# MASTER SUBSCRIPTION AGREEMENT

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.**

**BY USING THE SERVICE OR CLICKING "AGREE" CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON YOUR EMPLOYER'S BEHALF.**

This agreement is between Infocyte, Inc., a Delaware Corporation (**Infocyte**), and the customer agreeing to these terms (**Customer**).

## 1. SOFTWARE SERVICE.

This agreement provides Customer access to and usage of an Internet-based software service through the purchase of a subscription as specified on an order (**Service**).

## 2. USE OF SERVICE.

a. **Customer Owned Data.** All data uploaded by Customer to the Service remains the property of Customer, as between Infocyte and Customer (**Customer Data**). Customer grants Infocyte the right to use the Customer Data solely for purposes of performing under this agreement.

b. **Access and Usage.** Customer may allow its employees and contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its employees and contractors.

c. **Usage Limits**. Each subscription purchased specifies one specific Node or Endpoint and enables unlimited scans of that specific Node or Endpoint. **Node** or **Endpoint** *means* a network endpoint, such as a workstation or server, running an Infocyte supported operation system. For clarity, virtual servers, virtual desktops and other logically distinct Internet Protocol (IP) addressable endpoints are also Endpoints/Nodes.

d. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Infocyte promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.

e. **Infocyte Support.** Infocyte must provide customer support for the Service under the terms of Infocyte's Customer Support Policy (**Support**), which is located at www.infocyte.com/support.

f. **30-Day Trial Version.** If Customer has registered for a trial use of the Service, Customer may access the Service for a 30-day time period (unless extended by Infocyte in writing). The Service is provided AS IS, with no warranty during this time period.

## 3. SERVICE LEVEL AGREEMENT & WARRANTY.

a. **Warranty.** Infocyte warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (excluding maintenance outages, outages beyond Infocyte's reasonable control, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any

paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

| Availability Warranty | Credit |
|---|---|
| - 99.5 - 95% = | 10% of monthly fee. |
| - 94.99 - 90% = | 25% of monthly fee. |
| - Less than 90% = | 50% of monthly fee. |

b. **LIMITED REMEDY. CUSTOMER'S EXCLUSIVE REMEDY AND INFOCYTE'S SOLE OBLIGATION FOR ITS FAILURE TO MEET THE WARRANTY IN SECTION (A)(I) ABOVE WILL BE FOR INFOCYTE TO PROVIDE A CREDIT FOR THE APPLICABLE MONTH, AS PROVIDED IN THE CHART ABOVE (IF THIS AGREEMENT IS NOT RENEWED, THEN A REFUND FOR THE MONTH), PROVIDED THAT CUSTOMER NOTIFIES INFOCYTE OF SUCH BREACH WITHIN 30 DAYS OF THE END OF THAT MONTH.**

c. **WARRANTY DISCLAIMER. INFOCYTE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE INFOCYTE TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, INFOCYTE DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.**

d. **ADDITIONAL DISCLAIMER. CUSTOMER UNDERSTANDS AND AGREES THAT (I) ITS USE OF THE SERVICE MAY REVEAL MALWARE IN CUSTOMER'S NETWORK AND MAY RECOVER AND RETAIN A COPY IN AN INERT STATE FOR EVIDENCE RETENTION; (II) ITS REMOVAL OR TRANSFER OF MALWARE MAY INTRODUCE ADDITIONAL RISKS TO CUSTOMER'S NETWORK; AND (III) INFOCYTE HAS NO RESPONSIBILITY OR LIABILITY FOR THE POSSESSION, HANDLING OR USE OF MALWARE IDENTIFIED BY OR EXPORTED FROM THE SERVICE.**

## 4. PAYMENT.

Customer must pay all fees as specified on the order, but if not specified, then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT, and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.  Infocyte may charge interest on overdue amounts at the lesser of 1.5% or the highest rate permitted under applicable law.

## 5. MUTUAL CONFIDENTIALITY.

a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Infocyte's Confidential Information includes, without limitation, the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below). Customer's Confidential Information includes, without limitation, the Customer Data.

b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have

signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

d. **Data Security Measures.**

i. *Security Measures.* In order to protect Customer's Confidential Information, Infocyte (i) implements and maintains all reasonable security measures appropriate to the nature of the Confidential Information including, without limitation, technical, physical, administrative, and organizational controls, and will maintain the confidentiality, security, and integrity of such Confidential Information; (ii) implements and maintains industry standard systems and procedures for detecting, preventing, and responding to attacks, intrusions, or other systems failures and regularly tests, or otherwise monitors the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designates an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of any safeguards in place to control these risks (collectively, **Security Measures**).

ii. *Notice of Data Breach.* If Infocyte knows that Customer Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, Infocyte will promptly alert Customer of any such data breach, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. Infocyte will give highest priority to immediately correcting any data breach, and will devote such resources as may be required to accomplish that goal. Infocyte will provide Customer with all information reasonably necessary to enable Customer to fully understand the nature and scope of the data breach. To the extent that Customer, in its sole reasonable discretion, deems warranted, Customer may provide notice to any or all parties affected by any data breach. In such case, Infocyte will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties. Infocyte will provide Customer with information about what Infocyte has done or plans to do to minimize any harmful effect of the unauthorized use or disclosure of, or access to, Confidential Information.

## 6. INFOCYTE PROPERTY.

a. **Reservation of Rights.** The software, workflow processes, user interface, designs, Software and Documentation, and other technologies provided by Infocyte as part of the Service are the proprietary property of Infocyte and its licensors, and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with Infocyte. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. Infocyte reserves all rights unless expressly granted in this agreement.

b. **Restrictions.** Customer *may not* (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Software and Documentation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes.

c. **Software and Documentation.** All software provided by Infocyte as part of the Service, and the Service documentation, sample data, marketing materials, training materials, and other materials provided through the Service or by Infocyte (**Software and Documentation**) are licensed to Customer as follows: Infocyte grants Customer a non-exclusive, non-transferable license during the term of this agreement to use and copy such Software in accordance with the Documentation, solely in connection with the Service.

d. **Aggregated Data.** During and after the term of this agreement, Infocyte may use and owns all anonymized results and data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support, and other business purposes.

## 7. TERM AND TERMINATION.

a. **Term of this Agreement.** This agreement continues until all orders have expired or are terminated for material breach under **Section 7(b)**.

b. **Subscription Term**. The term of the subscription is as specified in the order. Subscriptions automatically renew for additional periods equal in length to the then current subscription term or one year, whichever is shorter, unless either party gives the other party notice of non-renewal at least 30 days prior to the end of the then current subscription term.

c. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

d. **Return Infocyte Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Infocyte for any unpaid amounts and destroy or return all property of Infocyte. Upon Infocyte's request, Customer will confirm in writing its compliance with this destruction or return requirement.

e. **Suspension for Violations of Law.** Infocyte may temporarily suspend the Service and/or remove the applicable Customer Data if it in good faith believes that, as part of using the Service, Customer has violated a law. Infocyte will attempt to contact Customer in advance.

f. **Suspension for Non-Payment.** Infocyte may temporarily suspend the Service if Customer is more than 30 days late on any payment due pursuant to an order.

## 8. LIABILITY LIMIT.

a. **Exclusion of Indirect Damages. Infocyte is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss.**

b. **Total Limit on Liability. Except for Infocyte's indemnity obligations, Infocyte's total liability arising out of or related to this agreement (whether in contract, tort, or otherwise) does not exceed the amount paid by Customer within the 12-month period**

**prior to the event that gave rise to the liability.**

## 9. INDEMNITY.

a. **Defense of Third-Party Claims.** Infocyte will defend or settle any third-party claim against Customer to the extent that such claim alleges that Infocyte technology used to provide the Service violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies Infocyte of the claim in writing, cooperates with Infocyte in the defense, and allows Infocyte to solely control the defense or settlement of the claim.

- *Costs.* Infocyte will pay infringement claim defense costs it incurs in defending Customer, and Infocyte negotiated settlement amounts, and court-awarded damages.

- *Process.* If such a claim appears likely, then Infocyte may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Infocyte determines that none of these are reasonably available, then Infocyte may terminate the Service and refund any prepaid and unused fees.

- *Exclusions.* Infocyte has no obligation for any claim arising from: Infocyte's compliance with Customer's specifications; a combination of the Service with other technology where the infringement would not occur but for the combination; use of Customer Data; or technology not provided by Infocyte. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND INFOCYTE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

b. **By Customer.** If a third party claims against Infocyte that any part of the Customer Data violates a law or infringes that party's patent, copyright, or other right, Customer will defend Infocyte against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that Infocyte promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.

## 10. GOVERNING LAW AND FORUM.

a. **Customers In the US. For Customers located in the United States, this agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Travis County, Texas, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.**

b. **Customers Located Outside the US. For Customers located outside the United States, this agreement is governed by the laws of Texas, without regard to conflict of laws principles. Any dispute between Customer and Infocyte arising out of or related to this agreement must be exclusively determined by binding arbitration in Travis County, Texas under the then current international rules of the American Arbitration Association. Nothing in this agreement prevents either party from seeking injunctive relief in any court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.**

## 11. OTHER TERMS.

a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or

agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Infocyte. No waiver is effective unless the party waiving the right signs a waiver in writing.

b. **Compliance Audit.** No more than once in any 12-month period and upon at least 30 days' advance notice, Infocyte (or its representative) may audit Customer's usage of the Service Software at any Customer facility. Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification any fees applicable to Customer's use of the Service and Software in excess of the license.

c. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger or sale of substantially all the assets of a party.

d. **Independent Contractors.** The parties are independent contractors with respect to each other.

e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.

f. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.

g. **No Additional Terms.** Infocyte rejects additional or conflicting terms of any Customer form-purchasing document.

h. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.

i. **Survival of Terms.** Any terms, that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.

j. **Export Compliance.** Customer must comply with all applicable export control laws of the United States, foreign jurisdictions, and other applicable laws and regulations.

k. **Third Party Software Licenses.** The Software may contain embedded third party software components, which are provided as part of the Software and for which additional terms may be included, if required, in the Documentation.

l. **U.S. Government Restricted Rights.** If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1), and DFAR §252.227-7014(a)(5), or otherwise, all Software provided in connection with this agreement are "commercial items," "commercial computer software," or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution by or for the United States government is governed solely by the terms of this agreement and is prohibited except to the extent permitted by the terms of this agreement.

m. **Feedback.** If Customer provides feedback or suggestions about the Service, then Infocyte (and those it allows to use its technology) may use such information without obligation to Customer.