

## XCITIUM PLATFORM TERMS AND END USER LICENSE AGREEMENT

### THIS AGREEMENT CONTAINS A BINDING ARBITRATION AND WAIVER OF CLASS ACTION CLAUSE

IMPORTANT—PLEASE READ THIS AGREEMENT CAREFULLY BEFORE SUBSCRIBING TO OR USING THE XCITIUM PLATFORM (“THE “PRODUCT”). BY SUBSCRIBING TO, ACCESSING OR USING THE PRODUCT OR BY CLICKING ON “I ACCEPT” BELOW, YOU ACKNOWLEDGE THAT 1) YOU HAVE READ THIS AGREEMENT, 2) YOU UNDERSTAND IT, AND 3) YOU AGREE TO THE TERMS HEREIN. IF YOU DO NOT AGREE TO THE TERMS HEREIN, DO NOT SUBSCRIBE TO OR USE THE PRODUCT AND CLICK “DECLINE” BELOW.

This end-user license agreement is a legal contract between you, as either an individual or as a business entity, and either: Xcitium, Inc., a Delaware company with offices at 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003, United States, hereinafter referred to as “Xcitium.”

This end-user license agreement covers the following features, which are included and may be enabled at your option, as part of the Xcitium account: RMM, Service Desk, Patch Management, Xcitium Endpoint Manager (separate EULA attached as Exhibit), and the Xcitium Platform Store. The Xcitium Standard Module EULA is attached as Exhibit B. Additional products of Xcitium are also provided through the Xcitium Platform, such as Xcitium’s Secure Internet Gateway, the terms of which are attached as Exhibit C. The user can also subscribe to other products through the Xcitium Platform.

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

#### 1. General

- 1.1. Grant of License. Xcitium grants you a limited, non-exclusive, non-transferable, and revocable license to download, install, access and use on your computer network(s) the Product, including any documentation and files accompanying the Product. You shall not resell, lease, sell, modify, reverse engineer, decompile, or create derivative works of any software provided together with this Product. All rights not expressly granted herein are reserved to Xcitium. Any violation of this paragraph or other license terms shall result in automatic termination of the license grant and Xcitium may enforce its legal rights under any applicable law, including copyright and intellectual property laws.
- 1.2. Scope. The Product consists of endpoint security, and as applicable, remote monitoring and management, service desk, and patch management modules as described on the Xcitium websites. The Product includes store and tools sections for adding more modules and tools. The specific scope of the Product is in Xcitium’s sole discretion and may change without notice.
- 1.3. Access. The Product is provided via cloud services and may be accessed anywhere with proper credentials. You are responsible for providing and maintaining your network connections. You warrant that use of the Product complies with all applicable computer and network policies which you are using for access. For MSP and Enterprise accounts, there is the option for Two Factor Authentication:

Prerequisites for Two Factor authentication usage:

- Authorized account user configuration
- Google Authenticator configuration on mobile device

Back up codes are available for users having Two Factor Authentication enabled.

Further, Enterprise accounts have ability to use Cloud Backup services, with available backup region options.

## 2. Limitations

- 2.1. Scope. The scope and extent of the Product are limited to the options selected by you when registering for the Product. Xcitium provides the Product in any manner it sees fit. Xcitium may modify the scope, type, and access to the Product without notice. The Product does not cover restoration of the Product, repair the Product, lost or expected profits, lost or corrupted data, lost or deleted work, or lost or damaged personal files. Xcitium does not guarantee against the loss of any file, information, or data. Unless your subscription to the Product states otherwise, you are solely responsible for backing up and safely storing its data, information, and files. You shall (1) obtain and pay for all equipment and third-party product required to use and receive the Product and (2) be responsible for all content on both your computer and network.
- 2.2. Quality of Product. Xcitium provides the Product using commercially reasonable efforts. Xcitium does not represent that commercially reasonable efforts will optimally configure a network or provide you with any significant energy or cost savings.
- 2.3. Compliance with Laws. You shall comply with all laws, regulations, and other restrictions when using the Product, including any applicable data collection, privacy, and export control laws or regulations. You may not use the Product to 1) engage in conduct that is offensive, abusive, contrary to public morality, indecent, defamatory, obscene, or menacing, 2) cause Xcitium or a third party distress, harassment, denial of any service, disruption or inconvenience, or 3) send or receive unsolicited bulk correspondence.

3. **Ownership**. Xcitium retains its rights at all times over the Product, including its ownership or licensed rights in any software or intellectual property accompanying the Product. You shall not use Xcitium's trademarks except with Xcitium's prior written consent.

## 4. Promotions

- 4.1. Terms. Xcitium occasionally offers promotions and special offers ("Promotion") such as free trials. Xcitium may terminate a Promotion at any time. If you subscribe to the Product during a Promotion, you are bound by the terms of the Promotion as set forth on the advertisement or web page of the Promotion.

## 5. Term and Termination

- 5.1. Term. This agreement is effective for one year or as otherwise indicated in any applicable purchase order, unless terminated earlier by you or by Xcitium. If this is a paid Product, you may only use paid Products during the period for which you have paid the subscription fee or as indicated on any applicable purchase order. The subscription may be renewed by paying an additional license fee as set forth on the Xcitium website.
- 5.2. Termination by You. For free software, you may terminate this agreement at any time by removing all copies of the software in your possession or under your control. All paid Products may be terminated by removing all copies of any related software and notifying Xcitium of your intent to terminate this agreement. Notification of termination must be sent by email to [support@Xcitium.com](mailto:support@Xcitium.com). Your termination will be effective upon Xcitium's receipt and processing of the email. Processing may take up to 24 hours.
- 5.3. 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 Products. 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, with email notice, terminate your account or adjust the price of the Products. Violation of the license granted in paragraph 1.1 results in automatic termination of the license and this agreement with all rights reverting back to Xcitium.

- 5.4. Events Upon Termination. Upon termination, you must immediately cease using the Products and delete all copies of any related software found on your computer and any backup copies made. Upon termination, Xcitium may disable further use of the Products without further 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. Such deletions are in Xcitium's sole discretion and may occur without notice to you. No refunds shall be given for any reason.

## **6. Warranty Disclaimers and Limitations on Liability**

- 6.1. Internet. You acknowledge that the Product is subject to the operation and telecommunications infrastructures of the Internet and your network and that the operation of the Internet and your network connections are all beyond Xcitium's control.
- 6.2. Warranty Disclaimer; Assumption of Risk. YOU ACKNOWLEDGE THAT XCITIUM PROVIDES THE PRODUCT "AS IS" AND "AS AVAILABLE". XCITIUM EXPRESSLY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES IN THE PRODUCT AND RELATED SOFTWARE. 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 PRODUCT WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS OR 2) THAT ACCESS TO THE PRODUCT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. YOU BEAR THE ENTIRE RISK AS TO THE QUALITY OF THE PRODUCT.
- 6.3. 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. YOU WAIVE ALL LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. THIS WAIVER INCLUDES ALL DAMAGES FOR LOST PROFITS, REVENUE, USE, OR DATA AND 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.
- 6.4. 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 RECIPIENT IN ITS ORIGINAL STATE AND NOT NECESSARILY ENCRYPTED. XCITIUM EXPRESSLY DISCLAIMS ANY ENCRYPTION OF COMMUNICATIONS AND DATA DURING TRANSFER.
- 6.5. Exceptions. If any legal right disallows an exclusion of warranties or disallows limiting certain damages, then the disclaimers of warranty and limitations on liability herein apply

only to the maximum extent allowed by law.

## 7. Remedy

- 7.1. Limitation on Actions. Except for actions and claims related to a party's indemnification and confidentiality obligations, all claims and actions arising from this agreement must be brought within one (1) year from the date when the cause of action occurred.
- 7.2. Remedy. Your sole remedy for a defect in the Product is to have Xcitium attempt to cure the defect. Xcitium is not obligated to correct a defect if (i) the Product was misused, damaged, or modified, (ii) you did not promptly report the defect to Xcitium, or (iii) you have breached any provision of this agreement.

## 8. Privacy and Permissions

- 8.1. Privacy Policy. Xcitium shall follow the privacy policy posted at its website when using collected personal information. Xcitium may revise its privacy policy without notice by posting the amended privacy policy on the Xcitium website. You shall periodically review the website to be aware of changes.
- 8.2. Communication. Xcitium may send you communications regarding your account, the Product, or its other products. By accepting this agreement, you consent to receiving marketing material from Xcitium. You may withdraw this consent later and opt-out of receiving communication by unsubscribing from emails you receive.

The Product has a unified notification ability where module notifications may be monitored over the Product's platform.

- 8.3. Data Collection. Xcitium may collect any information necessary to ensure your compliance with this agreement. Xcitium may also collect non-personally identifiable information about your use of the Product. Xcitium may monitor and create logs relating to the Product usage, for improving customer service, internal training, and internal market research. Xcitium may disclose these logs and any other information to satisfy any law, regulation or other governmental request, to operate the Product properly, or to protect ourselves and/or Xcitium's customers.

Data Collection may include:

- obtaining system information from a client's computer;
- retrieving a list of installed software, browser add-ons, and active tcp/udp connections from a client's computer;
- remote support session details logs; and
- collecting operational and audit logs

Customer user interface actions are logged about Product usage.

The Xcitium portal provides data synchronization with enabled Xcitium applications, as well as synchronization with services such as Microsoft Azure - please review the terms of this third party application for more information.

Options are provided for regional data storage per customer region.

- 8.4. Permissions. Upon acceptance by you, information collected by the Product will include (if you provide): company and contact name, phone, email, geo-location, such as zip code, and industry for the purpose of providing offers and promotions regarding other Xcitium products and services.

If you desire to opt-out of this module, please write to: [support@Xcitium.com](mailto:support@Xcitium.com) to disable access.

There is an automatic subscription of the Endpoint Manager, modules, Service Desk applications. The Service Desk includes telemetric logging for administrators and staff; audit logs and syslogs for monitoring. For authentication and authorization with Service Desk, Microsoft Azure integration is used – please review the terms of this third party application for more information.

For newly created accounts, remote access for Xcitium is enabled by default for immediate support by sales engineers. Users may disable this feature at any time.

If you subscribe, automatic payment is done for the Acronis post-payment option.

- 9. Arbitration.** 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 International Chamber of Commerce in accordance with its Arbitration Rules, with the venue in Bloomfield, NJ, USA and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in English. Either party may appear before the panel by telephone.

WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS.

YOU AND XCITIUM AGREE THAT ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER YOU NOR XCITIUM WILL SEEK TO HAVE ANY DISPUTE HEARD AS A FEDERAL OR STATE CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. NO ARBITRATION OR PROCEEDING WILL BE COMBINED WITH ANOTHER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES TO ALL AFFECTED ARBITRATION OR PROCEEDINGS.

**10. Miscellaneous**

- 10.1. Independent Contractors. No party shall have any authority to act or bind the other party in any way, or to represent that it has such authority. The parties are acting as independent contractors and not as agents, partners, or employees of each other. Neither party has the power to bind or obligate the other party and each party is responsible for its own expenses and employees.
- 10.2. Notices. You shall send all notices to Xcitium by first class mail, return receipt requested, in English writing to Xcitium, Inc., 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003, United States. Xcitium shall send all notices to the email address listed in your account.
- 10.3. Entire Agreement. With respect to the Product, this agreement is the entire understanding of the parties and supersedes all other agreements that may exist between the parties. The parties may execute one or more counterparts of the agreement, each of which will be deemed an original copy of the agreement. Section headings in this agreement are for reference and convenience only and are not part of the interpretation of the agreement.

- 10.4. **Modifications.** Xcitium may modify this agreement by posting an updated copy of the agreement on its website. Xcitium may also amend its website and pricing without notice. You may not modify this agreement unless the modification is signed by Xcitium. Xcitium may modify, supplement, or discontinue the Product, in whole or in part, without notice.
- 10.5. **Waiver.** A party's failure to enforce a provision of this agreement will 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.
- 10.6. **Force Majeure and Internet Frailties.** 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, or other such transmission failure.
- 10.7. **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.
- 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.
- 10.8. **Assignment.** You may not assign any of your rights or obligations under this agreement. Any transfer without Xcitium's consent is void. Xcitium may assign its rights and obligations without your consent.
- 10.9. **Severability.** Any provision determined invalid or unenforceable by rule of law 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 the agreement remains valid and enforceable.
- 10.10. **Survival.** All provisions of the agreement relating to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of the agreement.
- 10.11. **Rights of Third Parties.** There are no third party beneficiaries under the agreement.

## 11. Included Software and Licenses

The following third party software is distributed with, and is provided under, other licenses and/or has source available from other locations.

Component	License
osTicket	GPLv2
Vfense	LGPLv3
OpenSSL	OpenSSL License SSLeay License
Qt Framework	GPLv3
Google Protocol Buffers	3-Clause BSD License
Zlib	zlib License

Copies of the licenses covering some of these or other components can be found at the following destinations:

1. GNU General Public License version 2 (June 1991) ("GPLv2"), which can be found here: <http://www.gnu.org/licenses/gpl-2.0.html>
2. GNU General Public License version 3 (29 June 2007) ("GPLv3"), which can be found here: <http://www.gnu.org/copyleft/gpl.html>
3. GNU Lesser General Public License version 3 (29 June 2007) ("LGPLv3"), which can be found here: <https://www.gnu.org/licenses/lgpl.html>
4. OpenSSL License, which can be found here: <https://www.openssl.org/source/license.html>
5. SSLeay License, which can be found here: <https://www.openssl.org/source/license.html>  
Balena  
<https://github.com/balena/stun-msg/blob/master/LICENSE>

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ATTN: Accounting  
Xcitium, Inc.  
200 Broadacres Drive, Second Floor  
Bloomfield, NJ 07003  
United States

In your email and along with your check please include your name, address, telephone number, email address, the Xcitium product name, and the specific open-source software components. Your request will be processed once Xcitium receives both your email and your check.

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**The following applies to Google Protocol Buffers:**

Google Protocol Buffers - protobuf  
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**The following applies to zlib:**

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Jean-loup Gailly jloup@gzip.org  
 Mark Adler madler@alumni.caltech.edu

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The following applies to Google Analytics:

<https://github.com/GoogleWebComponents/google-analytics/blob/master/LICENSE>

**Additional Libraries:**

ngTagsInput:	The MIT License license_url: <a href="https://github.com/mbenford/ngTagsInput/blob/master/LICENSE">https://github.com/mbenford/ngTagsInput/blob/master/LICENSE</a>
angular-ui: Bootstrap 2.4	The MIT License <a href="https://github.com/angular-ui/ui-sortable/blob/master/LICENSE">https://github.com/angular-ui/ui-sortable/blob/master/LICENSE</a> <a href="https://github.com/angular-ui/bootstrap/blob/master/LICENSE">https://github.com/angular-ui/bootstrap/blob/master/LICENSE</a>
AngularJS 1.4.9:	The MIT License <a href="https://github.com/angular/angular.js/blob/master/LICENSE">https://github.com/angular/angular.js/blob/master/LICENSE</a>
nvd3:	Apache License <a href="https://github.com/novus/nvd3/blob/master/LICENSE.md">https://github.com/novus/nvd3/blob/master/LICENSE.md</a>
Jasper Report 5.0.7:	LGPL <a href="https://sourceforge.net/p/jasperreports/code/ci/master/tree/jasperreports/license.txt">https://sourceforge.net/p/jasperreports/code/ci/master/tree/jasperreports/license.txt</a>
Apache Tomcat 8.0.35:	Apache License <a href="http://www.apache.org/licenses/">http://www.apache.org/licenses/</a>
Oracle JDK 8:	Oracle Binary Code License (BCL) <a href="http://www.oracle.com/technetwork/java/javase/overview/javase8speclicense-2158700.html">http://www.oracle.com/technetwork/java/javase/overview/javase8speclicense-2158700.html</a>
spring-framework 4.2.6:	Apache License <a href="http://www.apache.org/licenses/LICENSE-2.0">http://www.apache.org/licenses/LICENSE-2.0</a>
jackson-core 2.4.4:	Apache License <a href="http://www.apache.org/licenses/">http://www.apache.org/licenses/</a>
logback 1.1.7:	EPL, LGPL: <a href="http://logback.qos.ch/license.html">http://logback.qos.ch/license.html</a>
slf4j 1.7.21:	MIT License <a href="http://www.slf4j.org/license.html">http://www.slf4j.org/license.html</a>
jstl 1.2.2:	CDDL, GPL: <a href="https://jstl.java.net/license.html">https://jstl.java.net/license.html</a>



javaee-web-api 7.0:	CDDL: <a href="https://glassfish.java.net/nonav/public/CDDL+GPL.html">https://glassfish.java.net/nonav/public/CDDL+GPL.html</a>
commons-pool2 2.2:	Apache: <a href="http://www.apache.org/licenses/">http://www.apache.org/licenses/</a>
mysql-connector-java 6.0.2 :	gpl: <a href="http://www.gnu.org/licenses/old-licenses/gpl-2.0.html">http://www.gnu.org/licenses/old-licenses/gpl-2.0.html</a>
beanstalkd 1.9:	MIT license: <a href="https://github.com/kr/beanstalkd/blob/master/LICENSE">https://github.com/kr/beanstalkd/blob/master/LICENSE</a>
jqplot ui chart (1.0.8)	MIT License <a href="https://github.com/jqPlot/jqPlot/blob/master/copyright.txt">https://github.com/jqPlot/jqPlot/blob/master/copyright.txt</a>
moment/moment-timezone with data (0.5.7)	MIT License <a href="https://github.com/moment/moment-timezone/blob/develop/LICENSE">https://github.com/moment/moment-timezone/blob/develop/LICENSE</a>
jquery-filestyle (1.5.1)	MIT License <a href="https://github.com/markusslima/jquery-filestyle/blob/master/LICENSE-MIT">https://github.com/markusslima/jquery-filestyle/blob/master/LICENSE-MIT</a>
nvd3 chart (1.1.15b)	Apache License <a href="https://github.com/novus/nvd3/blob/master/LICENSE.md">https://github.com/novus/nvd3/blob/master/LICENSE.md</a>
ui-grid (v3.0.7)	MIT License <a href="https://github.com/angular-ui/ui-grid/blob/master/LICENSE.md">https://github.com/angular-ui/ui-grid/blob/master/LICENSE.md</a>
redis (2.6.2)	MIT License <a href="https://raw.githubusercontent.com/xetorthio/jedis/master/LICENSE.txt">https://raw.githubusercontent.com/xetorthio/jedis/master/LICENSE.txt</a>
speakeasy 2.0.0	MIT License <a href="https://github.com/speakeasyjs/speakeasy/blob/master/LICENSE">https://github.com/speakeasyjs/speakeasy/blob/master/LICENSE</a>
express-session 1.14.2	MIT License <a href="https://github.com/expressjs/session/blob/master/LICENSE">https://github.com/expressjs/session/blob/master/LICENSE</a>
Fontawesome 4.7	Fontawesome.io SIL Open Font License <a href="http://scripts.sil.org/cms/scripts/page.php?site_id=nrsi&amp;id=OFL">http://scripts.sil.org/cms/scripts/page.php?site_id=nrsi&amp;id=OFL</a> MIT License <a href="https://opensource.org/licenses/mit-license.html">https://opensource.org/licenses/mit-license.html</a>
Connect-redis 3.1.0	MIT License <a href="https://github.com/tj/connect-redis">https://github.com/tj/connect-redis</a>
Font Roboto v2	Apache v. 2.0 License <a href="http://www.apache.org/licenses/LICENSE-2.0">http://www.apache.org/licenses/LICENSE-2.0</a> <a href="https://github.com/google/roboto/blob/master/LICENSE">https://github.com/google/roboto/blob/master/LICENSE</a>
randomstring v.1.1.5	MIT License <a href="https://www.npmjs.com/package/randomstring">https://www.npmjs.com/package/randomstring</a>
node-pool v2.5	MIT License <a href="https://github.com/coopernurse/node-pool/tree/v2.5">https://github.com/coopernurse/node-pool/tree/v2.5</a>
angucomplete-alt v.3.0.0	MIT License <a href="https://github.com/ghiden/angucomplete-alt/blob/master/LICENSE">https://github.com/ghiden/angucomplete-alt/blob/master/LICENSE</a>

## 12. Acceptance

BY CLICKING "I ACCEPT", YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND ACCEPT THE PRODUCT'S FUNCTIONS. DO NOT CLICK THE "I ACCEPT" BUTTON IF YOU DO NOT ACCEPT THIS AGREEMENT AND THE PRODUCT'S FUNCTIONS.

## EXHIBIT A

### **XCITIUM END USER LICENSE AGREEMENT AND TERMS OF SERVICE ENDPOINT MANAGER**

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE.

IMPORTANT – PLEASE READ THESE TERMS CAREFULLY BEFORE USING XCITIUM ENDPOINT MANAGER (THE “PRODUCT”). THE PRODUCT MEANS ALL OF THE ELECTRONIC FILES PROVIDED BY DOWNLOAD OR ACCESSED OR INSTALLED WITH THIS LICENSE AGREEMENT. BY USING THE PRODUCT, OR BY CLICKING ON “I ACCEPT” BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS HEREIN, DO NOT USE THE SOFTWARE, SUBSCRIBE TO OR USE THE SERVICES, OR CLICK ON “I ACCEPT”.

#### **Product Functionality**

Xcitium Endpoint Manager (EM) allows administrators to manage, monitor and secure mobile devices which connect to enterprise wireless networks. Once a device has been enrolled, administrators can remotely apply configuration profiles which determine that device's network access rights, security settings and general preferences. EM also allows administrators to monitor the location of the device; run antivirus scans on the device; install/uninstall device apps; remotely lock or wipe the device; view/start/stop running services; view reports on device hardware/software information; reset user passwords; make the device sound an alarm and more. Integration with Simple Certificate Enrollment Protocol also allows EM end-users to enroll for and install client certificates for the purposes of two factor authentication and identification. Administrators also have mail access control and can whitelist devices that have access to company mail server. Monitoring of users and devices on the network may also be performed by administrators, including communication with users directly by sending push messages to their devices. Error logs from EM portals are collected through mails.

EM integrates with Xcitium Verdict Cloud, (<https://Xcitium.com>) by Xcitium, Inc., a cloud based file analysis which tests user submitted files with a range of detectors such as heuristics, file lookup and real time behavior analysis. The Xcitium Verdict Cloud terms are also included as an Exhibit for your convenience.

For a complete list and description of the Product features and functions, please refer to the Administration Guide.

This end user license and subscriber agreement is between you (“you” or “Subscriber”), an individual or entity, and:

- a. Xcitium, Inc. a Delaware corporation, with offices at 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003, United States, hereinafter referred to as “Xcitium”.

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

#### **1. License**

##### **1.1. Grant of License.**

###### **a. Standard Edition:**

Xcitium grants you a limited, non-exclusive, non-transferable, and revocable license to download, install, access and use on your computer network(s) the Product, including any documentation and files accompanying the Product. You shall not resell, lease, sell, modify, reverse engineer, decompile, or create derivative works of any software provided together with this Product. All rights not expressly granted herein are reserved to Xcitium. Any violation of this paragraph or other license terms shall result in automatic termination of the

license grant and Xcitium may enforce its legal rights under any applicable law, including copyright and intellectual property laws. This license is free for up to a maximum of fifty (50) devices having Xcitium RMM installed. Each device over the fifty device limit with Xcitium RMM shall be paid on a per device basis per month at the fees indicated on any applicable purchase order or if no purchase order, in the manner otherwise communicated to you, including via electronically or via the website.

In the event Xcitium determines there are multiple accounts which belong to one customer, Xcitium will recognize only the initially opened account and will close all of the additional accounts and send a single invoice for all of the accounts as one account.

b. Premium Edition:

Xcitium grants you a limited, non-exclusive, non-transferable, and revocable user license to download, access, install, back-up, and use the Product on or for one (1) network device under a valid license granted by Xcitium for the term that you have paid for, including any documentation and files accompanying the Product. 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.

Premium Edition includes license to protection with Xcitium Client Security for your devices.

This License grant shall expire at the end of the paid subscription period or at the end of the trial period.

- 1.2. Restrictions. The licenses granted herein are only valid if:
  - (i) the Product is NOT modified in any manner;
  - (ii) the Product is only installed and used in accordance with your network security policies,
  - (iii) you possess the necessary authority and power to install and use the Product,
  - (iv) you promptly pay all license fees when due, and
  - (v) this agreement is accepted without modification and has not been breached.
- 1.3. Registration. When registering Product, you must provide accurate information and must update the registration information if it changes. Xcitium may limit your ability to use the Product if you fail to complete a required registration process. You may also be required to select a username and password. Maintaining the confidentiality of this password and username is your responsibility. You must notify Xcitium immediately of any unauthorized use of your account.
- 1.4. Limited License. The licenses granted herein are only for the registered end user for one (1) device for which you paid for the Product. Each of these devices must be enrolled and activated through the Product. You can secure additional devices by obtaining a separate license, which might require an additional fee. You must have a license for each mobile device that accesses or uses the Product prior to installing or using the Product.
- 1.5. Updates. Xcitium may, but is not obligated, to provide updates to the Product. 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. The Product may update automatically without notice.

- 1.6. Technical Support. Xcitium is not obligated to provide technical or customer support for Xcitium Endpoint Manager. In the event technical or customer support is offered or included, Xcitium has a right to alter or terminate the support at any time without notice.
- 1.7. Trial, Free, Evaluation, and Beta. If this agreement pertains to a trial, free, beta, or evaluation version, the licenses granted herein terminate at the end of the trial or evaluation period or when Xcitium disables access to the Product. For a trial version of the Product if no term is agreed or specifically set forth in the documentation that you receive with this Product, then the term for the licenses granted herein shall be for the term that you purchased. All trial, evaluation, and beta licenses are limited to one per customer. Generally, credit card or account information is required to access a free trial. However, Xcitium shall not charge your credit card or account until the trial period has ended. At the end of the trial period, Xcitium may bill the credit card or account for the Product without further notice. Participants in a free trial are not entitled to a 30 day refund period. Your termination of this agreement prior to the end of the free trial is required to avoid fees for the Product. Annual subscriptions expire one year from the end of the trial period. Xcitium may deny or revoke a free trial for any reason.

## 2. Ownership

- 2.1. No Ownership Rights. The Product is being licensed, not sold. Xcitium retains all of its ownership rights in and to the Product, including any intellectual property rights therein.
- 2.2. Copyright. The Product contains material that is protected by United States and foreign intellectual property laws, including copyright, trade secret, and patent law. All rights not granted to you herein are expressly reserved by Xcitium. You may not remove any copyright or other proprietary notice of Xcitium or any third party from the Product.
- 2.3. Content. Content, including files, links, images, and text, made available or accessible through the Product 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 Product, 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.
- 2.4. Submissions. 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, and subject to applicable law, Xcitium is entitled to unrestricted use of any submissions for any purpose whatsoever without compensation to the provider of the submission.

## 3. Payment

- 3.1. Fees. If there is a free version of the Product, it may be used without payment to Xcitium. For a paid Product, you must pay the fee listed on any applicable purchase order or Xcitium's website prior to using or accessing the Product. Free and paid for Product are listed on [www.Xcitium.com](http://www.Xcitium.com). Any products of affiliates or other third parties may be found on their respective websites. Xcitium may modify fees for paid Product in its sole discretion. Your failure to terminate this agreement after a fee change is posted to Xcitium's website constitutes your acceptance of amended prices, which will apply upon your renewal of the Product.
- 3.2. Method of Payment. All fees must be paid in advance. Xcitium may automatically charge the

credit card or account provided for renewing subscriptions to the Product. However, you remain solely responsible for any renewal payment. If renewal payments are not made before a subscription expires, Xcitium may, without notice, restrict or remove your access to the Product.

- 3.3. Rejected Charges. If any charges are rejected by your credit card issuer then Xcitium may deactivate your account until payment is successfully received. Xcitium may deactivate any account that has a disputed charge until Xcitium, in its sole discretion, determines the dispute resolved.
- 3.4. Billing Issues. You shall provide Xcitium notice of any billing problems or disputes within 60 days after the charge first appears on a statement you receive from your bank, credit card company, or other billing company. Failure to notify Xcitium of the problem within the 60 day period is your acceptance of the charges. Xcitium is not obligated to provide a refund for any unused Product.

#### **4. Restrictions**

- 4.1. Lawful Use. The Product is solely for lawful purposes and use. You are responsible for ensuring that your use of the Product is in accordance with this agreement and any applicable laws, statutes, ordinances, regulations, rules and other government authority.
- 4.2. Compliance. You shall (1) not interfere or disrupt networks connected to Xcitium's services; (2) comply with all regulations, policies and procedures of networks connected to the services; (3) not use the Product to infringe the privacy or intellectual property rights of a third party; (4) not use the Product to distribute or transmit any file that contains malware, (5) not attempt to gain unauthorized access to other computer systems or mobile devices; and (6) not use the Product to 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.
- 4.3. Export. You represent that you are not located in and will not modify, export or re-export, either directly or indirectly, the Product 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.

#### **5. Termination.**

- 5.1. Term. This agreement is effective for one year or as otherwise indicated in any applicable purchase order, unless earlier terminated by you or by Xcitium. You may only use paid Product during the period for which you have paid the subscription fee. The subscription may be renewed by paying an additional license fee as set forth on the Xcitium website.
- 5.2. Termination by You. For free software, you may terminate this agreement at any time by removing all copies of the software in your possession or under your control. All paid Product may be terminated by removing all copies of any related software and notifying Xcitium of your intent to terminate this agreement, and paying any outstanding invoices. (To uninstall EM, follow the instructions in section 5.5 below). Notification of termination must be sent by email to [support@Xcitium.com](mailto:support@Xcitium.com). Your termination will be effective upon Xcitium's receipt and processing of the email. Processing may take up to 24 hours.

- 5.3. 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 Product. 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, with email notice, terminate your account or adjust the price of the Product.
- 5.4. Events Upon Termination. Upon termination, you must immediately cease using the Product and delete all copies of any related software found on your mobile device and any backup copies made. Upon termination, Xcitium may disable further use of the Product without further 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. Such deletions are in Xcitium's sole discretion and may occur without notice to you. No refunds shall be given for any reason.
- 5.5. Uninstall. To uninstall the Xcitium application, you should be de-enrolled from the server by the company administrator or you should remove the application. For Android, you should remove the application from the device administration screen first. You can find the menu under "Settings - Security - Device Administrators". You should disable the check mark from the Xcitium application under Device Administrator menu. If removal protection is set by your company administrator, your device would be locked and you will be asked to enter the unlock password. You can ask your company administrator to get the password. When you unlock it, you should go to "Settings – Application Manager" menu and find the Xcitium application from the list. You should tab on application name to see the details on App info menu. Under App info menu, you can see the action buttons. You should choose and tab "Uninstall". (\*Menu names and order could be not exactly as described in here due to Android versions and manufacturer customization. Please contact Xcitium if you need further help).

## 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 a law, including but not limited to any law or regulation relating to the privacy and/or security of your users and their devices.
- 6.2. Indemnification By Xcitium. Xcitium hereby agrees to indemnify, defend and hold harmless You (an "Indemnified Person"), from and against, any and all Losses incurred by You in connection with any claim, action, suit or proceeding by a third party (each, a "Claim") to the extent such Claim arises out of or results from Xcitium's misappropriation of a trade secret of a third party or direct infringement of any U.S. patent, registered copyright, or registered trademark ("Intellectual Property Infringement") related to the use of the Product. Xcitium's indemnification obligations shall not apply to the extent any such infringement or misappropriation is the result of: (a) Your independent modification of the Product, or any other product, software or service provided under this agreement where without such modification the Product or other product would not infringe, (b) Your combination of the Product or any other product, software or service provided under this agreement with any other product, or use with any other product, (c) Xcitium's adherence to Your express written instructions where such instructions and any modifications, changes or combinations made

as a result of said instructions are solely responsible for the claim of infringement, (d) any Claim based on open source software or other third party code included with the Product, (e) any unauthorized use of the Product, or (f) use of the Product other than in accordance with the Documentation (any applicable administration guide for the current version of the Product).

- 6.2.1. **Remedy and Liability:** In the event that a court of final determination and of competent jurisdiction holds that the Product constitutes a direct infringement or use of the Product is enjoined, Xcitium shall, at its sole discretion, do one or more of the following: (i) procure for you the right to continue use of the Product, (ii) provide a modification to the Product so that its use becomes non-infringing, (iii) replace the Product with software that is substantially similar in functionality and performance or (iv), if none of the foregoing alternatives is reasonably available to Xcitium, Xcitium shall refund the residual value of the purchase price paid by you for the infringing Product, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Product to you. Xcitium may also request You to remove all copies of any Product held to be infringing or giving rise to a Claim.

THE AGGREGATE LIABILITY OF XCITIUM AND ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS, RESULTING FROM OR CONNECTED TO THIS SECTION OF THE AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNT PAID OR PAYABLE BY YOU UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO A CLAIM. THIS SECTION STATES XCITIUM'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

- 6.3 **Indemnification Procedure.** Each Indemnified Person must notify the other party promptly (within 14 days) of a demand for indemnification. However, an Indemnified Person's failure to notify will not relieve the other party from its indemnification obligations except to the extent that the failure to notify materially prejudices a party. The Indemnitor 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. Indemnitor 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.
- 6.4 **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. **Internet.** You acknowledge that the Product is 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.
- 7.2. **Guarantee Disclaimer; Assumption of Risk.** EXCEPT AS SPECIFICALLY STATED OTHERWISE IN THIS AGREEMENT, XCITIUM EXPRESSLY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES IN THE PRODUCT. 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 PRODUCT WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS OR 2) THAT ACCESS TO THE PRODUCT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. YOU ACKNOWLEDGE THAT IF YOU WISH TO PROTECT YOUR TRANSMISSION OF DATA OR FILES, IT IS

YOUR RESPONSIBILITY TO USE A SECURE ENCRYPTED CONNECTION TO COMMUNICATE WITH THE SERVICES.

- 7.3. Damage Limitation. EXCEPT AS STATED UNDER SECTION 6.2.1 (INDEMNIFICATION FOR INTELLECTUAL PROPERTY INFRINGEMENT), THE TOTAL LIABILITY OF XCITIUM AND ITS AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS, RESULTING FROM OR CONNECTED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID BY YOU FOR THE PRODUCT. YOU WAIVE ALL LIABILITY FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WAIVER INCLUDES ALL DAMAGES FOR LOST PROFITS, REVENUE, USE, OR DATA AND 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.
- 7.4. Data Transfer. ALL MATERIAL AND/OR DATA DOWNLOADED OR OBTAINED THROUGH THE PRODUCT 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 PRODUCT AND CANNOT WARRANT THE CONTENT OF SUCH MATERIAL OR DATA.
- 7.5. 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.
- 7.6. 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 occurred.

## 8. Privacy.

- 8.1. 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.

In the event that third party products, features and functionalities are incorporated in or made available in or through an Xcitium product, then the policies of those third parties apply. Please visit each third party's license agreement and privacy policy to better understand their terms of use, privacy and data collection practices.

- 8.2. Permissions. Upon your request and permission, Xcitium may access your device information and status, location, application list, and license list and Xcitium may take action on your device for you remotely. Please see the EM user guide for a full list of features.

Xcitium may ask you to create a portal or select options based on your geolocation preferences.

The EM endpoint agent, Xcitium Client Security (XCS), has additional features and permissions including access to device information and device IP address. Please review the corresponding XCS EULA which is included as an Exhibit for more detail.

Event Logging:



Continuous integration of user action event logging to analyze user behavior within the product, as well as event collection for analysis of user funnel data. Device event logging is sent to the logging system. Logging between the product plugins and back end services for analysis is also performed. Xcitium may enable logging for clients to send for Xcitium's investigation of incidents.

Audit logging includes logging of administrator actions with device list actions, such as sign in attempts, basic actions with profiles, procedures sections, actions with RBAC system; logging of IRC events. Also includes malware page action logs and antivirus page action logs.

Xcitium Remote Control (IRC) – this feature allows authentication by Xcitium and EM credentials; By providing the device list, it allows use without the portal. (for Windows and macOS). Profile management options allow for setting of access permissions. Ability is also provided to select which cloud to connect by geo-location region (U.S. or EU). Access scope restrictions may be set up as well.

Administrator Portal – Admin portal activity logging, admin portal account creation and role based security and authorization implementations. Retrieval of installation origin of OS patches and 3<sup>rd</sup> party applications.

Installation of Selected Applications – third party applications can be selected and installed to selected devices.

- 8.3. 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.
- 8.4. Promotions. By clicking "I ACCEPT", you affirmatively consent to receiving Xcitium's promotional material. You may opt out of any promotional materials you may receive by unsubscribing from the emails.
- 8.5. User Data Compliance. You are responsible for ensuring that you or any users of the Product comply with the obligations under this Agreement. You will duly observe all your obligations under any relevant data protection or privacy law or regulation that may apply, including any obligation to configure the Product appropriately, provide notice, obtain consent, or file documents with any applicable data protection authorities. You are responsible for developing a policy that protects user data, outlines the responsibilities of you and your users, and informs your users of the scope your use of the Product.

## 9. Miscellaneous

- 9.1. 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, New Jersey 07003, USA. All notices to you shall be made by posting the notice on the Xcitium website.
- 9.2. Governing Law. The laws 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.

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.

- 9.3. Entire Agreement. This agreement, along with the attached schedules and any documents referred to herein, is the entire agreement between the parties with respect to the subject

matter, superseding all other agreements that may exist with respect to the subject matter. Section headings are for reference and convenience only and are not part of the interpretation of the agreement.

- 9.4. Modifications. Xcitium may amend or discontinue the Product offered under this agreement in its sole discretion, including modifying renewal license fees, availability, equipment and software requirements, and limiting or restricting use of Product. 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 a Product after an amendment constitutes your acceptance of the change.
- 9.5. 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.
- 9.6. 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, or other such transmission failure.
- 9.7. 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, Bloomfield, New Jersey 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 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 International Chamber of Commerce in accordance with its Arbitration Rules, with the venue in Bloomfield, NJ, 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.

#### WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS.

YOU AND XCITIUM AGREE THAT ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER YOU NOR XCITIUM WILL SEEK TO HAVE ANY DISPUTE HEARD AS A FEDERAL OR STATE CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. NO ARBITRATION OR PROCEEDING WILL BE COMBINED WITH ANOTHER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES TO ALL AFFECTED ARBITRATION OR PROCEEDINGS.

- 9.8. 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.
- 9.9. 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 the agreement remains valid and enforceable.
- 9.10. Survival. All provisions relating to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of the agreement.
- 9.11. Rights of Third Parties. There are no third party beneficiaries under the agreement.

## **ACCEPTANCE**

BY CLICKING "I ACCEPT" BELOW, YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND THAT YOU WILL BE BOUND BY AND COMPLY WITH ALL OF ITS TERMS. DO NOT CLICK THE "I ACCEPT" BUTTON IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT.

## SCHEDULE A

### Included Software and Licenses

The following third party or open source software may be included and is provided under other licenses and/or has source available from other locations.

Component	License
PHP	<a href="http://php.net/license/3_01.txt">http://php.net/license/3_01.txt</a> (PHP License v3.01)
OpenSSL	<a href="https://www.openssl.org/source/license.html">https://www.openssl.org/source/license.html</a> (OpenSSL License) <a href="https://www.openssl.org/source/license.html">https://www.openssl.org/source/license.html</a> (SSLeay License)
PostgreSQL	<a href="http://www.postgresql.org/about/licence/">http://www.postgresql.org/about/licence/</a> (PostgreSQL License)
Yii	<a href="http://www.yiiframework.com/license/">http://www.yiiframework.com/license/</a> (3-Clause BSD License)
PHPMailer	<a href="https://www.gnu.org/licenses/lgpl-2.1.html">https://www.gnu.org/licenses/lgpl-2.1.html</a> (LGPLv2.1)
sscep	<a href="https://www.openssl.org/source/license.html">https://www.openssl.org/source/license.html</a> (OpenSSL License)
nzmqt	<a href="https://github.com/jonnydee/nzmqt/blob/master/LICENSE.md">https://github.com/jonnydee/nzmqt/blob/master/LICENSE.md</a> (2-Clause BSD License)
NGINX	<a href="http://nginx.org/LICENSE">http://nginx.org/LICENSE</a> (2-Clause BSD License)-like
Bootstrap	<a href="https://github.com/twbs/bootstrap/blob/master/LICENSE">https://github.com/twbs/bootstrap/blob/master/LICENSE</a> (MIT License)
jQuery	<a href="https://jquery.org/license/">https://jquery.org/license/</a> (MIT License)
Leaflet	<a href="https://github.com/Leaflet/Leaflet/blob/master/LICENSE">https://github.com/Leaflet/Leaflet/blob/master/LICENSE</a> (2-Clause BSD License)-like
ORMLite	<a href="http://ormlite.com/javadoc/ormlite-core/doc-files/ormlite_9.html#License">http://ormlite.com/javadoc/ormlite-core/doc-files/ormlite_9.html#License</a>
Apache http components	<a href="http://www.apache.org/licenses/">http://www.apache.org/licenses/</a> (Apache License, Version 2.0)
ZeroMQ	<a href="http://zeromq.org/area:licensing">http://zeromq.org/area:licensing</a> (LGPLv3.1 + static link exception)
AndroidAnnotations	<a href="http://www.apache.org/licenses/LICENSE-2.0.html">http://www.apache.org/licenses/LICENSE-2.0.html</a> (Apache License Version 2.0)
Zend Guard	<a href="http://www.zend.com/en/products/guard">http://www.zend.com/en/products/guard</a>
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By accepting this Agreement, you are providing express permission for the following information to be obtained by this program:

Data and information that is collected from users for statistics and analysis during Xcitium product installation, uninstallation and product update(s) in order for Xcitium to know specific Xcitium product usage on various operating systems, and to assist in further product planning and support include:

Anonymous Computer ID; Xcitium defined integer values for Product ID, Channel ID, Affiliate ID and selected Interface Language, Xcitium product version; operating system name, platform, language, build and version; input e-mail (if optionally provided during installation); Xcitium product related license information; settings for consent to data collection; if the web filtering feature is enabled and a browsed URL is a heuristic match with a malicious website database, the URL may be sent to Xcitium for further analysis.

The following information is also sent to Xcitium to determine active users:

Anonymous Computer ID; Xcitium defined integer values for Product ID, Channel ID and Affiliate ID; and Xcitium product version.

The following information is only sent to Xcitium based on consent:

Install options;  
Xcitium application usage (i.e. Xcitium product launch and which features and interfaces used);  
Information on executed files which includes the file path, file size, the file's sha-1 hash, Xcitium verdict and source of verdict, user's decision on application, parent application sha-1 hash, url associated with the file, IP of domain from where the file is downloaded, browser name and version from where a file is downloaded, if the file is seen as an installer by product, a file's digital signing status, digital signer name if the file is signed;  
Information on installed browser, such as name, search engine and home page settings;  
Default browser;  
Crash dumps of Xcitium application and Kernel crash dumps.

In order to investigate crashes in the context of the system, computer information as extracted using Microsoft tool "msinfo32.exe /nfo" is sent, which contains complete system information including but not limited to, the categories of "Hardware Resources", "Components", and "Software Environment" with information about installed applications.

Xcitium Product(s) may produce log files of information about certificate revocation checks which are transmitted to Xcitium for analysis. No correlation of personally identifiable information is made or included in the log files.

Additional particular details of information collection include:

The file/application list is scanned; reporting of information of scan events to Xcitium's server/ portal for integration, where the scan events will be shown on EM portal per device;

System information via PAAR Service (Information about the computer or device such as computer ID, operating system language, operating system type);

User events, (such as install, uninstall, and updates), logging, heartbeat, operating system changes, installation failure via Xcitium Messaging Center Service. Upon enablement of functionality, collection includes global machine code, operating system version, and any changes to OS.

Administrator access control for device;

Data reporting to Xcitium of response errors and response time for the following services: FLS, Xcitium Verdict Cloud, EM File Rating, and download. Xcitium.com, as well as determining if these services are available.

Options to automatically submit crash reports for XCS processes crash and Windows crashes and event logs are also available.

XCS also sends the following information to Xcitium's FLS:

Scan of files; file downloads from URLs and from which URL the file is downloaded; domain IP, browser name; parent hash if the file/process has a parent process; user id; product id; product version; installer; file size; file type; file path; digital signature status; file hidden status; verdict source; caller type; value of signer name of the code signing digital signature; enterprise field; enterprise value; registration and de-registration information; logging the parent process of file-less script launched in Containment.

XCS monitors file upload/download status and the duration of such. Monitoring and reporting of file operations including any upload to Xcitium Verdict Cloud, upload to Xcitium account manager service (if configured), downloading updates from download.Xcitium.com or other configured updating service. Reporting of unrecognized files that have stayed unrecognized for a given time period. Downloads of the local verdict service database updates is also allowed.

A recognizer function of the program blocks suspicious applications from dropping files into a user's auto run folder and has the ability to choose applicable actions.

XCS may also send logs to third party logging systems, these could include event logs, system logs, and external files.

XCS also creates, as needed, files or other items (such as logs, registry, keys etc.) required by the operating system for compatibility purposes.

- 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 Product by emailing a clear notice to [optout@Xcitium.com](mailto:optout@Xcitium.com). By clicking "I AGREE", you affirmatively consent to receiving Xcitium's and its affiliates' promotional material.
- 9.4. File Submission. This product may automatically submit to Xcitium any files or programs that are identified as potential malware, including information on the actions taken by such files. The collected files could potentially contain personally identifiable information that has been obtained within the file which was identified as a potential malware file. 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.

## 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, New Jersey 07003. All notices to you shall be made by posting the notice on the Xcitium website.
- 10.2. Entire Agreement. This agreement, along with the attached schedules and any documents referred to herein, is the entire agreement between the parties with respect to the subject matter, superseding all other agreements that may exist with respect to the subject matter. Section headings are for reference and convenience only and are not part of the interpretation of the agreement.
- 10.3. Modifications. Xcitium may amend or discontinue certain Product offered under this agreement in its sole discretion, including modifying renewal license fees, availability, equipment and software requirements, and limiting or restricting use of the Product. 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 a Product 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, or other such transmission failure.
- 10.6. Arbitration.

ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JUDGE OR JURY TRIAL IN A COURT PROCEEDING AND YOUR GROUNDS FOR APPEAL ARE LIMITED.

You agree that any dispute, claim or controversy arising out of this agreement shall be determined by binding arbitration, except as indicated at the end of this section below. 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 200 Broadacres Drive, Second Floor, Bloomfield, New Jersey 07003.

If the dispute is not resolved within sixty (60) days after the initial notice, then a party may proceed in accordance with the following: Any unresolved dispute arising under the terms of this Agreement shall be decided by arbitration conducted through the services of the Commercial Arbitration Rules of the American Arbitration Association (hereinafter referred to as the "AAA"). Notice of demand for an arbitration hearing shall be in writing and properly served upon the parties to this Agreement. Arbitration hearings shall be held in the state of New Jersey at a location mutually agreeable to the parties.

You and Xcitium agree that "dispute, claim or controversy" as defined in this Agreement shall not include any claim or cause of action by You or Xcitium for trade secret misappropriation, patent infringement, copyright infringement or misuse, or trademark infringement or dilution. You agree that a Court, not an Arbitrator, may decide if a claim falls within one of these exceptions.

10.7 WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS.

YOU AND XCITIUM AGREE THAT ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER YOU NOR XCITIUM WILL SEEK TO HAVE ANY DISPUTE HEARD AS A FEDERAL OR STATE CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. NO ARBITRATION OR PROCEEDING WILL BE COMBINED WITH ANOTHER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES TO ALL AFFECTED ARBITRATION OR PROCEEDINGS.

10.8 Governing Law

The laws of the state of New Jersey govern the interpretation, construction and enforcement of this agreement and all proceedings arising out of it without regard to any conflicts of laws principles. Both parties agree to the exclusive venue and jurisdiction of state or U.S. federal courts located in New Jersey.

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.

- 10.9. 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.
- 10.10. 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 the agreement remains valid and enforceable.
- 10.11. Survival. All provisions relating to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of the agreement.
- 10.12. Rights of Third Parties. There are no third party beneficiaries under the agreement.

## **ACCEPTANCE**

BY CLICKING "I ACCEPT" BELOW, YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND THAT YOU WILL BE BOUND BY AND COMPLY WITH ALL OF ITS TERMS. DO NOT CLICK THE "I ACCEPT" BUTTON IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT.



## SCHEDULE A

### Included Software and Licenses

The following third party or open source software may be included and is provided under other licenses and/or has source available from other locations.

SQLite

(Public domain)

FileHash.h

<https://github.com/JoeKun/FileMD5Hash/blob/master/Library/FileHash.h>

(Apache v2.0 <http://www.apache.org/licenses/LICENSE-2.0> )

Open DLAP License

<https://github.com/LMDB/lmdb/blob/mdb.master/libraries/liblmdb/LICENSE>

Luajit

<http://luajit.org/luajit.html> MIT License

<https://opensource.org/licenses/mit-license.php>

## **ENDPOINT MANAGER EXHIBIT B**

### **XCITIUM VERDICT CLOUD TERMS AND CONDITIONS**

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER WHICH REQUIRES THE RESOLUTION OF DISPUTES ON AN INDIVIDUAL BASIS, LIMITS YOUR ABILITY TO SEEK RELIEF IN A COURT OF LAW, AND WAIVES YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS, CLASS ARBITRATIONS, OR A JURY TRIAL FOR CERTAIN DISPUTES.

IMPORTANT—READ THESE TERMS CAREFULLY BEFORE USING XCITIUM VERDICT CLOUD (“SERVICES”). BY USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS AND CONDITIONS, THAT YOU UNDERSTAND THEM, AND THAT YOU AGREE TO THEM.

These terms and conditions (“Terms”) govern the relationship between you and Xcitium, Inc., with its principal place of business at 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003, United States, (“Xcitium”) with respect to your use of the Services.

#### **1. Use of Services**

You agree to submit files to Xcitium only for the purpose of malware analysis. You agree that you shall have no right to any file after its submission and that all submissions shall be deemed NOT CONFIDENTIAL. Xcitium may use submitted files and the results of its test in any manner it sees fit and you grant Xcitium an irrevocable license to modify, use, display, perform, reproduce, transmit, and distribute any submitted files. You agree that all testing shall be conducted in Xcitium’s sole and absolute discretion. Xcitium does not guarantee that a report will be generated for each file submitted. Xcitium does not guarantee that a generated report will be accurate or that Xcitium will detect all malware. Any generated report shall be solely owned by Xcitium.

#### **2. Restrictions**

You agree to not use the Services to:

- i engage in unlawful activity or to use the Services in an unlawful manner
- ii use the Services in any manner that is likely to damage, disable, overburden or impair the Services (excluding the submission of malware to Xcitium);
- iii use automated scripts to collect information from or otherwise interact with the Services;
- iv transmit content that would reasonably be considered harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- v impersonate any person or entity, or falsely state or otherwise misrepresent yourself;
- vi transmit any private information; or
- vii transmit content that would constitute or encourage criminal offense, violate the rights of any party, create liability for Xcitium, or violate any local, state, national or international law.

#### **3. Disclaimer of Warranties**

ANY USE OF THE SERVICES IS AT YOUR OWN RISK AND THE SERVICES MAY NOT OPERATE AS INTENDED. XCITIUM, ITS AFFILIATES, AND THEIR LICENSORS, SUPPLIERS, EMPLOYEES OR AGENTS SHALL NOT BE RESPONSIBLE FOR ANY USE OF THE SERVICES. THE SERVICES MAY NOT OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION. XCITIUM MAKES NO REPRESENTATIONS THAT ANY DEFECTS OR ERRORS IN THE SERVICES WILL BE CORRECTED OR THAT THE SERVICES ARE COMPATIBLE WITH ANY PARTICULAR PLATFORM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, XCITIUM DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, IN EQUITY OR AT LAW, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-

INFRINGEMENT. XCITIMUM DOES NOT WARRANT THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR THAT ACCESS TO THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

#### **4. Permissions and Privacy Policy**

The Xcitium Verdict Cloud Services may integrate with other Xcitium products and services, such as File Analysis Tool (with report generation) and REST Services. These may include requests for you to submit file paths and user email address(es). The scan session detail page link can be sent to a user email after scan completion. Further, the scan session email and/or user email may be sent to Xcitium sales and marketing for follow up contact.

YOU ARE GIVING EXPRESS PERMISSION FOR RECEIVING SALES AND MARKETING COMMUNICATIONS FROM XCITIMUM BY EMAIL AND TELEPHONE.

Xcitium shall follow the privacy policy posted on its website at:

<https://www.Xcitium.com> and

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.

Any history in Xcitium's possession older than thirty (30) days may be deleted, including history and dashboard data.

You are also giving express permission to receive notification emails and alerts with respect various product features, including uncertain verdicts.

Xcitium Verdict Cloud Services also include optimization with Endpoint Manager product and can receive statistics regarding files submitted/queried for a given client, as well as retrieving information about each file for a given client. You are giving express permission for retrieval of the statistics and information of the files.

In Managed Service Provider ("MSP") use, the following permissions apply:

When in use with MSP's, the files of an MSP group can be reached by that MSP's users.

When an MSP with a Cloud license on the Xcitium Platform: (i) creates a user, a user is also created automatically on Verdict Cloud; (ii) updates a user, that user is updated on Verdict Cloud automatically; (iii) deletes a user, that user is deleted on Verdict Cloud automatically.

In the event that third party features and functionalities are incorporated in or made available in or through Xcitium Product(s), then the policies of those third parties apply. Please visit each third party's license agreement and privacy policy to better understand their terms of use and data collection practices.

#### **5. Limitation of Liability**

XCITIMUM, ITS LICENSORS, AND AFFILIATES SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE RELATED TO THE USE OR INABILITY TO USE THE SERVICES. XCITIMUM WILL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION OR DATA) EVEN IF XCITIMUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATIONS ON LIABILITY SHALL APPLY TO ALL CAUSES OF ACTION UNDER ALL LEGAL THEORIES, INCLUDING THEORIES OF CONTRACT, WARRANTY, STRICT LIABILITY, MISREPRESENTATION, NEGLIGENCE, AND OTHER TORTS. To the extent that your jurisdiction does not allow the limitation or exclusion of liability for incidental or consequential damages, this exclusion may

not apply to you. In such circumstances, Xcitium's liability shall be limited to a maximum of the minimum allowable liability in that jurisdiction.

## **6. Indemnity**

You agree to release, indemnify, defend and hold harmless Xcitium and any of its contractors, agents, employees, officers, directors, shareholders, affiliates and assigns from all liabilities, claims, damages, costs and expenses, including reasonable attorney's fees and expenses, of third parties relating to or arising out of (a) your breach of these Terms, (b) falsehoods or misrepresentations of fact by you, or (c) your use or misuse of the Services. Xcitium has the right to participate in any defense of a third-party claim related to your use of the Services, with counsel of our choice. You shall have sole responsibility to defend Xcitium against any claim, but you must receive Xcitium's prior written consent regarding any related settlement. The terms of this paragraph will survive these Terms.

## **7. Arbitration / Governing Law**

ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JUDGE OR JURY TRIAL IN A COURT PROCEEDING AND YOUR GROUNDS FOR APPEAL ARE LIMITED.

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, Bloomfield, New Jersey 07003.

If the dispute is not resolved within sixty (60) days after the initial notice, then a party may proceed in accordance with the following: Any unresolved dispute arising under the terms of this Agreement shall be decided by arbitration conducted through the services of the Commercial Arbitration Rules of the American Arbitration Association (hereinafter referred to as the "AAA"). Notice of demand for an arbitration hearing shall be in writing and properly served upon the parties to this Agreement. Arbitration hearings shall be held in the state of New Jersey at a location mutually agreeable to the parties.

These Terms shall be governed by and construed in accordance with the laws of the state of New Jersey, United States of America, without regard to any conflicts-of-law rules. You irrevocably consent to the exclusive jurisdiction and venue of the federal and state courts of New Jersey and waive any right you may have to object to or seek to change such jurisdiction or venue.

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.

Waiver of Class Actions and Class Arbitrations: Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither you nor Xcitium will seek to have any dispute heard as a class action, private attorney general action, or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitration or proceedings.

## **8. Severability**

If any provision of these Terms is determined by a court of competent jurisdiction to be unenforceable or illegal, such provision shall be modified to the minimum extent necessary to make the provision enforceable. The remainder of the Terms shall remain in full force and effect.

## **9. Force Majeure**

Xcitium is not responsible for any cessation, interruption or delay in the operation of the Services or performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God or the public enemy, war, armed conflict, terrorist action, strike, lockout, boycott, riot, release of hazardous or toxic substances, explosion, accident, communications outages, Internet frailities, or any other causes whether or not of the same class or kind as those specifically above named.

## **10. Amendments**

Any waiver of these Terms shall only be effective if it is in writing and signed by both parties. Xcitium may change the Terms and the Services without prior notice to you. You should check the Terms each time you use or access the Services. Your use of the Services after any changes to the Terms constitutes your acceptance of the new terms. Section headings are for convenience only and shall not be considered in the interpretation of these Terms.

## **11. Notices**

All notices, demands or requests to Xcitium with respect to these Terms shall be made in writing to: Xcitium, Inc., 200 Broadacres Drive, Second Floor, Bloomfield, New Jersey 07003.

## **ACCEPTANCE**

BY USING THE SERVICES OR CLICKING "SUBMIT", YOU AGREE TO BE BOUND BY AND COMPLY WITH ALL OF THE TERMS HEREIN. DO NOT USE THE SERVICES IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

## **Verdict Cloud Third Party Software**

The following third party software may be distributed with, and is provided under, other licenses and/or has source available from other locations.

Cuckoo Sandbox GNU GLPv3

<https://github.com/spender-sandbox/cuckoo-modified/blob/master/docs/LICENSE>

ipwhois

<https://github.com/secynic/ipwhois/blob/master/LICENSE.txt>

IPy

<https://docs.python.org/3/license.html>

Copyright 2001-2017 Python Software Foundation; All Rights reserved

jqvmap

<https://github.com/manifestinteractive/jqvmap/blob/master/LICENSE>

radar chart

data-driven documents

BSD-3-Clause

<https://opensource.org/licenses/BSD-3-Clause>

D3-based reusable chart library

MIT License

<https://opensource.org/licenses/MIT>

## **XCITIUM PLATFORM EXHIBIT B**

### **END USER LICENSE AGREEMENT AND TERMS OF SERVICE**

#### **XCITIUM PLATFORM STANDARD MODULE**

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE.

IMPORTANT – PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE XCITIUM MODULE PRODUCT (THE “PRODUCT”). THE PRODUCT MEANS ALL OF THE ELECTRONIC FILES PROVIDED BY DOWNLOAD OR ACCESSED WITH THIS LICENSE AGREEMENT. BY USING THE PRODUCT, OR BY CLICKING ON “I ACCEPT” BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS HEREIN, DO NOT USE THE SOFTWARE, SUBSCRIBE TO OR USE THE SERVICES, OR CLICK ON “I ACCEPT”.

#### **Product Functionality**

For a complete list and description of the Product features and functions, please refer to the appropriate section of any applicable Administration Guide.

This end user license and subscriber agreement is between you (“you” or “Subscriber”), an individual, and Xcitium, Inc., a Delaware limited liability company, with offices at 200 Broadacres Drive, Second Floor, Bloomfield, NJ 07003, United States.

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

#### **1. License**

##### **1.1. Grant of License.**

Xcitium grants you a limited, non-exclusive, non-transferable, and revocable user license to download, install, back-up, and use the Software (collectively, the “Product”) on one network per MSP unless otherwise indicated under a valid license granted by Xcitium including any documentation and files accompanying the Product. 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.

This License grant shall expire at the end of the paid subscription period or at the end of the trial period.

##### **1.2. Restrictions.** The licenses granted herein are only valid if:

- (i) the Product is NOT modified in any manner;
- (ii) the Product is only installed and used in accordance with your network security policies,
- (iii) you possess the necessary authority and power to install and use the Product,
- (iv) you promptly pay all license fees when due, and
- (v) this agreement is accepted without modification and has not been breached.

##### **1.3. Registration.** When registering Product, you must provide accurate information and must update the registration information if it changes. Xcitium may limit your ability to use the Product if you fail to complete a required registration process. You may also be required to select a username and password. Maintaining the confidentiality of this password and username is your responsibility. You must notify Xcitium immediately of any unauthorized use of your account.

##### **1.4. Limited License.** The licenses granted herein are only for the registered MSP account for which you paid for the Product. Each account(s) must be enrolled and activated through the

Product. You can secure additional accounts by obtaining a separate license, which might require an additional fee. You must have a license for each account that accesses or uses the Product prior to installing or using the Product.

- 1.5. Updates. Xcitium is not obligated to provide updates to the Product. 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. The Product may update automatically without notice.
- 1.6. Technical Support. Xcitium is not obligated to provide technical or customer support for the Product. In the event technical or customer support is offered or included, Xcitium has a right to alter or terminate the support at any time without notice.
- 1.7. Trial, Free, Evaluation, and Beta. If this agreement pertains to a trial, free, beta, or evaluation version, the licenses granted herein terminate at the end of the trial or evaluation period or when Xcitium disables access to the Product. For a trial version of the Product if no term is agreed or specifically set forth in the documentation that you receive with this Product, then the term for the licenses granted herein shall be for the term that you purchased. All trial, evaluation, and beta licenses are limited to one per customer. Generally, credit card or account information is required to access a free trial. However, Xcitium shall not charge your credit card or account until the trial period has ended. At the end of the trial period, Xcitium may bill the credit card or account for the Product without further notice. Participants in a free trial are not entitled to a 30 day refund period. Your termination of this agreement prior to the end of the free trial is required to avoid fees for the Product. Annual subscriptions expire one year from the end of the trial period. Xcitium may deny or revoke a free trial for any reason.

## 2. Ownership

- 2.1. No Ownership Rights. The Product is being licensed, not sold. Xcitium retains its rights of ownership or licensed in and to the Product, including any intellectual property rights therein.
- 2.2. Copyright. The Product contains material that is protected by United States and foreign intellectual property laws, including copyright, trade secret, and patent law. All rights not granted to you herein are expressly reserved by Xcitium. You may not remove any copyright or other proprietary notice of Xcitium from the Product.
- 2.3. Content. Content, including files, links, images, and text, made available or accessible through the Product 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 Product, 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.
- 2.4. Submissions. 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 and subject to applicable law, Xcitium is entitled to unrestricted use of any submissions for any purpose whatsoever without compensation to the provider of the submission.

## 3. Payment

- 3.1. Fees. If there is a free version of the Product, it may be used without payment to Xcitium. For a paid Product, you must pay the fee listed on any applicable purchase order or Xcitium's website prior to using or accessing the Product. Free and paid for Product are listed on [www.Xcitium.com](http://www.Xcitium.com). Xcitium may modify fees for paid Product in its sole discretion. Your failure to terminate this agreement after a fee change is posted to Xcitium's website



constitutes your acceptance of amended prices, which will apply upon your renewal of the Product.

- 3.2. Method of Payment. All fees must be paid in advance. Xcitium may automatically charge the credit card or account provided for renewing subscriptions to the Product. However, you remain solely responsible for any renewal payment. If renewal payments are not made before a subscription expires, Xcitium may, without notice, restrict or remove your access to the Product.
- 3.3. Rejected Charges. If any charges are rejected by your credit card issuer then Xcitium may deactivate your account until payment is successfully received. Xcitium may deactivate any account that has a disputed charge until Xcitium, in its sole discretion, determines the dispute resolved.
- 3.4. Billing Issues. You shall provide Xcitium notice of any billing problems or disputes within 60 days after the charge first appears on a statement you receive from your bank, credit card company, or other billing company. Failure to notify Xcitium of the problem within the 60 day period is your acceptance of the charges. Xcitium is not obligated to provide a refund for any unused Product.

#### 4. Restrictions

- 4.1. Lawful Use. The Product is solely for lawful purposes and use. You are responsible for ensuring that your use of the Product is in accordance with this agreement and any applicable laws, statutes, ordinances, regulations, rules and other government authority.
- 4.2. Compliance. You shall (1) not interfere or disrupt networks connected to Xcitium's services; (2) comply with all regulations, policies and procedures of networks connected to the services; (3) not use the Product to infringe the privacy or intellectual property rights of a third party; (4) not use the Product to distribute or transmit any file that contains malware, (5) not attempt to gain unauthorized access to other computer systems or mobile devices; and (6) not use the Product to 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.
- 4.3. Export. You represent that you are not located in and will not modify, export or re-export, either directly or indirectly, the Product 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.

#### 5. Termination.

- 5.1. Term. This agreement is effective for one year or as otherwise stated in any applicable purchase order, unless earlier terminated by you or by Xcitium. You may only use paid Product during the period for which you have paid the subscription fee. The subscription may be renewed by paying an additional license fee as set forth on the Xcitium website.
- 5.2. Termination by You. For free software, you may terminate this agreement at any time by removing all copies of the software in your possession or under your control. All paid Product may be terminated by removing all copies of any related software and notifying Xcitium of your intent to terminate this agreement. Notification of termination must be sent by email to [support@xcitium.com](mailto:support@xcitium.com). Your termination will be effective upon Xcitium's receipt and processing of the email. Processing may take up to 24 hours.
- 5.3. 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 Product. 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, with email notice, terminate your account or adjust the price of the Product.

- 5.4. Events Upon Termination. Upon termination, you must immediately cease using the Product and delete all copies of any related software found on your mobile device and any backup copies made. Upon termination, Xcitium may disable further use of the Product without further 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. Such deletions are in Xcitium's sole discretion and may occur without notice to you. No refunds shall be given for any reason.

## 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 a law, including but not limited to any law or regulation relating to the privacy and/or security of your users and their devices.
- 6.2 Indemnification By Xcitium. Xcitium hereby agrees to indemnify, defend and hold harmless You (an "Indemnified Person"), from and against, any and all Losses incurred by You in connection with any claim, action, suit or proceeding by a third party (each, a "Claim") to the extent such Claim arises out of or results from Xcitium's misappropriation of a trade secret of a third party or direct infringement of any U.S. patent, registered copyright, or registered trademark ("Intellectual Property Infringement") related to the use of the Product. Xcitium's indemnification obligations shall not apply to the extent any such infringement or misappropriation is the result of: (a) Your independent modification of the Product, or any other product, software or service provided under this agreement where without such modification the Product or other product would not infringe, (b) Your combination of the Product or any other product, software or service provided under this agreement with any other product, or use with any other product, (c) Xcitium's adherence to Your express written instructions where such instructions and any modifications, changes or combinations made as a result of said instructions are solely responsible for the claim of infringement, (d) any Claim based on open source software or other third party code included with the Product, (e) any unauthorized use of the Product, or (f) use of the Product other than in accordance with the Documentation (any applicable administration guide for the current version of the Product).
- 6.2.1. Remedy and Liability: In the event that a court of final determination and of competent jurisdiction holds that the Product constitutes a direct infringement or use of the Product is enjoined, Xcitium shall, at its sole discretion, do one or more of the following: (i) procure for you the right to continue use of the Product, (ii) provide a modification to the Product so that its use becomes non-infringing, (iii) replace the Product with software that is substantially similar in functionality and performance or (iv), if none of the foregoing alternatives is reasonably available to Xcitium, Xcitium shall refund the residual value of the purchase price paid by you for the infringing Product, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Product to you. Xcitium may also request You to remove all copies of any Product held to be infringing or giving rise to a Claim.

THE AGGREGATE LIABILITY OF XCITIUM AND ITS AFFILIATES, AND THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS, RESULTING FROM OR CONNECTED TO THIS SECTION OF THE AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNT PAID OR PAYABLE BY

YOU UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO A CLAIM. THIS SECTION STATES XCITIUM'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

- 6.3 Indemnification Procedure. Each Indemnified Person must notify the other party promptly (within 14 days) of a demand for indemnification. However, an Indemnified Person's failure to notify will not relieve the other party from its indemnification obligations except to the extent that the failure to notify materially prejudices a party. The Indemnitor 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. Indemnitor 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.
- 6.4 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. Internet. You acknowledge that the Product is 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.
- 7.2. Guarantee Disclaimer; Assumption of Risk. EXCEPT AS SPECIFICALLY STATED OTHERWISE IN THIS AGREEMENT, XCITIUM EXPRESSLY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES IN THE PRODUCT. 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 PRODUCT WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS OR 2) THAT ACCESS TO THE PRODUCT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. YOU ACKNOWLEDGE THAT IF YOU WISH TO PROTECT YOUR TRANSMISSION OF DATA OR FILES, IT IS YOUR RESPONSIBILITY TO USE A SECURE ENCRYPTED CONNECTION TO COMMUNICATE WITH THE SERVICES.
- 7.3. Damage Limitation. EXCEPT AS STATED UNDER SECTION 6.2.1 (INDEMNIFICATION FOR INTELLECTUAL PROPERTY INFRINGEMENT), THE TOTAL LIABILITY OF XCITIUM AND ITS AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS, RESULTING FROM OR CONNECTED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID BY YOU FOR THE PRODUCT. YOU WAIVE ALL LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. THIS WAIVER INCLUDES ALL DAMAGES FOR LOST PROFITS, REVENUE, USE, OR DATA AND 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.
- 7.4. Data Transfer. ALL MATERIAL AND/OR DATA DOWNLOADED OR OBTAINED THROUGH THE PRODUCT 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 PRODUCT AND CANNOT WARRANT THE CONTENT OF SUCH MATERIAL OR DATA.

- 7.5. 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.
- 7.6. 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 occurred.

## 8. Privacy.

- 8.1. 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.
- 8.2. Permissions. Please refer to the particular product or administrative guide for any specific permissions.
- 8.3. 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.
- 8.4. Promotions. By clicking "I ACCEPT", you affirmatively consent to receiving Xcitium's and its affiliates' promotional material.
- 8.5. User Data Compliance. You are responsible for ensuring that you or any users of the Product comply with the obligations under this Agreement. You will duly observe all your obligations under any relevant data protection or privacy law or regulation that may apply, including any obligation to configure the Product appropriately, provide notice, obtain consent, or file documents with any applicable data protection authorities. You are responsible for developing a policy that protects user data, outlines the responsibilities of you and your users, and informs your users of the scope your use of the Product.

## 9. Miscellaneous

- 9.1. 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, Bloomfield, New Jersey 07003, USA. All notices to you shall be made by posting the notice on the Xcitium website.
- 9.2. Governing Law. The laws 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.  
  
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.
- 9.3. Entire Agreement. This agreement, along with the attached schedules and any documents referred to herein, is the entire agreement between the parties with respect to the subject matter, superseding all other agreements that may exist with respect to the subject matter. Section headings are for reference and convenience only and are not part of the interpretation of the agreement.
- 9.4. Modifications. Xcitium may amend or discontinue the Product offered under this agreement in its sole discretion, including modifying renewal license fees, availability, equipment and software requirements, and limiting or restricting use of Product. 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 a Product after an amendment constitutes your acceptance of the change.

- 9.5. 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.
- 9.6. 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, or other such transmission failure.
- 9.7. 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, Bloomfield, New Jersey 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 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 International Chamber of Commerce in accordance with its Arbitration Rules, with the venue in Bloomfield, NJ, 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.

#### WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS.

YOU AND XCITIUM AGREE THAT ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER YOU NOR XCITIUM WILL SEEK TO HAVE ANY DISPUTE HEARD AS A FEDERAL OR STATE CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. NO ARBITRATION OR PROCEEDING WILL BE COMBINED WITH ANOTHER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES TO ALL AFFECTED ARBITRATION OR PROCEEDINGS.

- 9.8. 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.
- 9.9. 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 the agreement remains valid and enforceable.
- 9.10. Survival. All provisions relating to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of the agreement.
- 9.11. Rights of Third Parties. There are no third party beneficiaries under the agreement.

**ACCEPTANCE**

BY CLICKING "I ACCEPT" BELOW, YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND THAT YOU WILL BE BOUND BY AND COMPLY WITH ALL OF ITS TERMS. DO NOT CLICK THE "I ACCEPT" BUTTON IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT.

## **XCITIUM PLATFORM EXHIBIT C**

### **END USER LICENSE AGREEMENT XCITIUM SECURE INTERNET GATEWAY**

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE AND WAIVER OF CLASS ARBITRATIONS AND CLASS ACTIONS. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCEPTING ITS TERMS AND CONDITIONS.

IMPORTANT – PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE PRODUCT. THE “PRODUCT” MEANS XCITIUM’S SECURE INTERNET GATEWAY, INCLUDING ALL OF THE ELECTRONIC FILES, DOCUMENTATION, AND SOFTWARE PROVIDED THEREIN, EXCEPT AS EXPRESSLY STATED HEREIN. BY USING THE PRODUCT, OR BY CLICKING ON “I ACCEPT” BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS HEREIN, DO NOT USE THE PRODUCT, SUBSCRIBE TO OR USE THE SERVICES, OR CLICK ON “I ACCEPT”.

This end user license agreement (“Agreement”) is between you, or the business entity you represent, (“Subscriber”) and Xcitium, Inc., with its principal place of business at 200 Broadacres Drive, Second Floor, Bloomfield, New Jersey 07003, United States (hereinafter “Xcitium”).

In exchange for Subscriber’s use of the Product, Subscriber agrees as follows:

#### **1. License.**

- 1.1. **Grant of License.** Subject to the limits herein, Xcitium grants Subscriber a non-exclusive, non-sublicensable, and revocable license to use the Product, including any documentation and files accompanying the Product, on a single network for the term that Subscriber has paid. Subscriber shall not resell, lease, sell, modify, reverse engineer, decompile, or create derivative works of the Product. All rights not expressly granted herein are reserved to Xcitium. This license grant shall expire at the end of the paid subscription period or at the end of the trial period.
- 1.2. **Restrictions.** The licenses granted herein are only valid if:
  - (i) the Product is NOT modified in any manner;
  - (ii) the Product is only installed and used in accordance with Subscriber’s network security policies;
  - (iii) Subscriber possesses the necessary authority and power to install and use the Product;
  - (iv) Subscriber promptly pays all license fees when due; and
  - (v) this Agreement is accepted without modification and has not been breached.
- 1.3. **Registration.** When registering the Product, Subscriber must provide accurate information and must update the registration information if it changes. Xcitium may limit Subscriber’s ability to use the Product if Subscriber fails to complete a required registration process. Subscriber may also be required to select a username and password. Maintaining the confidentiality of this password and username is Subscriber’s responsibility. Subscriber must notify Xcitium immediately of any unauthorized use of Subscriber’s account.
- 1.4. **Limited License.** The licenses granted herein are only for the number of computers or devices for which Subscriber has paid for the Product. Subscriber can secure additional computers by obtaining a separate license for each computer or device, which might require an additional fee. Subscriber must have a license for each computer or device that accesses or

uses the Product prior to installing or using the Product.

- 1.5. Updates. Xcitium is not obligated to provide updates to the Product. If an update is provided and the update is not accompanied by an additional agreement, this Agreement applies to Subscriber's use and installation of the update. The Product may update automatically without notice.
- 1.6. Technical Support. Xcitium is not obligated to provide technical or customer support for the Product. In the event technical or customer support is offered or included, Xcitium has a right to alter or terminate the support at any time without notice.
- 1.7. Open Source Software. The Product contains open source software ("OSS"), which is licensed to Subscriber by third parties under different licenses than this Agreement. The licenses and notices for OSS contained in the Product can be found in Schedule 1 to this Agreement. To the extent the license for an OSS component grants Subscriber rights to use, copy, or modify the component that are broader than the rights granted in this Agreement, such rights shall take precedence over the rights and restrictions granted in this Agreement solely for that OSS component.
- 1.8. Trial, Free, Evaluation, and Beta. If this Agreement pertains to a trial, free, beta, or evaluation version, the licenses granted herein terminate at the end of the trial or evaluation period or when Xcitium disables access to the Product. For a trial version of the Product if no term is agreed or specifically set forth in the documentation that Subscriber received with this Product, then the term for the licenses granted herein shall be for the term that Subscriber purchased. All trial, evaluation, and beta licenses are limited to one per customer. Generally, credit card information is required to access a free trial. However, Xcitium shall not charge Subscriber's credit card until the trial period has ended. At the end of the trial period, Xcitium may bill the credit card for the Product without further notice. Participants in a free trial are not entitled to a 30 day refund period. Subscriber's termination of this Agreement prior to the end of the free trial is required to avoid fees for the Product. Annual subscriptions expire one year from the end of the trial period. Xcitium may deny or revoke a free trial for any reason.
- 1.9. DNS Services Upon installation and setup, the Product will reconfigure your DNS settings to point to the Xcitium name servers to accept, process, and resolve recursive DNS queries ("Recursive Traffic"). Xcitium may re-direct or terminate Recursive Traffic that Xcitium, in its sole discretion, determines or considers to be harmful or invalid. You must not disclose the NameServer addresses to any third party who has not accepted this Agreement. You are giving Xcitium express permission for the above with use of this Product.

You will be able to use your DNS package until you reach the total pre-set maximum DNS Requests per month. Upon reaching that limit, Xcitium may block your usage and request you to upgrade your account to a higher level. The limits are calculated per month and at the beginning of every month the number of requests reset and if within a month you exceed the allotted DNS requests, Xcitium may apply such actions as blocking your account, halting user interface, or disabling support or any other actions Xcitium deems necessary, including terminating your account.

Xcitium calculates one (1) endpoint as 1200 DNS Requests per day. Free usage limit and the pricing that Xcitium applies is on a per endpoint basis and is calculated based on this number. (As an Example, 20,000 DNS Requests is approximately 16 endpoints). There may be cases where customers' DNS requests are more than Xcitium's standard calculation. It is the Customer's responsibility to inform Xcitium and provide the correct number of endpoints. Absent evidence otherwise, Xcitium will use the 1200 DNS requests per day for endpoint count calculations. Upon customer's notification about the actual number of endpoints, Xcitium has the right to investigate the Customer's particular case in detail and if necessary,



request the Customer to satisfy a different pricing level based on the endpoint count as a result of the investigation.

Upon termination of this agreement, you must change your DNS settings away from Xcitium's NameServers. Xcitium is not required to provide access to alternative services at termination.

## 2. Ownership.

- 2.1. No Ownership Rights. The Product is being licensed, not sold. Xcitium retains all ownership rights in and to the Product, including any intellectual property rights therein.
- 2.2. Copyright. The Product contains material that is protected by United States and foreign intellectual property laws, including copyright, trade secret, and patent law. All rights not granted to Subscriber herein are expressly reserved by Xcitium. Subscriber may not remove any copyright or other proprietary notice of Xcitium from the Product.
- 2.3. Content. Content, including files, links, images, and text, made available or accessible through the Product 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. Subscriber accepts all responsibility for security risks and any damage resulting from any content viewed or accessed through the Product, and Xcitium is not responsible for any damage or loss caused by Subscriber's use or reliance on any of the content, goods or services, or information available through third party sources regardless of how presented.
- 2.4. Submissions. Subscriber represents that it has the necessary rights and licenses to any files submitted to Xcitium for scanning. Subscriber also represents that its 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, and subject to any applicable laws, Xcitium is entitled to unrestricted use of any submissions for any purpose whatsoever without compensation to the provider of the submission.

## 3. Payment.

- 3.1. Xcitium Fees. If there is a free version of the Product, it may be used without payment to Xcitium. For a paid Product, Subscriber must pay the fee listed on Xcitium's website prior to using or accessing the Product or any purchase order for the Product. Free versions and paid versions of the Product are listed on the Xcitium website. Xcitium may modify fees for a paid version of the Product in its sole discretion. Subscriber's failure to terminate this Agreement after a fee change is posted to Xcitium's website constitutes Subscriber's acceptance of the amended prices, which will apply upon Subscriber's renewal of the Product.
  - (i) Method of Payment. All Xcitium fees must be paid in advance. Xcitium may automatically charge the account or credit card provided for renewing subscriptions to the Product. However, Subscriber remains solely responsible for any renewal payment. If renewal payments are not made before a subscription expires, Xcitium may, without notice, restrict or remove Subscriber's access to the Product.
  - (ii) Rejected Charges. If any charges are rejected by Subscriber's credit card issuer then Xcitium may deactivate Subscriber's account until payment is successfully received. Xcitium may deactivate any account that has a disputed charge until Xcitium, in its sole discretion, determines the dispute resolved.
  - (iii) Billing Issues. Subscriber shall provide Xcitium notice of any billing problems or disputes within 60 days after the charge first appears on a statement Subscriber

receives from Subscriber's bank, credit card company, or other billing company. Failure to notify Xcitium of the problem within the 60day period is Subscriber's acceptance of the charges. Xcitium is not obligated to provide a refund for any unused Product.

- 3.2. Third Party Fees. Subscriber's use of the Product in connection with a third party account may result in other fees, charged by a third party, which are separate from and in addition to fees charged by Xcitium. Subscriber agrees that other terms of use and privacy policies may apply to Subscriber's use of the Product in connection with a third party account. Xcitium is not responsible for fees charged by third parties. These fees are not charged or billed by Xcitium, and should not be paid to Xcitium.

#### **4. Restrictions.**

- 4.1. Lawful Use. The Product is solely for lawful purposes and use. Subscriber is responsible for ensuring that Subscriber's use of the Product is in accordance with this Agreement and any applicable laws, statutes, ordinances, regulations, rules and other government authority.
- 4.2. Mobile Device Policies. The Product may contain functions allowing Subscriber to set policies for mobile devices. For each mobile device Subscriber includes in such policies, Subscriber represents that it (1) is the owner of the mobile device covered under such policies, or (2) has obtained the mobile device owner's express consent (i) to include the mobile device under such policies, and (ii) for Xcitium and Subscriber to collect the information provided for in section 8.2 (Permissions) below.
- 4.3. Subscriber Obligations. Subscriber shall (1) not interfere or disrupt networks connected to Xcitium's services; (2) comply with all regulations, policies and procedures of networks connected to the services; (3) not use the Product to infringe the privacy or intellectual property rights of a third party; (4) not use the Product to distribute or transmit any file that contains malware, (5) not attempt to gain unauthorized access to other computer systems or mobile devices; and (6) not use the Product to 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.
- 4.4. Export. Subscriber represents that it is not located in and will not modify, export or re-export, either directly or indirectly, the Product 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 Subscriber must comply with the list as it exists in fact. XCITIUM SHALL NOT BE LIABLE FOR SUBSCRIBER'S VIOLATION OF ANY SUCH EXPORT OR IMPORT LAWS, WHETHER UNDER UNITED STATES LAW OR FOREIGN LAW.

#### **5. Termination.**

- 5.1. Term. This Agreement is effective until terminated by Subscriber or by Xcitium. Subscriber may only use the paid Product during the period for which Subscriber has paid the subscription fee. The subscription may be renewed by paying an additional license fee as set forth on the Xcitium website.
- 5.2. Termination by Subscriber. For the free Product, Subscriber may terminate this Agreement at any time by removing all copies of the Product in Subscriber's possession or under Subscriber's control. The paid Product may be terminated by removing all copies of any related software and notifying Xcitium of Subscriber's intent to terminate this Agreement. Notification of termination must be sent by email to [support@Xcitium.com](mailto:support@Xcitium.com). Subscriber's termination will be effective upon Xcitium's receipt and processing of the email. Processing may take up to 24 hours.

- 5.3. 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 Subscriber's registration for the Product. 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 Subscriber's use to be excessive, Xcitium may, with email notice, terminate Subscriber's account or adjust the price of the Product. See also Section 1.9 for termination due to excessive use of DNS services.
- 5.4. Events Upon Termination. Upon termination, Subscriber must immediately cease using the Product and delete all copies of any related software found on Subscriber's mobile device and any backup copies made. Upon termination, Xcitium may disable further use of the Product without further 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. Such deletions are in Xcitium's sole discretion and may occur without notice to Subscriber. No refunds shall be given for any reason.

## 6. Indemnification.

- 6.1. Indemnification. Subscriber 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 Subscriber's breach of this Agreement, information provided by Subscriber, or Subscriber's infringement on the rights of a third party.
- 6.2. Indemnification Procedure. Xcitium shall notify Subscriber promptly of any demand for indemnification. However, Xcitium's failure to notify will not relieve Subscriber from Subscriber's indemnification obligations except to the extent that the failure to provide timely notice materially prejudices Subscriber. Subscriber 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. Subscriber 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. Subscriber's indemnification obligations are not Xcitium's sole remedy for a breach and are in addition to any other remedies Xcitium may have against Subscriber under this Agreement. Subscriber's indemnification obligations survive the termination of this Agreement.

## 7. Disclaimers and Limitation of Liability.

- 7.1. Internet. Subscriber acknowledges that the Product is subject to the operation and telecommunications infrastructures of the Internet and the operation of Subscriber's Internet connection services, all of which are beyond Xcitium's control.
- 7.2. Guarantee Disclaimer; Assumption of Risk. EXCEPT AS SPECIFICALLY STATED OTHERWISE IN THIS AGREEMENT, XCITIUM EXPRESSLY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES IN THE PRODUCT. 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 PRODUCT WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS OR 2) THAT ACCESS TO THE PRODUCT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.
- 7.3. Damage Limitation. THE TOTAL LIABILITY OF XCITIUM AND ITS AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS,

RESULTING FROM OR CONNECTED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID BY SUBSCRIBER FOR THE PRODUCT. SUBSCRIBER WAIVES ALL LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WAIVER INCLUDES ALL DAMAGES FOR LOST PROFITS, REVENUE, USE, OR DATA AND 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.

- 7.4. Data Transfer. ALL MATERIAL AND/OR DATA DOWNLOADED OR OBTAINED THROUGH THE PRODUCT IS AT SUBSCRIBER'S OWN RISK. SUBSCRIBER IS SOLELY RESPONSIBLE FOR ITS USE OR POSSESSION OF SUCH DATA OR MATERIAL. XCITIUM DOES NOT ACTIVELY MONITOR ANY INFORMATION OR MATERIAL TRANSFERRED THROUGH ITS PRODUCT AND CANNOT WARRANT THE CONTENT OF SUCH MATERIAL OR DATA.
- 7.5. 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.
- 7.6. 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 occurred.

## 8. Privacy.

- 8.1. Privacy Policy. Xcitium shall follow the privacy policy posted on its website at: <https://www.Xcitium.com> when collecting and using information from Subscriber. Xcitium may amend the privacy policy at any time by posting the amended privacy policy on its website.
- 8.2. Permissions. By using the Product, Subscriber expressly gives permission to Xcitium and the Product to collect information relating to the following: Subscriber's HTTP/S traffic, URLs visited, external IP addresses, and device name(s). This information is collected to improve the ability of Xcitium's products to detect malicious behavior, and to allow the Product to create rule-based actions (such as blocking or allowing) for particular types of traffic/information. In addition, 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. Such files could contain personally identifiable information that has been obtained by any of the identified pending/unrecognized files 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. Subscriber expressly gives permission to Xcitium and for the Product to collect and review such information, files, and to upload executable files to a cloud based system for malware analysis. Xcitium stores all processed files for further analysis and has access to those files.
- 8.3. 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.
- 8.4. Opt Out. Subscriber may opt-out of having information used for purposes not directly related to the Product by emailing a clear notice to [optout@Xcitium.com](mailto:optout@Xcitium.com). By clicking "I ACCEPT", Subscriber affirmatively consents to receiving Xcitium's and its affiliates' promotional material.

## 9. Miscellaneous.

- 9.1. 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, New Jersey 07003. All notices to Subscriber shall be made by posting the notice on the Xcitium website.
- 9.2. Entire Agreement. This Agreement, along with the attached schedules and any documents referred to herein, is the entire agreement between the parties with respect to the subject matter, superseding all other agreements that may exist with respect to the subject matter. Section headings are for reference and convenience only and are not part of the interpretation of this Agreement.
- 9.3. Modifications. Xcitium may amend or discontinue the Product offered under this Agreement in its sole discretion, including modifying renewal license fees, availability, equipment and software requirements, and limiting or restricting use of Product. Xcitium may amend this Agreement to the extent allowed by law. Xcitium will give Subscriber notice of these amendments by posting the modified agreement to its website. Subscriber must periodically visit Xcitium's website to be aware of any changes. Continued use of a Product after an amendment constitutes Subscriber's acceptance of the change.
- 9.4. 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.
- 9.5. Force Majeure and Internet Frailties. Other than for payment obligations by Subscriber, 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, or other such transmission failure.
- 9.6. Arbitration and Governing Law. Subscriber agrees that any dispute, claim or controversy arising out of this Agreement shall be determined by binding arbitration. Before Subscriber may begin arbitration with respect to a dispute involving any aspect of this Agreement, Subscriber 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 200 Broadacres Drive, Second Floor, Bloomfield, New Jersey 07003.

If the dispute is not resolved within sixty (60) days after the initial notice, then a party may proceed in accordance with the following: Any unresolved dispute arising under the terms of this Agreement shall be decided by arbitration conducted through the services of the Commercial Arbitration Rules of the American Arbitration Association (hereinafter referred to as the "AAA"). Notice of demand for an arbitration hearing shall be in writing and properly served upon the parties to this Agreement. Arbitration hearings shall be held in the state of New Jersey at a location mutually agreeable to the parties.

The laws of the state of New Jersey govern the interpretation, construction and enforcement of this Agreement and all proceedings arising out of it without regard to any conflicts of laws principles. Both parties agree to the exclusive venue and jurisdiction of state or U.S. federal courts located in New Jersey.

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.

WAIVER OF CLASS ACTIONS AND CLASS ARBITRATIONS.

YOU AND XCITIUM AGREE THAT ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE IN ANY FORUM WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER YOU NOR XCITIUM WILL SEEK TO HAVE ANY DISPUTE HEARD AS A FEDERAL OR STATE CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. NO ARBITRATION OR PROCEEDING WILL BE COMBINED WITH ANOTHER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES TO ALL AFFECTED ARBITRATION OR PROCEEDINGS.

- 9.7. Assignment. Subscriber may not assign any of its 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 Subscriber's consent.
- 9.8. 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.
- 9.9. Survival. All provisions relating to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of this Agreement.
- 9.10. Rights of Third Parties. There are no third party beneficiaries under this Agreement.

**ACCEPTANCE**

BY CLICKING "I ACCEPT" BELOW, SUBSCRIBER AGREES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT AND THAT IT WILL BE BOUND BY AND COMPLY WITH ALL OF ITS TERMS. DO NOT CLICK THE "I ACCEPT" BUTTON IF SUBSCRIBER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT.

## **SCHEDULE 1**

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- libevent (<http://libevent.org/>). 3-clause BSD license. See `src/libevent/LICENSE`.

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ATTN: Accounting  
Xcitium, Inc.  
200 Broadacres Drive  
Second Floor  
Bloomfield, NJ 07003  
United States

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