

## XCITIUM MANAGED DETECTION RESPONSE

### END-USER LICENSE AGREEMENT AND SUBSCRIPTION SERVICES

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE. PLEASE READ THE AGREEMENT CAREFULLY BEFORE ACCEPTING ITS TERMS AND CONDITIONS.**

IMPORTANT – PLEASE READ THESE TERMS CAREFULLY BEFORE DOWNLOADING, INSTALLING, OR USING SERVICES, HARDWARE AND SOFTWARE (“THE PRODUCT” OR “PRODUCT”). THE PRODUCT CONSISTS OF BOTH HARDWARE AND SOFTWARE, AND YOUR USE OF THE PRODUCT IS SUBJECT TO YOUR ACCEPTANCE OF THIS END-USER LICENSE AGREEMENT (THIS “AGREEMENT” OR “EULA”). YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO ITS TERMS EITHER (1) BY USING THE PRODUCT, (2) BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, OR (3) BY CLICKING ON “I ACCEPT” BELOW. IF YOU DO NOT AGREE TO THE TERMS HEREIN, DO NOT USE THE PRODUCT, DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND DO NOT CLICK ON “I ACCEPT”.

This Agreement is a legal contract between you, as an End-User, and Xcitium, Inc., a Delaware company, with offices at 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003 (“Xcitium”).

In exchange for your use of the Product and the Services, you agree as follows:

#### 1. License

- 1.1. Grant of License. Xcitium grants you a royalty-free, limited, non-exclusive, non-transferable, and revocable license to use the Product and any applicable Services, including any documentation and files accompanying the Product, for your internal enterprise purposes that relate to the integrity and reliability of your network. You shall not resell, lease, sell, modify, reverse engineer, decompile, or create derivative works of the Software. All rights not expressly granted herein are reserved to Xcitium.
- 1.2. Restrictions. The licenses granted herein are valid only if:
  - 1.2.1. the Software and the Hardware are NOT modified in any manner;
  - 1.2.2. the Software is lawfully installed and lawfully used in accordance with your network security policies;
  - 1.2.3. you are not renting, selling, or leasing any rights in either the Software, the Hardware, or the Services, in any form, to a third party;
  - 1.2.4. the Hardware is not disassembled by you;
  - 1.2.5. you possess the necessary authority and power to install the Software and use the Services; and
  - 1.2.6. this Agreement is accepted without modification and has not been breached.
- 1.3. Account. Your account shall be protected by a username and password which are confidential information. You are fully responsible for any activities that occur through your account. You must notify Xcitium immediately if you suspect any unauthorized use of your account.
- 1.4. Updates. Xcitium is not obligated to provide updates to the Software, the Hardware, or the Services. If an update is provided and the update is not accompanied by an additional

agreement, this Agreement applies to your use and installation of the update. Some Xcitium products update automatically without notice and you accept such updates.

- 1.5. Open Source and Third Party Licenses. Third Party Software may be used to provide the Services. Consult the terms of service or end-user license agreement for each application that you choose to install on the Product. Third Party Software that is open-source software may be covered by licenses other than those granted in this Agreement. You agree that any copies of Third Party Software shall contain the same copyright and proprietary notices that appear in the Software.

## 2. Ownership

- 2.1. Ownership Rights. Excluding any and all intellectual property associated with the Product, you own the Hardware on which the Software is installed. The Software is being licensed to you, not sold. You do not own the Software and you acknowledge that Xcitium retains any right, title, and interest in the Software, including any updates to the Software. Except where a third-party license or open-source license conflicts, Xcitium retains all ownership rights and intellectual property rights in and to the Hardware and the Software. Xcitium retains all ownership rights in its trademarks, logos, and certification marks.
- 2.2. Content. Any content made available or accessible through the Services is the sole responsibility of the person or entity from whom it originated and is the property of the applicable owner. This Agreement does not give any rights to such content. Xcitium does not endorse any such content. You accept all responsibility for security risks and any damage resulting from any content viewed or accessed through the Services, and Xcitium is not responsible for any damage or loss caused by your use or reliance on any of the content, goods or services, or information available through third party sources regardless of how presented.
- 2.3. Submissions. You represent that you have the necessary rights and licenses to any files submitted to Xcitium for scanning. You also represent that your submission of files to Xcitium will not violate any third party rights to such files, including intellectual property rights and rights to privacy. Any communications sent to Xcitium are the property of Xcitium or its affiliates. Unless stated otherwise herein, submissions are not considered confidential, and Xcitium is not liable for any use or disclosure of a submission. Except as noted herein, Xcitium is entitled to unrestricted use of any submissions for any purpose whatsoever without compensation to the provider of the submission.

## 3. Restrictions

- 3.1. Lawful Use. The Services and the licenses granted in this Agreement are solely for lawful purposes and use. You are responsible for ensuring that your use of the Services and the licenses is in accordance with this Agreement and any applicable laws, statutes, ordinances, regulations, rules, and other government authority.
- 3.2. Compliance. You shall comply with all regulations, policies, and procedures of networks connected to the Product. You shall not use the Hardware or the Software to (1) interfere or disrupt networks connected to Xcitium's services; (2) infringe the privacy or intellectual property rights of a third party; (3) distribute or transmit any file that contains malware; (4) attempt to gain unauthorized access to other computer systems; or (5) transmit any unlawful, harassing, libelous, defamatory, racist, indecent, abusive, violent, threatening, intimidating, harmful, vulgar, obscene, offensive or otherwise objectionable material of any kind or nature.
- 3.3. Export. You represent that you are not located in and will not modify, transport, transfer, export, or re-export, either directly or indirectly, the Hardware or the Software to any country or entity under United States restrictions or to any country or entity subject to applicable trade

sanctions. The United States restricted country and persons list is subject to change without notice from Xcitium, and you must comply with the list as it exists in fact. XCITIUM SHALL NOT BE LIABLE FOR YOUR VIOLATION OF ANY SUCH EXPORT OR IMPORT LAWS, WHETHER UNDER UNITED STATES LAW OR FOREIGN LAW.

#### **4. Term and Termination.**

- 4.1. Term. This Agreement is effective until terminated by you or by Xcitium. You may only use the Software during the period for which you have paid the subscription fee or as indicated on any applicable purchase order.
- 4.2. Termination by You. You may terminate this Agreement at any time by disabling your account, stopping your use of the Services, or selling the Hardware.
- 4.3. Termination by Xcitium. Xcitium may terminate this Agreement at any time by posting notice of the termination on its website or sending an email to the address provided during your registration for the Services. Xcitium may monitor its systems for excessive consumption of network resources and may take technical or other remedies deemed necessary to prevent or eliminate any excessive consumption. If Xcitium deems your use to be excessive, Xcitium may restrict your access to the Services.
- 4.4. Events Upon Termination. Upon termination of this Agreement, you must immediately cease using the Services and delete all copies of any related Services found on your computer and any backup copies made. Upon termination, Xcitium may disable use of the Services without notice and may delete, remove, and erase any account information, any backup data stored by Xcitium, and any other information stored or collected by Xcitium. No refunds shall be given for any reason.
- 4.5. Return of Hardware. Upon termination, you must return all hardware to Xcitium, Inc., 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003.

#### **5. Transfer.**

- 5.1. Transfer. Subject to the restrictions in this Agreement, at the end of your subscription to the Software, you may transfer the Hardware to any one person on a permanent basis provided that prior to the transfer: (1) you notify Xcitium of your intent to transfer the Hardware; (2) you receive the transferee's contact details and pass them to Xcitium; (3) you pass a copy of this Agreement to the transferee; and (4) you do not pass along your account details or any personal information relating to your use of the Software.
- 5.2. Export Controls. In addition to complying with the terms in section 3.3 of this Agreement, when transferring the Hardware under section 5.1 of this Agreement, you agree that (1) you will transfer the Hardware in accordance with any applicable export control laws; (2) you are solely responsible for fulfilling any applicable government requirements in connection with your transfer of the Hardware; and (3) you will not transfer any rights in the Hardware to any destination subject to US restrictive sanctions or trade embargoes without the proper authorization.

#### **6. Indemnification.**

- 6.1. Indemnification. You shall indemnify (i) Xcitium, (ii) Xcitium's affiliates, and (iii) Xcitium's and its affiliate's directors, officers, employees, and agents (each an "Indemnified Person") against all liabilities, losses, expenses, or costs (including reasonable attorney's fees) (collectively "Losses") that, directly or indirectly, are based on your breach of this Agreement, information provided by you, your infringement on the rights of a third party, or your violation of any applicable law.

- 6.2. Indemnification Procedure. Xcitium shall notify you promptly of any demand for indemnification. However, Xcitium's failure to notify will not relieve you from your indemnification obligations except to the extent that the failure to provide timely notice materially prejudices you. You may assume the defense of any action, suit, or proceeding giving rise to an indemnification obligation unless assuming the defense would result in potential conflicting interests as determined by the Indemnified Person in good faith. You may not settle any claim, action, suit or proceeding related to this agreement unless the settlement also includes an unconditional release of all Indemnified Persons from liability.
- 6.3. Additional Liability. Your indemnification obligations are not Xcitium's sole remedy for a breach and are in addition to any other remedies Xcitium may have against you under this Agreement. Your indemnification obligations survive the termination of this Agreement.

## 7. Disclaimers and Limitation of Liability.

- 7.1. Use Limitations. You acknowledge that the Services are subject to the operation and telecommunications infrastructures of the Internet and the operation of your Internet connection services, all of which are beyond Xcitium's control. The Services are not designed for high-risk environments, a failure of which could lead to death, personal injury, or severe damage.
- 7.2. Collected Files. The Product may automatically submit to Xcitium any files or programs that are unknown or untrusted, including information on the actions taken by such files. The collected files could contain personally identifiable information that has been obtained by any of the identified pending/unrecognized file without your permission. Files of this type are being collected by Xcitium only for the purpose of improving the ability of Xcitium's products to detect malicious behavior. Xcitium will not correlate these files with any personally identifiable information. The automatic submission function may be deactivated by de-selecting this option in the general settings.
- 7.3. Disclaimer of other Warranties and Restrictions; Assumption of Risk. EXCEPT AS SPECIFICALLY STATED OTHERWISE IN THIS AGREEMENT, XCITIUM EXPRESSLY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES IN THE SERVICES. THE SERVICES ARE PROVIDED "AS-IS". THIS DISCLAIMER INCLUDES ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND IS EFFECTIVE TO THE MAXIMUM EXTENT ALLOWED BY LAW. XCITIUM DOES NOT GUARANTEE THAT 1) THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, 2) THAT THE SERVICES WILL DETECT OR REMOVE VIRUSES, 3) THAT FILES WILL BE RESTORED TO ANY OPERATIONAL STATE, OR 4) THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.
- 7.4. Damage Limitation. YOU WAIVE ALL LIABILITY OF XCITIUM AND ITS AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS, RESULTING FROM OR CONNECTED TO THIS AGREEMENT, INCLUDING ALL DAMAGES FOR LOST PROFITS, LOST REVENUE, USE, OR LOST DATA. THIS WAIVER APPLIES EVEN IF XCITIUM IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. These limitations apply to the maximum extent permitted by law regardless of 1) the reason for or nature of the liability, including tort claims, 2) the number of claims, 3) the extent or nature of the damages, and 4) whether any other provisions of this Agreement have been breached or proven ineffective.
- 7.5. Data Transfer. ALL MATERIAL AND/OR DATA DOWNLOADED OR OBTAINED THROUGH THE SERVICES IS AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR THE

USE OR YOUR POSSESSION OF SUCH DATA OR MATERIAL. XCITIUM DOES NOT ACTIVELY MONITOR ANY INFORMATION OR MATERIAL TRANSFERRED THROUGH ITS SERVICES AND CANNOT WARRANT THE CONTENT OF SUCH MATERIAL OR DATA. COMMUNICATIONS AND DATA RETURNED TO YOU FROM XCITIUM'S SERVERS IS SENT TO THE RECIPIENT IN ITS ORIGINAL STATE AND IS NOT NECESSARILY ENCRYPTED. XCITIUM EXPRESSLY DISCLAIMS ANY ENCRYPTION OF COMMUNICATIONS AND DATA DURING TRANSFER.

- 7.6. Exceptions. If any legal right disallows an exclusion of warranties or disallows limiting certain damages, then the disclaimers of guarantee and limitations on liability herein apply to the maximum extent allowed by law.
  - 7.7. Limitations on Remedy. Except for actions and claims related to a party's indemnification obligations, all actions or claims relating to this Agreement must be brought within one (1) year from the date when the cause of action accrued.
- 8. Support.** If Xcitium support is included with your Product and you request support from Xcitium in your operation or use of the Product, the following provisions apply unless explicitly replaced by an applicable SLA:
- 8.1. You authorize Xcitium to access your computer and delete the files that Xcitium deems unnecessary to your computers' operation of this program.
  - 8.2. You grant Xcitium express permission to alter the registry of any computer receiving the Product and to install, configure, and use additional software on your computers as Xcitium sees fit for use of this Product.
  - 8.3. You shall assist Xcitium as reasonably requested by Xcitium in diagnosing the computer and providing the Product.
  - 8.4. The Xcitium support representative has sole discretion over any instructions and steps taken in providing the Product.
  - 8.5. The Xcitium support representative may need to download, run, or use software on your computer to assist in diagnosing and resolving computer problems. Such software may include toolbars, utilities, and other tools that allow Xcitium to improve computer performance and solve technical problems (collectively, the "Diagnostic Software"). The use of all Diagnostic Software is subject to the license agreements associated with the Diagnostic Software. You shall accept and comply with all such license agreements.
- 9. Privacy.**
- 9.1. Privacy Policy. Xcitium shall follow the privacy policy posted on its website when collecting and using information from you. Xcitium may amend the privacy policy at any time by posting the amended privacy policy on its website.
  - 9.2. Disclosure. Xcitium will disclose information where required by a subpoena, interception order or other lawful process. Xcitium may also disclose information when it believes that such disclosure is necessary to protect the rights or safety of others or to enforce, or protect Xcitium's rights under this Agreement.
  - 9.3. Opt Out. You may opt-out of having information used for purposes not directly related to the Services by emailing a clear notice to [optout@Xcitium.com](mailto:optout@Xcitium.com). By using the Services, you affirmatively consent to receiving Xcitium's and its affiliates' promotional material.

## 10. Miscellaneous

- 10.1. Notices. All questions, notices, demands, or requests to Xcitium with respect to this Agreement shall be made in English writing to Xcitium, Inc. 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003, USA. All notices to you shall be made by posting the notice on the Xcitium website.
- 10.2. Entire Agreement. This Agreement, along with any attached schedules and any documents referred to herein, is the entire agreement between you and Xcitium with respect to the subject matter, superseding all other agreements that may exist with respect to the subject matter.
- 10.3. Modifications. Xcitium may amend or discontinue the Services offered under this Agreement in its sole discretion. Xcitium may amend this Agreement to the extent allowed by law. Xcitium will give you notice of these amendments by posting the modified Agreement to its website. You must periodically visit Xcitium's website to be aware of any changes. Continued use of the Services after an amendment constitutes your acceptance of the change.
- 10.4. Waiver. A party's failure to enforce a provision of this Agreement does not waive the party's right to enforce the same provision later or right to enforce any other provision of this Agreement. To be effective, all waivers must be both in writing and signed by the party benefiting from the waived provision.
- 10.5. Force Majeure and Internet Frailties. Other than for payment obligations by you, neither party will be liable for a delay or failure to perform an obligation to the extent that the delay or failure is caused by an occurrence beyond the party's reasonable control. Each party acknowledges that the operation of the Internet is beyond the other party's reasonable control, and neither party will be liable for a delay or failure caused by an interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, any associated server disruption or other such transmission failure.
- 10.6. Governing Law. The laws of the state of New Jersey, USA govern the interpretation, construction, and enforcement of this Agreement and all proceedings arising out of it, including tort claims, without regard to any conflicts of law principles. All proceedings or legal action arising from this Agreement must be commenced in the courts of the state of New Jersey. Both parties agree to the exclusive venue and jurisdiction of these courts.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to this agreement and are specifically excluded.
- 10.7. Assignment. You may not assign any of your rights or obligations under this Agreement, whether by merger, consolidation, operation of law, or any other manner, without the prior written consent of Xcitium. For purposes of this section only, a change in control is deemed an assignment. Any transfer without consent is void. To the extent allowed by law, Xcitium may assign its rights and obligations without your consent.
- 10.8. Severability. Any provision held invalid or unenforceable will be reformed to the minimum extent necessary to make the provision valid and enforceable. If reformation is not possible, the provision is deemed omitted and the balance of this Agreement remains valid and enforceable.
- 10.9. Survival. All provisions relating to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of this Agreement.

10.10. Rights of Third Parties. There are no third party beneficiaries under this Agreement.

**11. Arbitration.** You agree that any dispute, claim or controversy arising out of this Agreement shall be determined by binding arbitration. Before you may begin arbitration with respect to a dispute involving any aspect of this Agreement, you shall notify Xcitium and any other party to the dispute for the purpose of seeking dispute resolution. The notice to Xcitium should be addressed to Xcitium, Inc., 200 Broadacres Drive, Second Floor, NJ 07003, USA.

If the dispute is not resolved within sixty (60) days after the initial notice, then a party may proceed in accordance with the following: The laws of the state of New Jersey, USA govern the interpretation, construction, and enforcement of this Agreement and all proceedings arising out of it, including tort claims, without regard to any conflicts of law principles. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association if both parties are located in the United States with venue in Bloomfield, NJ, USA or if one party is located outside the United States, then by the International Chamber of Commerce in accordance with its Arbitration Rules, with the venue in New York City, New York, USA, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Either party may appear before the panel by telephone.

## **12. Agreement Construction**

12.1. Definitions. The following words and expressions shall have the following meanings:

12.1.1. "End-User" means any person or entity who uses the Product and subscribes to the Services. An End-User is either an Original End-User or a Subsequent End-User.

12.1.2. "Original End-User" means an End-User who purchased or received an unused Product from Xcitium, a Xcitium authorized seller, or a Xcitium authorized distributor.

12.1.3. "Subsequent End-User" means an End-User who is not an Original End-User.

12.1.4. "Product" means both the Hardware and the Software.

12.1.5. "Hardware" means the appliance and any related physical components included within the appliance's packaging, such as cords and wires, but excluding any documentation.

12.1.6. "Software" means firmware and software initially installed on the Hardware, plus any Xcitium applications, updates, and enhancements to either the firmware or software, but excludes Third Party Software.

12.1.7. "Services" is comprised of the Software, services provided by Xcitium through the Software that you subscribe to, and services provided by Xcitium under a service level agreement (SLA).

12.1.8. "Third Party Software" means software or technology that is not proprietary to Xcitium and is licensed to Xcitium by third parties.

12.1.9. "Documentation" means any documentation provided to you by Xcitium, in either electronic or printed form, that accompanies the Product.

12.2. Singularity; Plurality. In this Agreement, words in the singular include the plural meaning and words in the plural include the singular meaning, unless the context clearly indicates to the contrary.

12.3. Headings. Section headings are for reference and convenience only and are not part of the interpretation of the Agreement.

- 12.4. Legislative Amendments. Any reference to any law, statute, regulation, rule, directive, code, or treaty shall be interpreted to include any change, amendment, clarification, re-enactment, annulment, abrogation and revocation.

**ACCEPTANCE**

BY USING THE PRODUCT, BY DOWNLOADING, INSTALLING, OR USING SOFTWARE, OR BY CLICKING ON "I ACCEPT" BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO AND WILL BE BOUND BY ITS TERMS AND CONDITIONS.