

CWATCH WEB BACKUP

END USER LICENSE AND SUBSCRIBER AGREEMENT

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

IMPORTANT—PLEASE READ THESE TERMS CAREFULLY BEFORE APPLYING FOR, ACCEPTING, OR USING THE SERVICES. BY USING, APPLYING FOR, OR ACCEPTING THE ACCOUNT OR SERVICES 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 THESE TERMS, DO NOT CLICK “I ACCEPT” AND DO NOT APPLY FOR, ACCEPT, OR USE THE SERVICES.

This End User License and Subscriber Agreement (this “Agreement”) constitutes the final binding agreement between the company that you represent (“Subscriber”) and either:

Xcitium LLC., with its principal place of business at 200 Broadacres Drive, Bloomfield, NJ 07003, United States, is the entity responsible for any data or information that is processed or controlled and associated with this product and services.

Each are hereinafter referred to as “Xcitium.”

Services: cWatch Web Backup provides automated website and database backup, which requires FTP/SFTP or SSH-KEY connection to the site, which are all set by customer.

Features include: one storage site; backup retention until full capacity or 90 days, whichever occurs first; file system backup - FTP or SFTP; daily automatic backup; custom scheduled backups; on-demand backup; backup history; backup status notifications; alerts on failure to backup; file change monitoring one click automatic recovery; manual restore as a downloadable zip; database backup.

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

1. General.

1.1. License. Subject to the terms herein, Xcitium grants Subscriber a limited, non-exclusive, non-transferable, revocable license to use cWatch Web BackUp, including the accompanying software, services, documentation, and other information and files (the “Services”), provided that Subscriber agrees to the unmodified terms and conditions of this Agreement. Any rights in the Services not expressly granted in this Agreement are reserved by Xcitium.

Subscriber is granting express permission to Xcitium to copy website content and back up data of Subscriber and Subscriber’s customers.

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

- (i) the Services are NOT modified in any manner;
- (ii) the Services are 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 Services,
- (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 for the Services, Subscriber must provide accurate information and must update the registration information if it changes. Xcitium may limit the Services 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. Any information that is untrue, inaccurate, or incomplete may result in the immediate termination of this Agreement in Xcitium’s discretion.

1.4. Trial, Evaluation, and Beta. If this Agreement pertains to a trial, beta, or evaluation license, the licenses granted herein will terminate upon the expiration or cancellation of the trial or evaluation period or when the Services are no longer available. Subscriber may use the Services only for the duration of the trial or evaluation period. All such licenses are limited to one per customer per promotion or beta test.

- 1.5. Updates.** Xcitium is not obligated to provide updates to the Services. If an update is provided and the update is not accompanied by an additional agreement, this Agreement applies to Subscriber's use of the update.

2. Limitations.

- 2.1. Compliance with Laws.** Subscriber must comply with all rules, regulations, and laws applicable to Subscriber when using the Services, including laws applicable to data collection, privacy, and export control. Subscriber shall not use the Services 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, annoyance, denial of any service, disruption, or inconvenience; or (3) send or receive unsolicited bulk correspondence.
- 2.2. Prohibited Activities.** The Services are not designed, manufactured or intended for use or resale as or with on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines or weapon systems in which the failure of the Services could lead directly to death, personal injury or severe physical or environmental damage. Subscriber may not:
- (i) resell or transfer the Services to any third party;
 - (ii) register or use any Xcitium logo or trademark in any jurisdiction;
 - (iii) modify any software in any manner;
 - (iv) attempt to gain unauthorized access to any computer systems;
 - (v) interfere or disrupt a network connected to the Services;
 - (vi) use the Services to infringe the intellectual property, proprietary, or privacy rights of a third party;
 - (vii) post, distribute, or transmit any offensive, obscene, vulgar, violent, defamatory, harassing, harmful, or otherwise objectionable material or any software or computer file that contains malware, such as a Trojan, virus, or adware; or
 - (viii) interfere with another's use of the Services or other similar services.
- 2.3. Subscriber Obligations.** Subscriber must (1) obtain and pay for all equipment and third-party services (e.g., Internet access and email service) required for Subscriber to access and use the Services; (2) maintain the security of Subscriber's identification, and other confidential information relating to Subscriber's account; and (3) be responsible for all charges resulting from use of Subscriber's account associated with the Services. Subscriber is solely responsible for the content of Subscriber's computer and any transmissions made through the Services.
- 2.4. Export.** Subscriber represents and warrants that Subscriber is not located in and will not modify, export or re-export, either directly or indirectly, the Services and related software to any country or entity under United States restrictions or to any country or entity subject to applicable trade sanctions. The United States restricted country and persons list is subject to change without notice from Xcitium, and 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.

3. Set Up and Remediation.

- 3.1. Installation.** As part of the consideration of Subscriber's use of the Services, Subscriber is required to (1) download and install all software accompanying the Services, if any, (2) reconfigure firewalls, antivirus solutions, and other IT security services that interfere with or prevent the Services from operating correctly. Once Subscriber has completed the above installation requirements, which shall be determined by Xcitium in its sole discretion, Xcitium will initiate the Services.
- 3.2. Remediation.** The Services do not include any remediation assistance from Xcitium. Xcitium shall not be responsible for assisting Subscriber in correcting or eliminating any security flaw or vulnerability. The Services do not, and are not intended to, fix, remedy, prevent, or eliminate vulnerabilities or other insecurities. Remedying any vulnerabilities or insecurities is solely Subscriber's responsibility. Any remediation assistance may be made available by Xcitium in its sole and absolute discretion and may entail an additional fee.

4. Ownership.

- 4.1. Ownership Rights.** The Services are being licensed, not sold. Xcitium retains all ownership rights in and to the Services, including any intellectual property rights therein.

4.2. Copyright. The Services contain material that is protected by United States and foreign intellectual property laws, including copyright, trademark, trade secret, and patent law. All rights not granted to Subscriber herein are expressly reserved by Xcitium. Subscriber shall not remove any copyright or other proprietary notice of Xcitium from the Services.

4.3. Submissions. Any communications sent to Xcitium are the property of Xcitium or of Xcitium's affiliates. Unless stated otherwise herein, submissions are not considered confidential, and Xcitium is not liable for any use or disclosure of a submission. Except as noted herein, Xcitium is entitled to use of any submissions, subject to applicable law, without compensation to the provider of the submission.

5. Payment.

5.1. Fees. Subscriber agrees to pay all fees, including overage charges, listed on Xcitium website or documentation applicable to the Services. Xcitium may modify fees for the Services in its sole discretion. Subscriber's failure to terminate this Agreement after a fee change is posted constitutes Subscriber's acceptance of the amended prices, which will apply on Subscriber's next invoice.

5.2. Limited License. The licenses granted herein are only for the number of end-user licenses purchased by Subscriber.

5.3. Renewal. The licenses granted herein shall automatically renew until this Agreement is terminated by Subscriber or by Xcitium. Any credit card or account provided to Xcitium to pay for the Services shall be automatically charged for the Services upon renewal. In the event that Xcitium is unable to bill the credit card or account on file or Subscriber requests that Xcitium not bill the credit card or account, Subscriber shall be solely responsible for any renewal payment required. In the event that payment is not made, the Services may become unavailable to Subscriber and Xcitium may terminate this Agreement in its sole and absolute discretion without notice to Subscriber.

5.4. Billing Issues. Subscriber agrees to provide Xcitium notice of any billing problems or disputes within thirty (30) days after they first appear on the statement Subscriber receives from Subscriber's bank, credit card company, or other billing company. Failure to notify Xcitium of the problem within the thirty (30) day period will result in Subscriber's acceptance of the charges, waiving Subscriber's right to dispute such problems or discrepancies. Xcitium does not provide any refunds for the Services.

5.5. Service Modifications. Xcitium may at any time change, modify, add to, discontinue, or retire the Services either in whole or in part. Xcitium will provide notice of material changes to the Services or changes to this Agreement by posting such changes at www.Xcitium.com which shall be Subscriber's sole notice of such changes. Subscriber must periodically check the website to inform yourself of any such changes.

6. Term and Termination.

6.1. Term. The Services with this Agreement are for a term of one month or one year as selected upon initiation. One year terms renew automatically. Other terms may be indicated in any applicable purchase order unless earlier terminated by Subscriber or by Xcitium. Subscriber may only use the Services during the period for which Subscriber has paid the subscription fee.

6.2. Termination by Subscriber. Subscriber may terminate this Agreement, after payment of all fees due for the term, at any time by (1) notifying Xcitium of Subscriber's intent to terminate this Agreement by email at support@Xcitium.com; and (2) uninstalling all copies of any software provided with the Services. Subscriber's termination will be effective upon Xcitium's receipt and processing of the email, which may take up to 24 hours.

6.3. Termination by Xcitium. Xcitium may terminate this Agreement in its sole discretion without notice. Xcitium may refuse access or deny participation into the Services at any time.

6.4. Excessive Use. 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 Subscriber's consumption of the Services is deemed excessive by Xcitium, based on the average use of the Services by other customers, Xcitium may terminate Subscriber's account or adjust the price offered to Subscriber for the Services.

6.5. Events upon Termination. Upon termination, Subscriber shall immediately cease using the Services. Xcitium may disable use of the Services or related software without further notice to Subscriber, and may remove and erase any

account information. Xcitium will delete backup data, and other information stored or collected by Xcitium. No refunds shall be provided for any unused Services.

7. Privacy.

7.1. Privacy Policy. The use of personal information by Xcitium is governed by the Xcitium privacy policy which is available on the Xcitium Resources repository located under the Privacy Policy link at <https://www.Xcitium.com>. Subscriber should periodically review this website, as Xcitium may revise the Privacy Policy at any time. Xcitium may occasionally send Subscriber communications regarding Subscriber's account or the Services.

7.2. Data Collection. Xcitium may collect certain information about Subscriber's use of the Services, including, without limitation, statistics relating to the use of the Services, performance metrics relating to the Services, and configuration settings. Information collected will be sent to Xcitium and may be used by Xcitium in accordance with applicable law. Xcitium may also collect information about the use of the Services to ensure compliance with this Agreement.

Particular information collected is: the users email address (upon sign up), the user's website's FTP connection details, the user's website's DB connection details. The user's website content, DB content are collected as well.

For mobile devices, the Services can access the device and app history. An app can use one or more of the following: Read sensitive log data; Retrieve system internal state; Read your web bookmarks and history; Retrieve running apps.

By accepting this agreement, you acknowledge that during the term of the subscription, Xcitium's cWatch Web BackUp Service may encounter technical problems, human errors, maintenance, upgrades to software/systems/hardware, omissions, and/or internet and communication frailties. You specifically acknowledge and agree that Xcitium is not liable for any damages as a result of the foregoing.

7.3. 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.

7.4. Obligations of Subscriber. Subscriber shall be responsible for complying with any and all necessary privacy laws and regulations in any applicable jurisdiction(s) with respect to any networks, systems, and property within their ownership, custody or control. This includes all local, state, and Federal laws in the United States, all European Union laws or directives, and any other laws throughout the world. Subscriber shall make the appropriate and required disclosures to individuals. Pursuant to Section 10, Subscriber shall indemnify Xcitium for any alleged privacy or data security violation which is attributed to Subscriber or due to any Subscriber action, inaction or negligence.

8. Warranty Disclaimers.

8.1. Use of Internet. Reasonable effort shall be made by Xcitium to provide reliable services, but Xcitium provides the Services on the Internet and, as such, they are subject to the operation of Internet and telecommunications infrastructures which are beyond the control of Xcitium. Xcitium does not warrant that the services will be uninterrupted or that Subscriber will be able to access or use the Services at the location and times of Subscriber's choosing.

8.2. Warranty Disclaimer. THE SERVICES AND ACCOMPANYING SOFTWARE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND. ANY USE OF THE SERVICES IS AT SUBSCRIBER'S OWN RISK. XCITIMUM DOES NOT WARRANT THAT ANY SOFTWARE OR ONLINE SERVICES PROVIDED WILL OPERATE SUBSTANTIALLY IN ACCORDANCE WITH THE DOCUMENTATION ACCOMPANYING THAT SOFTWARE OR SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, XCITIMUM 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 FUNCTIONS CONTAINED IN THE SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS SUBSCRIBER MAY HAVE, THAT ANY DEFECTS OR ERRORS IN THE SERVICES WILL BE CORRECTED, OR THAT THE SERVICES ARE COMPATIBLE WITH ANY PARTICULAR PLATFORM. SOME JURISDICTIONS DO NOT ALLOW THE WAIVER OR EXCLUSION OF

IMPLIED WARRANTIES SO THEY MAY NOT APPLY TO SUBSCRIBER. SUBSCRIBER SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES.

8.3. Data Transfer. ANY AND ALL MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT SUBSCRIBER'S OWN RISK. SUBSCRIBER IS SOLELY RESPONSIBLE FOR THE USE OR POSSESSION OF SUCH DATA OR MATERIAL. XCITIUM DOES NOT ACTIVELY MONITOR ANY INFORMATION OR MATERIAL TRANSFERRED THROUGH THE SERVICES AND CANNOT WARRANT THE CONTENT OF SUCH MATERIAL OR DATA.

9. Limitation of Liability.

IN NO EVENT SHALL XCITIUM, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS, LICENSORS OR SUPPLIERS BE LIABLE FOR (I) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO (A) THE USE OF THE SERVICES, (B) THE DELAY OR INABILITY TO USE THE SERVICES, (C) ANY INFORMATION, DATA, OR SERVICES OBTAINED THROUGH THE SERVICES, (D) UNAUTHORIZED THIRD PARTY ACCESS TO SUBSCRIBER'S ACCOUNT, OR (E) THIS AGREEMENT; OR (II) ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. THIS LIMITATION APPLIES REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY AND SHALL APPLY EVEN IF XCITIUM, ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS, LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL XCITIUM'S TOTAL AGGREGATE LIABILITY RESULTING FROM OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY SUBSCRIBER TO XCITIUM UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM. THE LIMITATIONS HEREIN SHALL APPLY EVEN IF ANY ESSENTIAL PURPOSE OF THIS AGREEMENT FAILS TO BE MET.

10. Indemnification.

Subscriber shall release, indemnify, defend and hold harmless Xcitium and 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) this Agreement or the breach of Subscriber's warranties, representations and obligations under this Agreement, (b) falsehoods or misrepresentations by Subscriber, or (c) Subscriber's violation of the intellectual property rights or other proprietary rights of a third party. When Xcitium is threatened with a suit or sued by a third party, Xcitium may seek written assurances from Subscriber concerning Subscriber's promise to indemnify Xcitium. Failure to provide those assurances is a material breach of this Agreement. Xcitium shall have the right to participate in any defense by Subscriber of a third-party claim related to Subscriber's use of the Services, with counsel of Xcitium's choice. Subscriber shall have sole responsibility to defend Xcitium against any claim, but Subscriber must receive Xcitium's prior written consent regarding any related settlement. The terms of this paragraph will survive any termination or cancellation of this Agreement.

11. Miscellaneous.

11.1. Entire Agreement. This Agreement, including any documents referenced herein, shall constitute the entire agreement between the parties. Any waiver of this Agreement shall only be effective if it is in writing and signed by both parties. Except as otherwise provided in this Agreement, Xcitium may: (1) revise the terms and conditions of this Agreement; and/or (2) change any part of the Services. Any such revisions or changes will be binding and effective immediately upon the earlier of posting the change to www.Xcitium.com or upon notification to Subscriber by e-mail or United States mail. Subscriber agrees to periodically review the Xcitium website to be aware of any such changes. By continuing to use the Services after a change, Subscriber agrees to abide by and be bound by any such changes. Xcitium is not bound by and Subscriber may not rely on any representation by (i) an agent, representative or employee of a third party; or (ii) information posted on the Xcitium website of a general informational nature. Section headings are for reference only and are not part of the terms of this Agreement.

11.2. Independent Contractors. Subscriber and Xcitium are independent contractors, and nothing contained in this Agreement shall be construed to designate or establish Subscriber as a partner, employee, joint venturer, or agent of Xcitium for any purpose whatsoever.

- 11.3. Force Majeure.** Any delays in or failure by Xcitium shall be excused to the extent that the delay or failure is beyond Xcitium's reasonable control. Xcitium shall not be liable for any failure or problem related to access or use of the Internet.
- 11.4. 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 shall be omitted and the balance of this Agreement shall remain valid and enforceable.
- 11.5. Governing Law; Venue.** Any disputes related to the Services shall be governed by and construed in accordance with the laws of the state of New Jersey. Any actions arising out of or based on this Agreement shall be brought in the federal or state courts of 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.
- 11.6. Limitation on Actions.** Neither party may bring any action, regardless of form, arising out of nor relating to this Agreement more than one (1) year after the cause of action has accrued.
- 11.7. Non-assignment.** Subscriber may not assign or delegate 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 Xcitium's consent renders this Agreement voidable at Xcitium's option. Xcitium may assign and delegate its rights and obligations under this Agreement.
- 11.8. Notices.** All notices, demands or requests made to Xcitium with respect to this Agreement shall be in writing and mailed to Xcitium at 1255 Broad Street, Suite 100, Clifton, NJ 07013, United States. All notices to Subscriber shall be sent to the email address listed in Subscriber's account. Xcitium shall have no obligation to provide notice or attempt to locate a customer other than through the account email address.
- 11.9. Survival.** All sections regarding Confidentiality, Disclaimer of Warranties, Indemnification, Limitation on Liability, Intellectual Property, Arbitration, and Miscellaneous shall survive the termination of this Agreement.
- 11.10. Rights of Third Parties.** There are no third party beneficiaries under this Agreement.

12. Arbitration.

To the extent permitted by law, 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. If the dispute is not resolved within sixty (60) days after the initial notice, then a party may proceed in accordance with the following:

- (i) Any unresolved dispute arising under the terms of this Agreement shall be decided by arbitration conducted through the services of the American Arbitration Association (hereinafter referred to as the "AAA").
- (ii) 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.
- (iii) There shall be one Arbitrator to hear the matter. The parties shall initially agree to a panel of 3 possible Arbitrators to hear the matter and each party shall have the opportunity to name one Arbitrator to be dropped from the panel until one remains. The party giving notice of the Arbitration demand shall be first to indicate its selection.
- (iv) All costs of the Arbitration and the AAA shall be borne equally by both parties to this Agreement, regardless of the final decision. The defaulting party as determined by the Arbitrator, shall pay all other costs and expenses, including reasonable attorney's fees, incurred by the party in enforcing its rights under this Agreement.

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 AND CONDITIONS. DO NOT CLICK THE "I ACCEPT" BUTTON IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

SCHEDULE A

This Service includes open source software or third party applications under the following licenses:

The Apache Software License 2.0

<http://www.apache.org/licenses/LICENSE-2.0.txt>

The MIT License

<https://mit-license.org/>