

## MASTER SERVICE PROVIDER AGREEMENT

### (Infocyte Services for Service Provider Customers)

This Master Service Provider Agreement (as amended, the “MSPA”) is between Infocyte, Inc., a Delaware corporation, having an office at 3801 N Capital of Texas Hwy Suite D-120, Austin, TX 78746 (“Infocyte”) and the Infocyte customer who intends to use the Platform to provide security and other services to independent third parties and purchases an Infocyte “Professional” Subscription (“you”). Please forward any notices to [billing@infocyte.com](mailto:billing@infocyte.com).

**1. DEFINITIONS.** Unless otherwise defined in this MSPA, capitalized terms have the meanings set forth in this [Section 1](#).

**Agreement** means, collectively, this MSPA and all applicable accepted Orders, and includes all documents incorporated by reference in each of them.

**Documentation** means the commercially available, general release version of materials describing the Platform or its use, whether in print or digital form. Examples of Documentation are user manuals, administration guides, installation guides, training manuals, white papers, specifications, designs, test plans and test results, configuration guides, reference architectures, FAQs, and issues documentation. Documentation does not include any advertising or marketing materials.

**Malware** means any virus, malware, spyware, ransomware, adware, or other code or information that is designed to interrupt the normal use of an information system, destroy or corrupt any data, or covertly transmit information.

**Node** means a network endpoint, such as a workstation, server, virtual server, virtual desktop or other logically distinct Internet Protocol (IP) addressable endpoints, running an Infocyte supported operating system

**Open Source Software** means any software or software component, module or package that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software or similar licensing or distribution models, including, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (i) GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL); (ii) the Artistic License (e.g., PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry Standards License (SISL); (vii) the BSD License; (viii) the MIT License and (ix) the Apache License.

**Order** means an official Infocyte quote or order prepared by Infocyte for your signature that has been signed and submitted by you and accepted by Infocyte that describes the Platform subscription products and Related Services that you have elected to purchase, with related fees, subscription term, and other transactions terms.

**Order Effective Date** means the date on which the Subscription Term commences as set forth in the applicable Order.

**Platform** means Infocyte's generally available commercial release of Infocyte HUNT™ collectively comprised of: (i) the on-premises HUNT and survey module software to be deployed on your network, (ii) the Infocyte-hosted Infocyte Cloud service, and (iii) Documentation, as each of them may be modified from time to time by Infocyte.

**Platform Specifications** means the technical features and functions of the Platform as set forth in the Documentation.

**Related Services** means compromise assessment, training, consulting, incident response and any other Infocyte services related to the Subscription Service, but not including Support.

**Results** means the data, information or output that results from the use of the Platform, such as scan results, reports, raw data, data included in a report format, and data that is captured, recorded or communicated in any form or on any media.

**Service Provider Customer** means the customers to whom you (a) intend to provide the SP Services under a Professional Subscription or (b) resell the Platform in accordance with Section 2.3.

**Services** means any services that Infocyte has agreed to provide under the Agreement, including the Incyte Cloud service element of the Platform, Support, and any Related Services.

**SP Customer Data** means: the data stored on or processed by or through your or a Service Provider Customer's information technology systems that are assessed by Infocyte as part of the Services, including (i) personally identifiable information, health information, financial data or other information regarding a Service Provider Customer's customers, patients, insureds, and end users, (ii) a Service Provider Customer's financial data, and (ii) a Service Provider Customer's other business use data.

**SP Services** means the security and other services using the Platform that you provide to Service Provider Customers.

**Subscription** means your right to use the Platform and to receive Support during the Subscription Term, subject to, and in accordance with, the terms of the Agreement. Infocyte currently offers two (2) types of Subscriptions: a **Professional Subscription** (for customers that intend to provide security and other services to independent third parties) and an **Enterprise Subscription** (for customers that intend to use the Platform only for their internal business purposes).

**Subscription Term** means the term of the Professional Subscription as set forth in the applicable Order, or, if no term is stated in such Order, one year.

**Support** means Infocyte's provision of: (i) assistance to Platform users and (ii) updates to the Platform software to fix bugs, correct errors, or enhance functionality that are released on a

generally available commercial basis to all subscribers of a Platform product without additional charge.

**Third-Party License** means any of the Third-Party Software Licenses (as defined in Section 10.1) or Open Source Licenses (as defined in Section 10.2).

**Third-Party Licensor** means the licensor of any Third-Party Software or Open Source Software.

**Third-Party Product(s)** means any software, services, goods or other products or technology that are provided to you by a third party, or that are provided by Infocyte but are: **(i)** general systems software or technology, such as operating systems or virtualization software, **(ii)** are covered by an open source license, are **(iii)** identified by Infocyte as a separate line on the Order with a brand name or logo that is not an Infocyte brand name or logo, or **(iv)** provided subject to your agreement to the third party's legal terms and conditions including any Third-Party Software and Open Source Software.

**Third-Party Software** means any software or software component, module or package (other than Open Source Software) that contains, or is derived in any manner (in whole or in part) from, any software that is licensed or distributed by a third party.

## **2. PROFESSIONAL SUBSCRIPTION FOR SERVICE PROVIDER CUSTOMERS; SERVING AS A RESELLER**

**2.1 Professional Subscription.** The SP Services to be provided under a Professional Subscription using the Platform may be on a short-term basis (e.g., a month) or a longer-term basis (e.g., 12 months) as more particularly set forth on the applicable Order. Under your Professional Subscription, one (1) license enables your employees and contractors to use the Platform for unlimited scans of one (1) unique Node in for 12 months or 1 year. You may use the Nodes that you purchase for one (1) or more Service Provider Customers during the applicable Subscription Term so long as you do not scan more unique Nodes than the number of Nodes for which you purchased a Subscription. Nodes are tracked upon a successful scan and the register will be reset at the beginning of every 12 month period.

**2.1 Subscription.** You may use the Platform for the Subscription Term, subject to the terms, conditions, and restrictions stated in the Agreement. Infocyte will provide Support in accordance with the support plan you have chosen as stated on the applicable Order. Infocyte shall use commercially reasonable efforts to ensure that the Infocyte Cloud service element of the Platform will generally be available to you 24 hours per day, 7 days per week, except as necessary to perform routine and emergency maintenance and for circumstances beyond Infocyte's reasonable control. To the extent commercially possible, Infocyte will provide you with prior notice of the start and completion of any maintenance via the customer portal or an email.

**2.2 Servicing as a Reseller.** You may request to serve as a reseller of the Platform to your customers that intend to use the Platform as an end user for their internal business purposes (an "**Enterprise Customer**") rather than as the provider of the SP Services under a Professional Subscription (a "**Reseller Opportunity**"). **You may not resell the Platform as a stand-alone**

**product or service.** You shall provide the name and address of the Enterprise Customer in connection with any such Reseller Opportunity as well as any other information that InfocYTE may reasonably request. Contingent on InfocYTE's prior written approval (which shall be at InfocYTE's sole discretion), you may serve as a reseller with respect to any such Reseller Opportunity, subject to the terms set forth in Appendix A.

### **3. RELATED AND OTHER SERVICES**

**3.1 Related Services.** InfocYTE will perform the Related Services described in the Order at the times stated in the Order. Any Related Services that are included without additional charge as part of your Subscription Service are available only for thirty (30) days from the Order Effective Date. Unless otherwise agreed in writing, InfocYTE will provide Related Services remotely from its offices. You are responsible for scheduling Related Services. You acknowledge that InfocYTE will schedule internal and third-party resources based on your commitment to use the Related Services on the scheduled dates. If you reschedule any Related Services, InfocYTE will use reasonable efforts to minimize any out-of-pocket expenses it has incurred in connection with the originally scheduled date, but you must pay any remaining expenses. In addition, if you reschedule less than three (3) Business Days' in advance of the scheduled date, then InfocYTE may, at its option, charge you up to the full amount of the hourly fees of its scheduled personnel.

**3.2 Projects.** If you ask InfocYTE to provide Related Services that involve planning, scheduling or resource allocation, InfocYTE may ask you to sign a separate order, statement of work or other form of agreement that outlines the project specifications, milestones, deliverables, fees, and other details (a "**Statement of Work**"). Any Services covered in a Statement of Work between you and InfocYTE are provided on the terms and conditions stated in the Agreement.

**3.3 Support.** Any such Support is limited to correcting errors, bugs or other issues with the Platform. Except as otherwise stated in the Documentation, Support does not extend to any Third-Party Products or technologies you use with the Platform, any issues arising from modifications to the Platform not made or authorized by InfocYTE, or the use of the Platform other than as authorized by the Agreement. If you request Support that is not covered by your Support Plan, InfocYTE may invoice you at its then-current time and materials rates in connection with the request, provided that InfocYTE informs you that you will incur charges promptly after determining that the request is not covered by your Support plan.

**3.4 Access Information.** InfocYTE will provide you with information necessary to access and use the Platform. You must protect the confidentiality of your access information using the same level of care that you use to protect your own information of like nature, and in no event less than reasonable care. You are responsible for any use of the Platform that is enabled by means of your access information, even if the use is unauthorized. If you discover that the confidentiality of your access information has been or may have been compromised you must notify InfocYTE as promptly as possible, and in all events within four (4) hours of discovery. You must provide any

information or assistance that Infocyte may reasonably request to investigate and mitigate the compromise.

**3.5 Security.** Infocyte will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Platform. On your request, Infocyte will provide you with a description of its security measures for the Platform (the “**Security Documentation**”). You acknowledge that the Security Documentation is sensitive Confidential Information of Infocyte and treated as confidential under the terms of Section 8 (Confidentiality). You, and not Infocyte, are responsible for deciding if Infocyte’s security measures meet your requirements in light of your business goals and any laws or regulations applicable to your business. You agree that Infocyte is not responsible for any harm that you or any SP Customer may suffer as a result of a security incident arising from your use of the Platform except to the extent that the incident resulted from Infocyte’s failure to properly implement and maintain the security measures described in its Security Documentation.

**3.6 Contact Person.** Each party will designate an employee or agent of to act as the contact person for all operations related communications between the parties related to the use of the Platform and Services. Each party’s contact person will be responsible for receiving and managing information received from the other in connection with the Platform and the Services. Either party may change its contact person upon prior written notice to the other.

#### **4. TERM**

**4.1 MSPA.** The term of this MSPA begins on the Order Effective Date for the first Order and continues until there are no active Orders, unless earlier terminated as provided in Section 12 (Termination).

**4.2 Subscription Order(s).** The initial term of your Subscription begins on the Order Effective Date and continues until the expiration of the Subscription Term, unless earlier terminated as provided in Section 12 (Termination). Your Subscription shall automatically renew at the then current pricing unless either party gives the other party notice of non-renewal at least sixty (60) days before the end of the relevant Subscription Term.

**4.3 Co-Terminous Orders for Additional Nodes, Overages.** If you add licenses for additional Nodes to your subscription during a Subscription Term (either by means of an additional Order or as a result of an overage described in Section 5.2 (Overages)), then the subscription term for the additional Nodes is co-terminous with the then-current initial or renewal Subscription Term of the original subscription Order. If your subscription is renewed, the additional licenses for such Nodes will be included with the renewal, unless otherwise agreed in writing.

**4.4 Orders for Related Services.** The term for Related Services is the period stated in the Order, or if no term is stated, then the period beginning on the Order Effective Date and ending on the day that the Related Services are completed.

#### **5. FEES AND PAYMENTS**

**5.1 Fee Amounts.** You must pay when due the annual Professional Subscription fee and fees for Related Services described in an Order or Statement of Work. If you would like to add licenses for additional Nodes to your Subscription during any Subscription Term, you may purchase such additional licenses for a pro-rated fee based on the number of partial and full months remaining in that Subscription Term. Fees for prepaid Related Services are stated in the applicable Order or Statement of Work. If you ask Infocyte to provide Related Services in addition to those described in the Order or Statement of Work, you agree to pay fees for the Related Services at the rate quoted to you in writing by Infocyte prior to the performance of the additional Related Services.

**5.2 Overages.** If during any month you use the Platform to survey more unique Nodes than the number for which you have purchased a Subscription, Infocyte may treat your use as the purchase of additional licenses for these unique Nodes and charge you a Subscription fee for the additional unique Nodes based on the number of partial and full months remaining in the Subscription Term. Infocyte may, at its option, also charge you an administrative fee in connection with the Node overages equal to an additional 10% of the overage Subscription fee.

**5.3 Payment Terms.** Subscription fees for the initial Subscription Term are due on the Order Effective Date and are overdue if not paid within 30 days of the invoice date. If you renew your subscription, the fees for the renewal are due on receipt of the invoice and are overdue if not paid within thirty (30) days of the invoice date. Fees for Related Services are due at the time stated in the applicable Order or Statement of Work, or if no time is stated, 30 days from the invoice date. ALL FEES ARE NON-REFUNDABLE, NON-CANCELLABLE AND NON-CREDITABLE UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THE APPLICABLE ORDER OR REQUIRED BY LAW. Specifically, but without limitation, you acknowledge that the fees for Related Services stated in an Order or Statement of Work are due regardless of whether you consume the Related Services. All fees will be invoiced and must be paid in United States dollars.

**5.4 Taxes.** All fees are stated exclusive of sales, use, VAT, GST or similar tax (“**Sales Tax**”) unless expressly stated otherwise in the Order or Statement of Work. Unless you have provided an exemption certificate or direct pay permit, you must remit to Infocyte any applicable Sales Tax. Sales Tax is due on the payment terms applicable to the fees for the related Subscription or Related Services. You represent and warrant that your address shown on the Order is the correct address for purposes of determining Sales Tax, and that all other information you have provided to Infocyte for Sales Tax purposes is accurate and complete. If you are required by law to withhold from Infocyte’s fees any amounts as a withholding or like tax, then you must gross up the amount you pay Infocyte such that fees paid to Infocyte equal the amount that would have been paid if there had been no withholding tax. For clarity, you are not required to pay any tax that is assessed on the basis of Infocyte’s net income.

**5.5 Expenses.** You shall reimburse Infocyte for any reasonable out-of-pocket expenses that are approved in advance or that are expressly agreed in in the Order, Statement of Work or other signed written agreement.

**5.6 Overdue Payments.** Infocyte may charge interest on overdue amounts at the lesser of 1.5% or the highest non-usurious rate permitted under applicable law. If any amount is overdue by more than 30 days, and Infocyte has given at least one written notice describing the overdue

payment, then InfocYTE may require you to pay InfocYTE's reasonable costs of collection of the overdue amount, such as reasonable attorney's fees, court costs, and collection agency fees.

## **6. WARRANTIES; MALWARE RISK**

**6.1 Warranties.** InfocYTE warrants that (i) the Platform will conform to the Platform Specifications in all material respects, (ii) it will use commercially reasonable efforts to update the InfocYTE Cloud service with new threat information as it becomes available to InfocYTE, (iii) it will provide Support as described in the Support plan you purchase, and that its support personnel will use commercially reasonable efforts to resolve any Support issue within the target resolution times stated in the applicable Support plan, and (iv) any Related Services will be provided in a good and professional manner, and in material conformance with any specifications agreed in a Statement of Work. If the Platform or Services fail to conform to the applicable warranty, InfocYTE's sole obligation and your **sole and exclusive remedy**, is: (i) if the failure is curable, InfocYTE's cure of the failure in a commercially prompt manner, or (ii) if the failure is not curable, InfocYTE's refund of the fees paid for non-conforming part of the Services, or for your use of the Platform during the period of non-conformance, but in all events subject to Section 13 (Limitation of Liability).

**6.2 Warranty Exclusions.** InfocYTE's warranties in Section 6.1 are void as to (i) your use of the Platform or Services other than as permitted by the Agreement or in a manner not contemplated by the Documentation or (ii) any version of the Platform if you have not implemented each InfocYTE maintenance release for the analytics engine within 45 days of the day that the release is made available to you. You acknowledge that (i) InfocYTE is not responsible for the security of your network generally, and that InfocYTE does not represent or warrant that the Platform or any Related Services meet your particular security requirements or the requirements of any laws or regulations governing your operations and (ii) the Platform is an assessment service and not a monitoring service, and that the Platform does not include any functionality to notify you of an intrusion at the time it happens.

**6.3 Limitation of Warranties.** Except as expressly stated in the Agreement, (i) InfocYTE and its Third-Party Licensors make no representations or warranties whatsoever regarding the Platform, the Services, the Documentation or the Results and (ii) the Platform, the Services, the Documentation and the Results are provided "AS IS." InfocYTE makes no representation or warranty whatsoever regarding any Third-Party Products, and as between you and InfocYTE any Third-Party Products are provided AS IS. InfocYTE does not warrant that the Platform or Services will be error free, virus free or available on an uninterrupted basis. InfocYTE disclaims any implied or statutory warranties arising with respect to the Platform, the Services, the Documentation and the Results, including without limitation, the warranty of merchantability, fitness for a particular purpose, and non-infringement, and disclaims any warranty that may arise from a course of dealing. Any warranty that cannot be excluded under applicable law is limited in duration to thirty days from the event giving rise to the warranty. InfocYTE and its Third-party Licensors do not warrant that the functionality of the Platform will meet your requirements or that errors will be corrected, nor do they warrant or make any representations regarding the use or the results of the use of the Platform, including that the Platform will identify all threats present on your

**network. Infocyte has not authorized anyone to make any representations or warranties other than as provided above or to otherwise modify the terms of the Agreement. The foregoing limitations shall apply even if the above-stated warranty fails of its essential purpose.**

**6.4 Malware.** Your use of the Platform may reveal Malware on your systems or the systems of the SP Customers, and may recover and retain a copy in an inert state for evidence retention. **The removal or transfer of Malware may introduce additional risks to your network or the network of the SP Customers.** You assume all risk and responsibility for the possession, handling and use of Malware identified by, or exported from, the Platform

## **7. ADDITIONAL SERVICE PROVIDER REQUIREMENTS**

The following terms, in addition to the other terms and conditions of this MSPA, shall apply to any Professional Subscription and your use of the Platform:

**7.1 Use of Platform, Results.** You may provide your Service Provider Customers with Results, but may not permit your Service Provider Customers, including their employees, contractors, or other service providers, to access or use the Platform.

**7.2 EULA.** Access and use of the Platform by any end users, including your employees and contractors, shall be subject to, and governed by, Infocyte's customer license agreement (as modified from time to time, the "EULA"). The current EULA is available at [www.infocyte.com/legalprivacy](http://www.infocyte.com/legalprivacy). To the extent that there are any conflicts between this MSPA and the EULA, the terms and conditions of this MSPA shall prevail. You are solely responsible for any breach of the EULA by any end user that was provided access to the Platform by you.

**7.3 End Customer Support.** Unless otherwise agreed in writing you (a) shall provide technical and other support in connection with the Platform to your customers consistent in quality with support offered by high-quality service providers in the cyber security services industry and (b) may not refer your customers or end users to Infocyte for any support and Infocyte shall have no obligation to provide any such support.

**7.4 Risk of Non-Payment, Verification.** You are responsible for all fees due to Infocyte, including for any customer-specific assessment licenses, regardless of whether you collect any related fees from your customers. On Infocyte's request, you shall provide documentation supporting your fee calculations and payments under the Order, such as copies of customer agreements, accounting reports, and records reflecting the installation and use of the Platform.

**7.5 Marketing and Materials.** During the Term, you shall actively promote the SP Services and the Platform to all of your customers. You may not make any representation, guarantee or warranty to SP Customers or any other party regarding the performance, functional characteristics or accreditations (e.g., HIPAA, FED, etc.) of the Platform inconsistent with or beyond those expressly contained in the commercially available, general release version of the Documentation.

**7.6 Conduct.** You must provide the SP Services and related activities in compliance with all applicable laws and regulations and your posted privacy policy. You must provide the SP Services and related activities ethically and in a manner that reflects favorably on Infocyte's

reputation, and in accordance with Infocyte's Service Provider conduct standards that are communicated to you in writing. Specifically, but without limitation, you must comply with the U.S. Foreign Corrupt Practices Act, the U.K. Anti-Bribery Act, and any other similar anti-corruption laws and regulations. On request, you shall comply with Infocyte's opportunity registration process or other process intended to avoid conflict with other Infocyte service providers. You may not make any negative comments, orally or in writing, about Infocyte or the Platform to any customer or prospective customer, or in any public forum.

**7.7 Subtiers.** Unless otherwise authorized in writing by Infocyte, you may only provide the SP Services directly to your Service Provider Customers, and not through any sub-tiers of service providers.

**7.8 Platform Maintenance and Training.** You will properly maintain the Platform and the related software, including ensuring that the Platform that you are running for SP Customers is updated within thirty (30) days of the general release of any updates or modification as posted on Infocyte.com/partners. You will ensure that Partner Infocyte resources or users maintain proper training and certification in accordance with the requirements and updates posted on Infocyte.com/partners or the Infocyte Partner Portal on Infocyte.com.

### **7.9 Platform License and Restrictions**

Subject to the terms of the Agreement, if you have purchased a Professional Subscription, Infocyte grants to you a limited, worldwide (subject to compliance with all export and other laws), terminable, non-exclusive, non-transferable and royalty-free license for the applicable Subscription Term to use the Platform to assess the number of unique Nodes for which you have purchased a Subscription (the "**Platform License**"). You may use the Platform only for the SP Services that you provide to your Service Provider Customers. Your Platform License is valid only for the Subscription Term (as it may be renewed in accordance with the terms of the Agreement). You may (i) use any software provided to you as part of the Platform only in its executable form, (ii) deploy as many survey modules as reasonably incident to your licensed use and (iii) make a reasonable number of backup or archival copies of the analytics engine, but you may not otherwise copy the Platform. The survey modules are designed to be self-deleting, but in the event a survey-module does not self-delete, you must delete the module on completion of the assessment for which the module was deployed.

You may not:

- transfer or sublicense the Platform to, or make the Platform available for use by, any person except your employees and permitted contractors as described in Section 14 (*Contractors; Subcontractors*)
- use the Platform in connection with any activity where the failure of the Platform might result in death, personal injury or severe physical or environmental damage, such as controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, and weaponry systems
- copy, modify, adapt or translate the Platform or create any derivative works or improvements of the Platform

- reverse engineer, disassemble or de-compile the Platform except to the extent that the applicable law explicitly prohibits this contractual restriction, and then only on at least thirty (30) days' prior written notice to Infocyte.
- publish any benchmark or other performance test results regarding the Platform
- defeat, circumvent or disable any copy protection mechanism or mechanism in the Platform used to limit Subscription duration, number of Nodes or access to non-licensed functionality or capacity
- install, use, access, display and run the Platform except in the manner in which it has been licensed as indicated herein and in the applicable Order for such Platform, including but not limited to any restrictions on number of Nodes or location restrictions
- rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Platform to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service
- transfer the Platform that is in a licensed hosted environment out of any such environment
- delete or in any manner alter the copyright, trademark, and other proprietary rights notices of Infocyte and/or its Third-Party Licensors appearing on any Platform or any other Infocyte software or products. You will reproduce such notices on all copies it makes of any Platform
- access or use the Platform in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property rights or other rights of any third party, or that violates any applicable law
- access or use any Third-Party Software or Open Source Software as standalone software and as otherwise provided in accordance with the applicable Third-Party License

## **8. CONFIDENTIALITY**

Information disclosed by one party (the “**Discloser**”) to the other party (the “**Recipient**”) regarding the Discloser’s assets, liabilities, financial results, financing plans, business strategies, pricing, product development plans, marketing strategies, operations, source code, technology, know-how, trade secrets, customers, distributors, sales channels, contractors, suppliers, employees and other personnel, and all other information disclosed by Discloser that Recipient should reasonably understand to be confidential, due to the nature of the information or the circumstances of its disclosure, is the “Confidential Information” of the Discloser, regardless of the form or manner in which it is disclosed, and regardless of whether the information is marked or designated as confidential. Each party acknowledges that the terms of the Agreement are Confidential Information of each party. However, information that would otherwise be Confidential Information under the Agreement shall not be Confidential Information if the information: (i) becomes publicly known through no fault of Recipient, (ii) was rightfully known by Recipient, or in Recipient’s possession, before Discloser’s disclosure as evidenced by Recipient’s written business records; (iii) is disclosed to Recipient by a third party who, to Recipient’s knowledge, acquired the information without violation of law or contract, and who does not have an obligation of confidentiality to Discloser with respect to the information; or (iv)

is independently developed by Recipient without any use of, access to, or reference to the Confidential Information of Discloser as evidenced by Recipient's written business records. The Recipient shall not disclose the Discloser's Confidential Information except to Recipient's employees and to third parties who need to know the information to represent or advise the Recipient with respect to the subject matter of the Agreement; provided that all such employees and third-party recipients must be bound by written confidentiality obligations covering the Confidential Information that are at least as stringent as those stated in this MSPA. Neither party shall use the other party's Confidential Information except in connection with the performance of its obligations or exercise of its rights under the Agreement. However, Recipient shall not be in violation of this Section 8 if it discloses or uses Discloser's Confidential Information to comply with a legal requirement, such as a subpoena or preservation order, or to bring or defend a claim in a adjudicatory proceeding; provided that (i) Recipient has limited its disclosure to only such Confidential Information that is required under such legal requirement, (ii) Recipient has given Discloser reasonable advance notice of the disclosure or use and the opportunity to oppose such disclosure or obtain a protective order (unless such notice is prohibited by law) and (iii) no such disclosure shall otherwise exempt such Confidential Information from being treated as confidential under this Section 8. Recipient shall maintain the confidentiality of the Confidential Information with at least the same degree of care that it uses to protect its own most highly confidential information, but in any event shall use at least commercially reasonable measures to protect the confidentiality and avoid the disclosure of the Confidential Information. Each party agrees not to reverse engineer, decompile, or disassemble the other party's Confidential Information, except to the extent that the applicable law explicitly prohibits this contractual restriction, and then only on at least thirty (30) days' prior written notice to the other party. Each party shall return or destroy the other party's Confidential Information on expiration or termination of the Agreement or earlier on request of the other party; provided that a party may retain one (1) copy of the other party's Confidential Information to the extent reasonably necessary to maintain reasonable and customary business records but only to the extent that such Party continues to treat such Confidential Information as confidential under the terms of this Section 8. On request of a party, the other party shall certify its compliance with the preceding sentence. Each party is responsible for a breach of this Section 8 by its employees, agents or representatives or any other person to whom it discloses the Discloser's Confidential Information. Nothing in this Section 8 (i) limits either party's present or future business activities, including business activities that may be competitive with those of the other party or (ii) restricts either party's assignment of employees.

## **9. RECORDS AND VERIFICATION**

You must keep complete and accurate records regarding your use of the Platform, and you may not delete or obscure any information regarding the use of the Platform that is generated by the Platform. On Infocyte's request, you will provide reasonable information to evidence your use of the Platform and the Services in compliance with this MSPA and each Order, certified as "true, complete and correct" by your highest financial officer. In addition, Infocyte may perform an audit of your records, either onsite, or by means of remote access, on ten (10) days' prior written notice, provided that the audit must be conducted during normal business hours and may not unreasonably interfere with your normal business operations. Infocyte (i) may not audit your records more than often once every twelve (12) months and (ii) Infocyte shall be responsible for

the fees associated with any such audit, unless, in either case, the previous audit revealed that you were not in compliance with the Agreement or the applicable Third-Party License.

## **10. THIRD-PARTY PRODUCTS**

10.1 **Third-Party Software.** You hereby acknowledge that the Platform may utilize or include Third-Party Software that must be licensed under the specific license terms applicable to such Third-Party Software. Acknowledgements, licensing terms, copyright notices, disclaimers and other terms applicable to such Third-Party Software (the “**Third-Party Software Licenses**”) are available at <https://infocYTE.zendesk.com/hc/en-us/articles/115005905348-Third-Party-Licenses>. Specifically, but without limitation, all operating system, virtualization and other general systems software are Third-Party Software subject to the Third-Party Software Licenses. For example, your use of the Windows Server software or other Microsoft software is subject to the Microsoft Corporation’s license terms. You (i) acknowledge that any such Third-Party Software License is solely between you and the applicable Third-Party Licensor of the Third-Party Software and (ii) agree to bound by, and shall comply with, the terms of any such applicable Third-Party License. If you do not agree to the terms and conditions of any Third-Party Software License, you shall not access and use the Platform.

10.2 **Open Source Software.** You hereby acknowledge that the Platform may also utilize or include Open Source Software that must be licensed under the specific license terms applicable to such Open Source Software. Acknowledgements, licensing terms, copyright notices and disclaimers for such Open Source Software (the “**Open Source Licenses**”) are available at <https://infocYTE.zendesk.com/hc/en-us/articles/115005905348-Third-Party-Licenses>. You agree to review any such Open Source Licenses and other related documentation in order to determine which portions of the Platform are Open Source Software and are licensed under an Open Source License. To the extent any such Open Source License requires that InfocYTE provide you the rights to copy, modify, distribute or otherwise use any Open Source Software that are inconsistent with the limited rights granted to you in the Agreement, then such rights in the applicable Open Source License shall take precedence over the rights and restrictions granted in this License, but solely with respect to such Open Source Software. You (i) acknowledge that any such Open Source License is solely between you and the applicable Third-Party Licensor of the Open Source Software and (ii) agree to bound by, and shall comply with, the terms of any such applicable Open Source License. If you do not agree to the terms and conditions of any Open Source Software License, you shall not access and use the Platform.

Open Source Software is distributed WITHOUT ANY WARRANTY, without even the implied warranty of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Where the terms of an Open Source License entitle you to the source code of any such Open Source Software, such source code is available under the terms of the applicable Open Source License by contacting InfocYTE at the address above and identifying the specific Open Source Software for which you want the source code. If there is a conflict between this MSPA and any open source license for Open Source Software included in the Platform, the open source license will control.

## **11. EVALUATION and NFR Licenses**

If you are authorized to use the Platform on a “test,” “evaluation,” “lab,” “Not For Resale” or “NFR,” “proof of concept,” “temporary” or similar basis, then you may use the Platform for the period stated in the written authorization for such use, or if no term is stated, 30 days from the day the Platform is first made available to you (the “**Evaluation Period**”). Your access to the Platform may automatically terminate at the end of the Evaluation Period. If you do not purchase a production subscription at the end of the Evaluation Period, you must (i) destroy all Results generated as part of the evaluation and (ii) uninstall all Platform elements from your systems and destroy or render them unusable, in each case as evidenced by a written certificate of an officer confirming compliance with these requirements. During the Evaluation Period, you may use the Platform only for the purpose of evaluating the Platform for the purchase of a production subscription. Infocyte has no obligation to provide any Support or other services during the Evaluation Period, but may do so at its option. Any Support or Related Services provided during the Evaluation Period are provided “**AS IS**” with no representations or warranties whatsoever.

## **12. TERMINATION, SUSPENSION.**

**12.1 Infocyte Termination for Breach.** This MSPA, your Professional Subscription, the Platform License and any NFR License terminate automatically if you breach any Platform restriction stated in Section 7.9 (*Platform License and Restrictions*). In addition, Infocyte may terminate this MSPA, your Subscription, Platform License and any NFR License on prior written notice if (i) you fail to pay to Infocyte any fees when due, and do not cure the failure within 10 days of Infocyte’s written notice of the late payment or (ii) you are in breach of any term of this MSPA or an Order other than a breach of Section 7.9 (*Platform License and Restrictions*) or failure to pay fees, and the breach is not curable, or if the breach is curable, has not been cured within 30 days of receipt of Infocyte’s written notice describing the breach in reasonable detail.

**12.2 Your Termination for Breach.** You may terminate this MSPA, the Professional Subscription, the Platform License and any NFR License on prior written notice if Infocyte breaches a material term of this MSPA or an Order and does not cure the violation within thirty (30) days of receipt of your written notice describing the breach in reasonable detail.

**12.3 Termination for Convenience.** Either party may terminate this MSPA, the Platform License and any NFR License for convenience on written notice. Termination of this MSPA for convenience does not terminate any Professional Subscription that commenced prior to the date of such termination, and this MSPA survives in full as to any such Subscription. An Order may not be terminated for convenience unless expressly stated in the Order.

**12.4 Suspension.** Infocyte may suspend your use of the Platform during any period that you remain in breach of this MSPA upon prior written notice of its intent to suspend. Infocyte will reinstate you access to the Platform when the grounds on which the suspension was based are cured unless Infocyte has previously given a notice of breach under Section 12.1.

**12.5 Obligations on Termination.** On termination of this MSPA or the Platform License, you must uninstall all Platform elements from your systems, and destroy or render them unusable. On Infocyte’s request, you will provide a written certification of an officer confirming that you have complied with this Section 12.5.

**12.6 Survival.** The following sections of this MSPA survive expiration or termination of this MSPA: 1 (*Defined Terms*) to the extent any defined term is used in any other surviving section of the Agreement, 4 (*Fees and Payments*), 6.2 (Warranty Exclusions), 6.3 (Limitation of Warranties), 6.4 (*Malware Risk*), 7.4 (*Risk of Non-Payment, Verification*), 7.6 (*Conduct*), 8 (*Confidentiality*), 9 (*Records and Verification*), 10 (*Third-Party Products*), 12 (*Termination, Suspension*), 13 (Indemnification), 14 (*Limitation of Liability*), 15 (*Governing Law, Disputes*), 17 (*Notices*), 18 (Notice to U.S. Government End Users), 20 (*General*), and any other terms that by their nature are intended to survive expiration or termination.

### **13. INDEMNIFICATION**

13.1 InfocYTE. InfocYTE shall defend and hold you harmless from any third party claims, losses, damages, liabilities, including legal fees and expenses, to the extent arising from claims that the Platform infringes any United States patent, trade secret or copyright of that third party; provided that you (i) notify InfocYTE promptly in writing of any such allegation or claim, (ii) reasonably cooperate with InfocYTE to settle or defend such allegation or claim, and (iii) grant InfocYTE sole authority and control of the defense or settlement of such allegation or claim. Notwithstanding the foregoing, InfocYTE shall have no obligations under this Section 13 to the extent any infringement allegation or claim is based upon or arises out of (i) any modification or alteration to the Platform not approved in writing by InfocYTE, (ii) any combination or use of the Platform with products or services not supplied by InfocYTE or approved in writing by InfocYTE in advance of such combination, (iii) use of the Platform not in accordance with applicable Documentation provided by InfocYTE or outside the scope of the rights granted under this MSPA or (iv) your negligence or willful misconduct.

13.2 You shall defend and hold InfocYTE, its Third-Party Licensors, suppliers and affiliates and their respective officers and employers harmless from any third-party claims, losses, damages, liabilities, including legal fees and expenses, arising out or resulting from (i) your breach or the breach by any end user or Service Provider Customer of any of the terms and conditions of the applicable Offer, this MSPA or the EULA, (ii) your or any end user's or Service Provider Customer's negligence or willful misconduct (including any employees and representatives), (iii) any failure by you (or any of your employees and representatives) or any end user or Service Provider Customer to comply with any applicable laws, (iv) any SP Services that you provide to a Service Provider Customer, including any related activities, and (v) any claims or causes of action arising from the acts or omissions of any Service Provider Customer; provided that InfocYTE (i) notifies you promptly in writing of any such allegation or claim, (ii) reasonably cooperates with you to settle or defend such allegation or claim, and (iii) grants you sole authority and control of the defense or settlement of such allegation or claim. Notwithstanding the foregoing, you may not settle any allegation or claim if the settlement requires the payment of money by InfocYTE or the admission of wrong doing by InfocYTE without InfocYTE's prior written approval.

### **14. MUTUAL LIMITATION OF LIABILITY**

**To the maximum extent permitted by applicable law, in no event shall InfocYTE or its Third-Party Licensors, suppliers or affiliates have any liability for any harm that you suffer that could have been avoided by your reasonably prompt implementation of a software update**

**EXCEPT FOR CLAIMS ARISING FROM DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE AND TO CLAIMS ARISING FROM FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, A BREACH OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT. EXCEPT FOR CLAIMS ARISING FROM DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE AND TO CLAIMS ARISING FROM FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, A BREACH OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW, IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY ARISING OUT OF THIS AGREEMENT OR OTHERWISE EXCEED AN AMOUNT EQUAL TO THE MONEY PAID BY YOU FOR THE SUBSCRIPTION SERVICES AND RELATED SERVICES GIVING RISE TO THE LIABILITY UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT DURING THE ONE (1) YEAR PERIOD PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM. The essential purpose of this provision is to limit the potential liability of either party arising out of the sale of products to the other party whether for breach of contract, negligence, or otherwise. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.**

**You acknowledge that Infocyte has set its prices and entered into this MSPA and Orders in reliance on the limitations of remedies and liability stated in this MSPA, and that these limitations reflect an agreed allocation of risk between the parties. The limitations stated in this Section 14 shall apply to any liability arising from any cause of action whatsoever, whether in contract (including any warranty), tort (including active, passive or imputed negligence, strict liability or product liability), commercial code, strict liability or otherwise, even if a limited remedy fails of its essential purpose. Nothing in this Section 14 precludes a party from seeking specific enforcement, injunctive relief or other equitable remedy. If these limitations as written are not permitted by applicable law, they shall apply to the extent permitted by applicable law.**

## **15. CONTRACTORS; SUBCONTRACTORS**

**15.1 Contractors.** You may not allow any person to use the Platform other than your employees and individual contractors acting under your direct supervision in connection with the SP Services. Third party service providers are not allowed to access the Platform.

**15.2 Subcontractors.** Infocyte may use subcontractors to perform its obligations under this MSPA or an Order without notification or restriction unless otherwise expressly stated in the applicable Order.

## **16. GOVERNING LAW AND DISPUTE RESOLUTION**

**16.1 Governing Law, Venue.** This Agreement shall be governed by and interpreted under the laws of the State of Texas and the United States of America, as applicable, without giving effect to any conflicts of law principles that would require the application of the law of a different jurisdiction. **Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to any claim or otherwise in connection with this MSPA, any Order, the Platform or the Services (a "Dispute").** The parties expressly and irrevocably disclaim and waive the application of the United Nations Convention on Contracts for the International Sale of Good and the Uniform Computer Information Transactions Act, in whatever form adopted.

**16.2 Dispute Resolution.** In the event of any Dispute, the parties shall seek to settle the Dispute via direct discussions. If a Dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the Dispute via voluntary non-binding mediation, before resorting to arbitration. A mediator will be selected by voluntary agreement of both parties, or in the event both parties cannot agree on a mediator, a mediator will be selected in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. The mediation shall be held in San Antonio, Texas. Each party shall bear its own costs and expenses and an equal share of the administrative and other fees associated with the mediation. Any Dispute that remains unresolved following mediation shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and Mediation Procedures. The place of arbitration shall be San Antonio, Texas. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall award to the prevailing party as all of its Costs and Fees as determined by the arbitrator(s). "**Costs and Fees**" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. In rendering the award, the arbitrator(s) shall determine the rights and obligations of the parties according to the substantive and procedural laws of the State of Texas. The foregoing alternative Dispute resolution provisions will not apply to claims or actions related to the infringement, misappropriation or violation of Infocyte's intellectual property rights or those of its Third-party Licensors and such actions may be brought in any court of competent jurisdiction.

**16.3 Time Bar.** A party may not bring an action in relation to any Dispute more than two (2) years after the date on which the cause of action accrued.

## **17. NOTICES**

The parties address for notice purposes is stated below the signature block of this MSPA. Notices under the Agreement must be given by electronic mail with a copy transmitted via first class United States mail, or if your physical notice address is outside of the United States via a reputable and established international priority mail service, on the date of the electronic mail notice. Notices are deemed given, received and effective as of the time transmitted by electronic mail, or if that time does not fall within a business day, as of the beginning of the first business day following the time transmitted. Notices must be given in the English language. A party may change its address for notice by giving notice in the manner stated in this Section.

**18. NOTICE TO U.S. GOVERNMENT END USERS.** The Platform and Documentation qualify as commercial items as that term is defined at Federal Acquisition Regulation (FAR) (48 C.F.R.) 2.101, consisting of commercial computer software and commercial computer software documentation as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this MSPA may be incorporated, you may provide to Government end user or, if this MSPA is direct, Government end user will acquire, the Platform and Documentation with only those rights set forth in this MSPA. Use of either the Platform or Documentation or both constitutes agreement by the Government that the Platform and Documentation are commercial computer software and documentation and constitutes acceptance of the rights and restrictions herein.

**19. FORCE MAJEURE.** The obligations of a party (other than payment) will be suspended by the occurrence of any event beyond its reasonable control and not caused by its negligence, that renders its performance impossible including, acts of God, war, fire, flood, accident, strike, casualty, power failures, governmental acts, orders or restrictions or inability to obtain suitable and sufficient labor and materials. The party invoking force majeure shall (i) send written notice thereof to the other within a reasonable time after the invoking party knew or should have known that performance would be delayed or prevented due to the force majeure and (ii) take reasonable steps to limit the duration and effect of any such force majeure.

## **20. GENERAL**

**20.1 Rights in SP Customer Data and Results.** The Service Provider Customer retains all right, title and interest in and to SP Customer Data. Infocyte will use SP Customer Data solely for the purpose of providing the SP Services. You acknowledge that the Platform collects a broad range of system information. The Platform does not target the collection of personal or business data stored on or processed by means of the systems assessed but may unavoidably capture this type of data. Infocyte will not use this data for any purpose and will use reasonable means to protect the security of this data. If Infocyte discovers that it has captured more than an incidental amount of this type of data, Infocyte will inform you and will destroy the data. Notwithstanding the foregoing, you acknowledge that any Results generated by your use of the Platform or the Services is not SP Customer Data, and that Infocyte shall own all right, title and interest in any Results. Infocyte may use the Results and shall be free to use such Results without restrictions, including for the purpose of improving the Platform and the Services and operations generally and as otherwise determined by Infocyte, so long as Infocyte does not use or disclose any SP Customer Data or such use does not entail the disclosure of any information that would identify you, the Service Provider Customer or any individual in relation to the Results.

**20.2 Rights in Intellectual Property.** Except for the limited license rights expressly granted in this MSPA, Infocyte retains all right, title and interest in and to the Platform, Services and all related intellectual property, including all Infocyte trademarks. This MSPA and the Platform License confer no title or ownership in the Platform and Documentation and is not a sale of any rights in the Platform. If you provide any feedback, comments, or suggestions with respect to the Platform or Services (“**Suggestions**”), you hereby grant to Infocyte a non-exclusive, worldwide, fully paid-up, royalty-free, non-terminable, perpetual, irrevocable license to the Suggestions and all related intellectual property to use, disclose, modify, reproduce, license, distribute,

commercialize and otherwise freely exploit without restriction of any kind and without right of accounting.

**20.3 Export Compliance.** The Platform and the Services may be subject to export laws and regulations of the United States and other jurisdictions. You may not permit users to access or use the Platform or the Services in a U.S.-embargoed country or in violation of any export law or regulation of the U.S. or any other applicable jurisdictions, or in a manner that causes Infocyte to be in violation of the export laws and regulations of the U.S. and other applicable jurisdictions, even if the use is permitted the laws applicable to you or the user. Each of us represents that it is not on any restricted persons list maintained by the U.S., Canada, or any member of the European Union. “Export laws” include the U.S. Export Administration Regulations (Title 15 of the U.S. Code of Federal Regulations Part 730 et seq.), International Traffic in Arms Regulations (Title 22 of the U.S. Code of Federal Regulations Parts 120-130), the economic sanctions rules and regulations implemented under statutory authority and/or President's Executive Orders and administered by the U.S. Treasury Department's Office of Foreign Assets Control (Title 31 of the U.S. Code of Federal Regulations Part 500 et seq.), the EU's restrictive measures as published on the website of the European External Action Service, and the applicable export laws of any other jurisdiction. You shall at your own expense, procure all licenses and other permits, pay all tariffs, customs charges, duties and similar fees, and take all other actions and strictly comply with all applicable laws and regulations required to accomplish the export, re-export and import of the Platform. You shall hold harmless and indemnify Infocyte for any damages resulting from a breach of this Section 20.3.

**20.4 Foreign Corrupt Practices Act.** In conformity with the United States Foreign Corrupt Practices Act and with Infocyte's established corporate policies regarding foreign business practices. You and your employees and agents shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any foreign or US government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist you or Infocyte in obtaining, retaining or directing any such business.

**20.5 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, upon at least ten (10) days' prior written notice, either party may assign the Agreement in its entirety (including all Orders), without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**20.6 Publicity.** Neither party may issue any press release or other publicity regarding the Agreement or the relationship or transactions contemplated by the Agreement without the prior written consent of the other party. Neither party may use the other party's trade or service marks without the other party's prior consent, and then only to the limited extent expressly authorized, and subject to the other party's reasonable trademark usage guidelines that are communicated to the party from time to time.

**20.7 Relationship of the Parties.** The parties are independent contractors. Neither party is the agent of the other, and neither party is authorized to make any representations, contract, or commitment on behalf of the other. The use of the words “partner” or “partnership” in the Agreement or otherwise refers only to a business relationship, and does not create or reflect any legal partnership, joint venture, or other fiduciary or other special relationship between the persons described as partners. The parties do not agree to any exclusivity in regards to the subject matter of the Agreement and each party is free to contract with third parties, including competitors of the other party, for transactions of the type covered by the Agreement in any market, worldwide.

**20.8 Third-Party Beneficiaries.** There are no other third-party beneficiaries under the Agreement. Your Service Provider Customers shall not be third party beneficiaries of the Agreement. Unless otherwise agreed in writing by InfocYTE, InfocYTE shall have no liability or obligations of any kind to your Service Provider Customers and you shall defend and indemnify InfocYTE for any claims asserted by your Service Provider Customers relating to the SP Services and any related activities, the Platform, the Services or the Results in accordance with Section 12.2.

**20.9 Severability.** In the event one or more of the terms of the Agreement are adjudicated invalid, illegal, or unenforceable, the adjudicating body may either interpret the Agreement as if such terms had not been included or may reform such terms to the limited extent necessary to make them valid, legal or enforceable, consistent with the economic and legal incentives underlying the Agreement.

**20.10 Future Functionality.** You agree that your purchases of any Subscriptions or Services are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by InfocYTE regarding future functionality or features.

**20.11 General Representations.** Each party represents that it has validly entered into the Agreement and has the legal power to do so.

**20.12 Changes, Order of Precedence.** No modification, amendment, or waiver of any provision of the Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any preprinted term or condition stated in any business form is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) this Master Service Provider Agreement.

**20.13 Entire Agreement.** This MSPA, the EULA and any related Orders are the entire agreement between you and InfocYTE regarding its subject matter and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. To the extent that there any conflicts between the terms and conditions of this MSPA and the terms and conditions of the EULA, the terms and conditions of this MSPA shall prevail.



## Appendix A

### **Terms and Conditions for Reselling**

In your capacity as a reseller with respect to any approved Reseller Opportunity (“**Reseller**”) under Section 2.3 of the Agreement to which this Appendix A is attached, Reseller shall resell the Platform under the following terms and conditions:

1. Price and Discount. The prices to be paid by Reseller for the Platform shall be the then current Infocyte list prices for the Platform less the then current discount. Upon request, Infocyte shall provide to Reseller then then current list prices and discount. All prices are exclusive of installation charges, use, sales, excise, property and similar taxes or duties and insurance charges. Any such applicable charge, tax, duty, fee, or charge shall be paid by the Reseller, in addition to the prices quoted or invoiced.
2. Purchase Orders; Fulfillment. Reseller shall submit purchase orders for the Platform to Infocyte using the Infocyte defined process and form. An order becomes binding on Infocyte (an “**Order**”) on the first to occur of the date that Infocyte expressly accepts the Order or, for the Platform, the date that Infocyte fulfills the Order. Infocyte may modify the process or form in its sole discretion upon no less than thirty (30) days’ prior written notice. Infocyte may request Reseller to provide Enterprise Customer’s contact information and/or require a proof of the signed Purchase Order from such Enterprise Customer. Unless otherwise stated in the Order, Infocyte will fulfill an Order for the Platform by making the Platform available to the Enterprise Customer via Infocyte’s provisioning process.
3. Payment Terms. Reseller shall make payment by no later than thirty (30) days after acceptance of an Order. Reseller is responsible for payment of all amounts due under an accepted Order regardless of whether it collects any related amount from the Customer. All payments must be paid in United States dollars. If in Infocyte’s opinion Reseller’s financial condition is or becomes impaired or unsatisfactory or inadequate to meet Reseller’s obligations under this Agreement, Infocyte may require advance cash payment or an irrevocable letter of credit from a U.S. Bank (in form and substance reasonably satisfactory to Infocyte)
4. Changes and Cancellations. Reseller may only cancel an Order that has not yet been accepted by Infocyte. Once an Order has been accepted, the Order may not be cancelled without Infocyte’s prior written approval.
5. Access and Use of the Platform. Access and use of the Platform by (a) Enterprise Customers shall be subject to, and governed by, the Master Subscription Agreement (as modified from time to time, (the “**MSA**”) and (b) all end users of the Platform shall be subject to, and governed by, the EULA. Reseller shall inform (i) its Enterprise Customers of the MSA and each such Enterprise Customer shall accept or otherwise manifest its agreement to be bound by the MSA and (ii) all of its Enterprise Customers of the EULA and the end users of each such Enterprise Customer shall accept or otherwise manifest its agreement to be bound by the EULA.

6. Compliance with Laws. Reseller will comply with all applicable laws and regulations in performing this Agreement, including all laws and regulations related to selling the Platform to any government or government agency.

7. Reseller Restrictions. Reseller will not, without Infocyte's prior written approval, do any of the following:

(a) Reseller will not alter or modify the Platform in any fashion, or make any commitment for sale of the Platform that would require modification from Infocyte's standard specifications for the Platform.

(b) Reseller will not make any representation, guarantee or warranty to Customers or any other party regarding the performance, functional characteristics or accreditations (e.g., HIPAA, FED, etc.) of the Platform inconsistent with or beyond those expressly contained in the commercially available, general release version of the Documentation. Examples of Documentation are user manuals, administration guides, installation guides, training manuals, white papers, specifications, designs, test plans and test results, configuration guides, reference architectures, FAQs, and issues documentation. Documentation does not include any advertising or marketing materials.

8. Tax Resale Certificate. Reseller represents that it holds and agrees to provide to Infocyte a valid resale exemption certificate issued by each tax jurisdiction in which such certificate is required as a condition to the avoidance of sales or use taxes with respect to the sale of the Platform under the Agreement and this Appendix. Reseller shall promptly notify Infocyte of any amendment or revocation of such certificate and will hold Infocyte harmless from and against any taxes or other monies resulting from the failure to hold a certificate recognized as valid by the appropriate tax jurisdiction.

9. NFR License. In connection with a possible Reseller Opportunity, you may use Infocyte's online demonstration site to demonstrate the Platform to prospective Enterprise Customers. In addition, Infocyte hereby grants to Reseller a limited, non-exclusive, non-transferrable license for up to 100 nodes (as modified from time to time, a "**NFR License**") solely for demonstrations and evaluation purposes (and not for resale). Upon request, Infocyte shall provide you with a "key" for the Platform to be used under the NFR License. Except as provided under this Section 9, including the NFR License, you may not use any other instance of the Platform to demonstrate the Platform to a prospective customer without Infocyte's prior written consent. In providing the demonstrations and training, Reseller shall at all times use either the most current version, or the most recent previous version, of the Platform. You are not authorized (a) to duplicate the Platform (other than as necessary to install and operate it), (b) to use the Platform for any purpose other than to demonstrate or evaluate the Platform, (c) to reverse engineer, disassemble or de-compile the Platform or (d) use the Platform in an external or customer environment or expand beyond 100 nodes without the prior written approval of Infocyte. You agree to promptly provide the results and findings of the customer environment to Infocyte.

You may not provide a prospective Enterprise Customer with access to the Platform. If your prospective Enterprise Customer asks to use the Platform on an evaluation basis, Reseller must refer the prospect to Infocyte. If Infocyte elects to grant an evaluation license, Infocyte will directly enable the access to the evaluation Platform

11. Other Terms and Conditions. All of the terms and conditions in the Agreement (other than Sections 2.1, 2.2, 5, 8 and 9) shall apply, mutatis mutandis (i.e., by changing those things which need to be changed), equally to Reseller and to the resale of the Platform under Section 2.3 of the Agreement and this Appendix A, including without limitation, Sections 6.2, 6.3, 8, 12, 13, 14, 16 and 17.