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It is expressly agreed that the terms of this Agreement will supersede the terms in any purchase order or other ordering document and such terms will have no force or effect.

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Types of Licenses

Evaluation Licenses

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Standard Licenses

If you would like to obtain a standard license for the software, you must first agree to and accept the terms of this Agreement. To accept this Agreement, select "I accept" at the Xcitex licensing web page prior to download and/or "I accept" at the introductory screen during the software installation. All provisions of this Agreement that are applicable to evaluation licenses shall govern your use of the software. Such provisions include provisions of general application as well as provisions specifically referring to standard licenses. You may install the software once you have selected "I accept" to accept this Agreement. Unless otherwise specified by Xcitex in writing, no additional documentation shall be required to purchase standard licenses and/or related services.

The software may come with a temporary license code which you are required to type in (some of our software does not require you to type in codes in order to activate) as a condition precedent to activating the software. Once you unlock or activate the software you may use it for up to 30 days. During that period you are required to pay us and to register the software. Upon payment and registration we will issue you a permanent

license code or send you a file activating the software, depending on which software you are licensing. If you fail to pay us and to register the software within the specified 30 day period, you will be locked out of the software.

We may employ other activation methods in which case notice and procedures for unlocking and activating the software will be provided to you.

IN THE CASE OF AN EVALUATION LICENSE WE RETAIN THE RIGHT TO REJECT YOUR ACCEPTANCE OF THIS AGREEMENT WITHIN 72 HOURS OF YOUR INSTALLATION OF THE SOFTWARE. IN THE CASE OF A STANDARD LICENSE, WE RETAIN THE RIGHT TO REJECT YOUR ACCEPTANCE OF THIS AGREEMENT AT ANY TIME PRIOR TO YOUR PAYMENT OF THE APPLICABLE FEES.

To simplify the language in this Agreement:

- **Xcitex, us and we** means Xcitex Inc.;
- **You and Customer** means the person who has subscribed for the software license pursuant to the procedures specified by Xcitex; and
- **Parties** means Xcitex and Customer, collectively.

LICENSE TERMS AND CONDITIONS

In consideration of the mutual provisions contained herein, the Parties agree as follows:

1. **Definitions.** Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them below:
 - 1.1. **Authorized User** means one of your employees and no other person except as otherwise authorized in writing by us.
 - 1.2. **Default Notice** has the meaning set forth in Section 11.2.
 - 1.3. **Documentation** means the instructions, manuals, and diagrams pertaining to the Software, in electronic or printed form, as made generally available from time to time by Xcitex.
 - 1.4. **Concurrent User(s)** means the total number of copies of the Software that are executing and operating simultaneously at any given time.
 - 1.5. **Cure Period** means fifteen (15) days (five (5) days if the breach is a payment default) following receipt of a Default Notice. An Evaluation License shall have no cure period and shall be terminable upon delivery of a Default Notice only.
 - 1.6. **Evaluation License** has the meaning set forth in Section 2.1.
 - 1.7. **Invoice** means Xcitex's invoice for the Software and related services, if any, including but not limited to an invoice for a renewal.
 - 1.8. **Locked Work Station License** means, as more particularly described herein, a license to the Software limited to one Work Station for use by one Concurrent User that is not transferable to any other Work Station.

- 1.9. **Network License** means, as more particularly described herein, a license to the Software loaded on to one specified server for use by a specified number of Concurrent Users at Work Stations.
- 1.10. **Standard License** means a Network License, Locked Work Station License or Work Station License.
- 1.11. **Software** means the software programs specified on the Order Form(s) as the same may be updated and upgraded from time to time.
- 1.12. **Work Station** means a computer work station located at your facility unless otherwise agreed to in writing by Xcitex.
- 1.13. **Work Station License** means, as more particularly described herein, a license to the Software that may be transferred to multiple Work Stations but that will only work at one Work Station at time. Work Station Licenses are purchased by number of Concurrent Users.

2. Evaluation License.

- 2.1. **License Grant.** Subject to the provisions of this Agreement, Xcitex hereby grants to you a royalty-free, non-exclusive, non-transferable license ("**Evaluation License**") to (i) install and use the Software (in object code only) solely in accordance with the Documentation for internal evaluation purposes only to determine its suitability for use in connection with your business and (ii) use the Documentation in connection with the operation of the Software. No other use of the Software or Documentation is permitted hereunder.
- 2.2. **Type of License.** The Evaluation License is for one Concurrent User on one work Station (i.e., non-transferrable to other Work Stations).
- 2.3. **Term of License.** You may use the Software for a term commencing on the date of download and ending on the 30th day thereafter. On and after such 30th day you shall discontinue all use of the Software.

3. Standard Licenses.

- 3.1. **License Grant.** Subject to the provisions of this Agreement and the timely payment of the license fees specified on the Invoice, Xcitex hereby grants to you a personal, non-exclusive, non-transferable license ("**Standard License**") to (i) install and use the Software (in object code only) solely in accordance with the Documentation for your internal business purposes only and (ii) to use the Documentation to operate the Software. No other use of the Software or Documentation is permitted hereunder.
- 3.2. **Term of License.** The term of each Standard License will commence on the date you unlock the Software or the date upon which you receive an Invoice, whichever occurs sooner, and will continue thereafter, unless sooner terminated in accordance with the terms set forth herein, for the period of time set forth in the applicable software order form.
- 3.3. **Concurrent Users.** The Standard Licenses are for the number of Concurrent Users set forth on the software order form(s).
- 3.4. **Payment.** In consideration for a Standard License(s) and related services, if any, you shall pay to Xcitex the fees set forth on each Invoice net 30 days of the date of invoice.

3.5. **Effect of Expiration of License.** Upon expiration or termination of the license, you shall discontinue all use of the Software.

4. **Restrictions on Use of Software.** Notwithstanding anything contained herein to the contrary, you shall not directly or indirectly:

- (a) Integrate the Software into any other products or materials;
- (b) Use the Software to run a service bureau, time sharing service or software-as-service offering;
- (c) Prepare, develop, make or have made, sell or otherwise distribute any derivative works based upon the Software;
- (d) Decompile, disassemble, merge, translate, modify, analyze or reverse engineer any portions of the Software;
- (e) Make back-up copies of the Software except for one (1) archival copy for your records on which you must reproduce all of Xcitex's and its suppliers' proprietary legends and notices;
- (f) Remove any copyright, trademark, proprietary rights notice, disclaimer or warning notice on or embedded in any part of the Software;
- (g) Grant any sublicenses regarding the Software which includes granting access to the Software to any affiliated entity and its personnel; or
- (h) Disclose, transfer or otherwise make available the Software to anyone other than an Authorized User or through any means other than a Work Station.

5. **Rights Reserved.** Notwithstanding anything to the contrary contained herein, all rights not specifically granted in this Agreement to you shall be reserved and remain always with Xcitex.

6. **Support.** With respect to Standard Licenses, Xcitex will provide web and email support for the Software on a reasonable effort basis during normal Xcitex business hours. Consulting and other real-time support will be available at Xcitex's standard applicable billing rates.

7. **Other Agreements of Customer.**

7.1. **Use Restrictions.** You will not to use the Software in excess of the limits stated in this Agreement. You will not disable or evade any mechanism in the Software designed to limit the number of Concurrent Users, how the Software is used or where it is used.

7.2. **Monitoring Usage.** Xcitex may use technical means to monitor the compliance with this Agreement and usage of the Software, and you will cooperate in Xcitex's using such technical means.

8. **Intellectual Property Rights.** Title to the Software shall always remain with Xcitex, and you shall not acquire any interest therein except the limited right to use the same pursuant to this Agreement. The Parties agree that Xcitex shall solely own and have exclusive worldwide right, title and interest in and to the Software, and to all modifications, enhancements and derivative works thereof, and in all United States and worldwide trademarks, service marks, trade dress, logos, copyrights, rights of authorship, inventions, patents, rights

of inventorship, rights of publicity, privacy and defamation, trade secrets, rights under unfair competition and unfair trade practices laws, and all other intellectual and industrial property rights related thereto (collectively "**Intellectual Property Rights**"). You shall not challenge, contest or otherwise impair Xcitex's ownership of the Software or the validity or enforceability of Xcitex's Intellectual Property Rights related thereto.

9. Warranty; Warranty Disclaimers.

- 9.1. **Evaluation License; AS IS.** If you have an Evaluation License only, you agree that you are licensing the Software "AS IS" without any warranty of any kind from Xcitex.
- 9.2. **Standard License; Limited Warranty.** If you have a Standard License, Xcitex represents and warrants that the Software will perform in compliance with the Documentation in all material respects for a period of 180 days following the commencement date of such license (the "**Warranty Period**"). In the event that you provide written notice of a material defect during the Warranty Period, Xcitex's sole obligations under this warranty (and your sole and exclusive remedies) are, at Xcitex's option (1) to use reasonable efforts to correct such defect or (2) to refund the license fee paid for the Software. The warranties set forth in this Section 9.2 shall not apply to corrections or remedies for any issues arising from (i) misuse, neglect, accident or exposure to environmental conditions beyond those specified by us in the Documentation, (ii) use of the Software in combination with other equipment or software not provided or recommended in writing by us (iii) the acts or omissions of third parties, (iv) any modification to the Software made by you or any other third party, (iv) your failure to install bug fixes, enhancements or releases within a commercially reasonable period of time after such bug fixes, enhancement or releases are made available; or (vi) use of the Software other than in the manner specified in the Documentation.
- 9.3. **Disclaimers.** EXCEPT AS SET FORTH IN SECTION 9.2 ABOVE, XCITEX EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE SOFTWARE AND/OR ANY SERVICES PROVIDED BY XCITEX TO YOU, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INDEMNIFICATION, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR BASED ON COURSE OF CONDUCT OR TRADE CUSTOM OR USAGE.

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10. Limitations on Liability and Damages

- 10.1. **Evaluation License Terms**. If you have an Evaluation License only, Xcitex shall not be liable for any damages whatsoever including but not limited to actual, indirect, special, incidental, consequential or exemplary damages, even if warned of the possibility of such damages, that are in any way arising from or related to Software, services provided in connection with the Software or this Agreement.
- 10.2. **Standard License Terms**. If you have a Standard License, (i) Xcitex shall not be liable for any indirect, special, incidental, consequential or exemplary damages, even if warned of the possibility of such damages, that are in any way arising from or related to the Software, any services provided in connection with the Software or this Agreement and (ii) Xcitex's aggregate liability to you for any and all claims in any way arising from or related to the Software, any services provided in connection with the Software or this Agreement will not exceed the total of all license payments made to Xcitex during the previous twelve (12) month period.

11. Termination

- 11.1. **Notice and Cure**. Either Party may terminate this Agreement immediately by a written notice (a "**Default Notice**") if such Party commits any material breach of this Agreement; provided, that if such breach is capable of cure, such Party shall have the term of the Cure Period to cure such breach to the non-breaching Party's reasonable satisfaction. If such breach is not cured prior to the expiration of the Cure Period, the non-breaching Party may terminate this Agreement immediately by written notice.
- 11.2. **License Termination**. Upon the expiration or termination of this Agreement for any reason, all licenses hereunder shall immediately terminate and you shall immediately discontinue all further use of the Software.
- 11.3. Notwithstanding anything to the contrary set forth herein, Sections 1, 8, 9, 10, 11.2, 11.3 and 12-22 (except for Section 14) of this Agreement and any other provisions that by their terms survive termination, and any remedies for the breach thereof, shall survive the termination of this Agreement under the terms hereof. Termination of this Agreement shall not relieve or release either party from any rights, liabilities or obligations which it has accrued prior to the effective date of such termination.

12. Authority. The person executing this Agreement on your behalf has the authority to bind you to all the provisions of this Agreement.

13. Force Majeure Event. Xcitex will not be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other cause beyond the control of Xcitex (a "**Force Majeure Event**"). In the event of such a Force Majeure Event, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure Event but not in excess of sixty (60) days. If a Force Majeure Event delay exceeds sixty (60) days, you may terminate this Agreement without fault.

14. **Independent Contractors.** In all matters relating to this Agreement, the Parties are independent contractors. The relationship between the Parties is that of licensor/licensee. Neither Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, or in any other capacity.
15. **Governing Law.** This Agreement, and all matters arising out of or relating to this Agreement, will be governed by the laws of the Commonwealth of Massachusetts. This Agreement is not governed by the U.N. Convention on Contracts for the International Sale of Goods. The Parties agree to the exclusive jurisdiction and venue of the courts located in Boston, Massachusetts with regard to any dispute relating to this Agreement or its subject matter.
16. **Specific Performance.** The Parties agree that in case of a breach of the provisions of this Agreement relating to intellectual property rights or in case of the unlicensed use or exploitation of the Software, a remedy at law will not be adequate for the non-breaching Party's protection, and accordingly the non-breaching Party will have the right to seek, in addition to any other relief and remedies available to it, preliminary and final injunctive relief to enforce the provisions of this Agreement.
17. **Notices.** All notices shall be in writing and given personally or by prepaid certified mail, return receipt requested, or sent by internationally-recognized overnight courier, personal delivery service or facsimile transmission addressed to the Parties hereunder at the addresses set forth either on the cover page of this Agreement in the case of Xcitex or in the records of Xcitex, in the case of the Customer. Any such notice or communication shall be deemed to have been effectively given (i) in the case of personal delivery, on the date of such delivery, (ii) in the case of internationally-recognized overnight delivery courier, on the second business day after the date when sent, (iii) in the case of certified mail, on the fifth business day following that day on which the piece of mail containing such communication is posted and (iv) in the case of facsimile transmission, the date of telephone confirmation of receipt.
18. **Assignment.** You may not assign any rights or obligations under this Agreement without prior written consent of Xcitex which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon, and will inure to the benefit of, the parties and their respective permitted successors and assigns.
19. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
20. **Waiver.** The waiver by either Party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
21. **Interpretation.** This Agreement shall be construed without presumption of any rule requiring construction to be made against the party causing it to be drafted.
22. **Counterparts.** This Agreement may be executed in multiple counterparts, each being deemed an original and this being one of the counterparts.



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