

## Infinidat® General Terms and Conditions of Sale

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# INFINIDAT

These General and Specific Terms and Conditions (“**Terms**”) apply to the sale of Products and Professional Services by Infinidat Ltd., and any of its Affiliates (collectively, “**Infinidat**”) to a Reseller, Distributor or End User (as such terms are defined below) purchasing Infinidat Products and Professional Services for its own or any other third party’s use, unless any of Reseller, Distributor or End User has entered into a separate executed agreement with Infinidat which shall explicitly indicate it governs the Terms herein.

Infinidat and the Purchaser (as defined below) shall hereinafter collectively be referred to as the “Parties” and individually as the “Party”.

THESE TERMS SHOULD BE READ CAREFULLY. By ordering, accepting delivery, installing, keeping or using the Products and/or Professional Services or otherwise proceeding with any transaction with Infinidat, Purchaser agrees to comply with all of the Terms.

Infinidat may, at its sole discretion, change or modify the Terms at any time, with or without notice. Such changes or modifications shall become effective upon posting of the modified Terms to this web address (URL): <https://www.infinidat.com>

## 1. Definitions

### 1.1. “Affiliates”

means any entity that (a) controls, is controlled by, or is under common control with Infinidat, or (b) is the surviving entity as a result of a merger with Infinidat. “**Control**” means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the entity’s affairs. It is agreed and understood that in no event shall the parent company, Infinidat Ltd., be liable for any acts and/or omissions by its Affiliates. In the event of any claims, Purchaser may only claim against the specific contracting Affiliate as referenced in the Quotation.

### 1.2. “Business Day”

means Monday to Friday, or in the instance of Sunday to Thursday, excluding applicable national holidays.

### 1.3. “End User”

means a pre-approved in writing third-party, who purchases Products and Professional Services directly from Infinidat, or through an authorized Distributor or Reseller, as applicable, for its own use.

### 1.4. “EULA”

means Infinidat End User License Agreement, as amended from time to time and accepted as part of utilization of the Products.

### 1.5. “Confidential Information”

means any information related to the other Party’s business, including (not limited to) (a) (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic

diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of Infinidat; and (c) Product offerings, content partners, Product pricing, Product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies. In addition, Confidential Information includes information which the Disclosing Party protects against unrestricted disclosure to others that (i) the Disclosing Party or its representatives identifies as confidential at the time of disclosure; or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure; including, without limitation, information from, about or concerning any third party that is disclosed under the Terms herein.

**1.6. “Distributor”**

means a legal entity that, on a non- exclusive basis, is engaged with Infinidat, by way of executed agreement, for the sale and distribution of the Products to third parties.

**1.7. “Documentation”**

means Infinidat’s then current, generally available user manuals and technical documentation.

**1.8. “Effective Capacity”**

means the total capacity presented to the host or server and which is as defined within the Product as “**virtually allocated within pools**” reflecting the sum of all volume sizes (thick and thin, and including within any calculation the increased capacity deriving from inline compression and over provisioning).

**1.9. “Hardware”**

means Infinidat hardware, comprised of components and third party hardware manufactured, developed, licensed or otherwise made available to Infinidat and provided to Purchaser, as a constituent part of the Products.

**1.10. “Intellectual Property Rights” or “IPR”**

means any and all: (i) trademarks, service marks, brand names, collective marks, Internet domain names, logos, symbols, trade names, business names, corporate names, slogans, designs and other indicia of origin, Documentation, together with all translations, adaptations, derivations and combinations thereof, all applications, registrations and renewals for the foregoing, and all goodwill associated therewith and symbolized thereby (“**Trademarks**”); (ii) patents and patentable inventions (whether or not reduced to practice), all improvements thereto, and all invention disclosures and applications therefor, together with all divisions, continuations, continuations-in-part, revisions, renewals, extensions, reexaminations and reissues thereof (“**Patents**”); (iii) confidential proprietary business information, trade secrets and know-how, including

processes, schematics, business and other methods, technologies, techniques, protocols, formulae, drawings, prototypes, models, algorithms, processes, designs, discoveries and inventions (whether or not patentable) ("**Trade Secrets**"); (iv) copyrights in published and unpublished works of authorship (including databases and other compilations of information), and all registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof; and (v) other intellectual property rights.

- 1.11. "License"** means the Infinidat granted Software License provided in accordance with and subject to Infinidat's EULA.
- 1.12. "Products"** means all Infinidat products (however branded), excluding any BETA, non General Available products or any End Of Life products. Specific terms concerning the methods and structure of particular Products sold are as contained here in **Appendix A**.
- 1.13. "Professional Services"** means Infinidat offered consulting, installation, implementation, and other services that are not Support Services as per the terms specified under **Appendix C** attached hereto.
- 1.14. "Purchase Order"** means a formal written binding and irrevocable order received by Infinidat from a Purchaser, for the acquisition of Products and Professional Services (as applicable) on behalf of End User, in accordance with Section 2 hereunder.
- 1.15. "Purchaser"** means Reseller, Distributor or End User, as applicable.
- 1.16. "Quotation"** means an Infinidat approved official quotation for the acquisition of Products by a Purchaser.
- 1.17. "Reseller"** means a legal entity that, on a non- exclusive basis, is engaged with Infinidat, by way of executed agreement, for the sale and resale of the Products to End User(s).
- 1.18. "Site"** means End User's designated location for the Product(s), in respect of which an ISS has been undertaken, and as specified in the applicable Purchase Order and Quotation.
- 1.19. "Software"** means Infinidat software (however branded), utilized by any End User, integrated with the Hardware, as a Turnkey Solution.
- 1.20. "Support Services"** means services for the support and maintenance of acquired Products, in accordance with Infinidat's then current Support Level Agreement.
- 1.21. "Third-Party Products"** means hardware, software, or services that are not "Infinidat" branded. Third Party Products may include, without limitation, products and

services licensed, or performed by or on behalf of Infinidat or its Affiliates, and may include hardware or software installed on a Product.

## 2. Purchase Orders, Delivery and Acceptance.

- 2.1. Each Purchase Order shall include (but not be limited to) the following: (i) names of Products and Product Model; (ii) confirmation of completed ISS, date thereof and confirmed Site location; (iii) agreed Product unit prices and total amount of Purchase Order price; (iv) Quotation number; and (v) all logistics information necessary for shipment and any other such information as Infinidat may request.
- 2.2. All Purchase Orders are subject to credit approval and acceptance by Infinidat. Acceptance of one Purchase Order is independent from any other Purchase Order. Prices referenced in a Purchase Order are effective until the expiration of the applicable Quotation for the Products referenced therein, however such prices may change due to increase of manufacturing costs, shortage, or other factors at Infinidat's sole discretion.
- 2.3. All Products are deemed automatically accepted by End User upon Delivery, unless otherwise agreed by Infinidat.
- 2.4. **Delivery.** Products shall be delivered Ex Works (Incoterms 2010), unless otherwise explicitly agreed between Infinidat and Purchaser.
- 2.5. **Risk of Loss; Transfer of Title.** Risk of loss to the Products and title to the Product will pass upon shipment.
- 2.6. **Changed or Discontinued Products.** Infinidat may revise or discontinue Products, at any time, prior to Infinidat's shipment of the Products.
- 2.7. **Packaging, Labeling.** Infinidat shall supply the Products packed and labeled according to its required specifications and the same shall not be modified by any third party or Purchaser.
- 2.8. **Installation.** Infinidat, or any designated third party on behalf of Infinidat, shall install the Product(s) at the Site, unless explicitly agreed otherwise in writing between the Parties.

## 3. Payment

- 3.1. Unless explicitly indicated otherwise, Infinidat will issue an invoice to Purchaser immediately upon shipment of the Product(s) or in the case of Professional Services or Support Services extension/renewal, on the same date as receipt of the applicable Purchase Order.
- 3.2. Purchaser will make full payment for the Product in the currency as specified in the applicable invoice prior.
- 3.3. In the event of failure to pay, following the due date for any invoice payment, Purchaser will be required to pay interest accruing at a rate of 1.5% per month (18% per annum) or such amount as may be allowable under applicable law.
- 3.4. Unless specifically agreed in writing by Infinidat, Purchaser may not offset, defer or deduct any invoiced amounts. Infinidat, without waiving any other rights or remedies (by law or equity) and without liability to Purchaser, may suspend any and all shipments (including future deliveries) or other related Professional Services, including for the avoidance of doubt, maintenance and Support until all overdue amounts are received in full.
- 3.5. Infinidat may, at its sole discretion, terminate and revoke any License granted to End User in the event of failure to pay any amounts due and payable to Infinidat.

4. **Taxes.** Purchaser is solely responsible for payment of any sales, use, VAT, GST, or any other similar taxes or governmental fees associated with or assessed upon Purchaser's Purchase Order, other than taxes attributable to Infinidat and based on Infinidat's net income, gross revenue and employment

fees. If Purchaser is tax or withholding exempt, then Purchaser shall accordingly withhold according to applicable laws, and then provide Infinidat with any applicable tax exemption certificates or other documents as may be necessary for tax authorities, or reasonably requested by Infinidat, within ten (10) days from the date Purchaser placed the Purchase Order.

5. **Purchase Orders Through Reseller or Distributor.** If End User's transaction is made through a Reseller or Distributor all credit, invoicing, payments, returns, ordering and cancelation terms for the transaction will be as agreed between End User and Reseller or Distributor, as applicable.

6. **Infinidat End User License Terms**

- 6.1. **License Grant**

Subject to End User compliance with all the Terms hereto and further subject to the terms under the EULA located at <https://info.infinidat.com/rs/009-XLT-299/images/InfiniBoxEULA.pdf>, Infinidat grants to End User a non-exclusive, non-transferable, non-sublicensable, limited and revocable License to use the Software for End User's internal business purposes only, and use the Documentation in support of End User's use of the Software.

- 6.2. **License Limitations**

End User will not, nor will End User allow any third party to: (a) reverse engineer, decompile or disassemble the Software or otherwise reduce it to human readable form except to the extent required solely for interoperability purposes under applicable laws or as expressly permitted in open-source licenses, without any right to make profits therefrom; (b) remove or conceal any Product identification, proprietary, IPR, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties not authorized in advance and in writing by Infinidat; (d) assign or otherwise transfer, resale, distribute in whole or in part, the Software or Documentation Licenses or Product to another party unless otherwise agreed to in writing by Infinidat; (e) install the Software on or use it with third party's components; (f) modify, adapt, or create a derivative work of the Software or Documentation; or (g) publish or provide any Software benchmark or comparison test results.

- 6.3. **Third Party Licenses and Open Source Software**

The Software may contain third party software components, including (but not limited to) free open source software components, if any, embedded in Software ("**Third Party Embedded Software**"). Any such Third-Party Embedded Software is subject to their own license terms which shall be applicable to End User. Infinidat shall have no liability whatsoever with respect to the Third-Party Embedded Software.

7. **Warranty**

- 7.1. **Hardware Warranty**

Infinidat warrants to the End User that Products will substantially conform to Infinidat specifications and will be free from material defects in workmanship under approved use and conditions for a period of twelve (12) months from the date of Delivery from Infinidat by Purchaser.

- 7.2. **Software Warranty**

Infinidat warrants to the End User that the Software will substantially conform to the specifications contained in the Documentation for ninety (90) days from the Delivery of the Product ("**Software Warranty Period**"). The Software Warranty shall not apply: (i) if the Software is not used in accordance with the Documentation or as intended, including as concerns operating environment; or (ii) if the defect is caused by any modification or customization to the Software; or (iii) to any unauthorized License activities. Infinidat does not warrant that the

Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of End User's business requirements.

End User shall promptly notify Infinidat in writing with a description of a Warranty claim within the Warranty Period. Following such notification, Infinidat shall consider the claim, and Infinidat will, upon determination of the claim validity, at its option: a) repair, replace or upgrade the Software concerned, or b) refund the portion of License fees paid for the applicable Software concerned in exchange for a return of such Software. This is End User's sole and exclusive remedy under this warranty.

7.3. EXCEPT AS EXPLICITLY SET FORTH HEREIN AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, INFINIDAT DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING OUT OF STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

8. **Support Services and Maintenance.** Support and Maintenance services are provided by, or behalf of Infinidat to End User, in accordance with the terms stipulated in the SLA.

To the extent such Support Services are not provided as part of the initial Turnkey Solution, or are renewed, such Support Services shall be invoiced and payable in advance as per the applicable Quotation. Accordingly the Payment Terms as stated in Section 3 shall apply.

9. **Intellectual Property**

Infinidat is and remains the sole and exclusive owner of all brands, copyright, database rights, IPR and all other rights to the Product, Documentation, Website and the like whenever provided or referenced.

Purchaser is forbidden to copy, incorporate or store any Infinidat information, publications or other works of whatever kind on other websites or electronic retrieval systems. The content available on any Infinidat Websites, including text, graphics, photographs, audio, illustrations and Software (hereinafter the "**Content**") is owned by Infinidat or its Affiliates, its licensees and/or content providers.

All elements of the Product are protected by commercial law, copyright, moral rights, brands and other laws regarding intellectual property rights. All brands and trademarks of Infinidat are registered trademarks of Infinidat, unless otherwise indicated.

10. **Confidential Information**

These Terms impose no obligation upon a party receiving the Confidential Information (hereinafter: "**Recipient**") with respect to information designated as Confidential which: (a) the Recipient can demonstrate was already in its possession before receipt from the party disclosing the Confidential Information (hereinafter: "**Discloser**"); (b) is or becomes publicly available through no fault of the Recipient or its Representatives (as defined below); (c) is rightfully received by the Recipient from a third party who has no duty of confidentiality; (d) is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; or (e) is independently developed by the Recipient without a breach of these Terms, and without any use or reference to the other Party's Confidential Information. If a Recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted

by law, the Recipient agrees to give the discloser prompt advance written notice so that the Discloser may contest the disclosure or seek a protective order.

Recipient will use Confidential Information only for the purpose of which the Confidential Information was disclosed. Recipient may disclose Confidential Information to its directors, officers, employees, so long as those individuals have a “need to know” in their work for Recipient in furtherance of the potential or continued business transaction or relationship and are bound by obligations of confidentiality at least as restrictive as those imposed on recipient in herein (collectively, “**Representatives**”). Recipient is fully liable for any breach of the Confidential Information by its Representatives. Recipient will use the same degree of care, but no less than reasonable care, as the Recipient uses with respect to its own similar information to protect the Confidential Information. Recipient's duty to protect Confidential Information shall remain in full force and effect until earlier terminated by either Party. Upon the Discloser's written request, Recipient will promptly return or destroy all Confidential Information received from the Discloser, together with all copies. Notwithstanding the foregoing, Recipient's professional advisors (e.g., lawyers and accountants) may retain in confidence one file copy of their respective work papers and final reports in accordance with their professional and ethical obligations.

## 11. **Indemnification**

Purchaser will fully defend, indemnify and hold Infinidat harmless against any third party claim resulting or arising from Purchaser's: (i) failure to obtain any appropriate license as applicable to Purchaser in respect of the Product or its' usage; (ii) violation of Infinidat's proprietary rights; (iii) misrepresentation of facts regarding the Product and/or Infinidat; (iv) misuse of the Product or failure to follow Infinidat's instructions as concerns operation or environment.

## 12. **Limitation of Liability**

- 12.1. EXCEPT IN THE EVENT OF DEATH OR PERSONAL INJURY, INFINIDAT'S ENTIRE LIABILITY TO PURCHASER OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE TERMS AND/OR THE PRODUCTS SHALL BE LIMITED TO THE AMOUNTS ACTUALLY RECEIVED BY INFINIDAT FROM PURCHASER PURSUANT TO THE PURCHASE ORDER THAT GAVE RISE TO THE CLAIM, AND IF NO SPECIFIC PURCHASE ORDER IS APPLICABLE THEN INFINIDAT'S ENTIRE LIABILITY SHALL NOT EXCEED IN AGGREGATE THE AMOUNTS ACTUALLY RECEIVED BY INFINIDAT FROM PURCHASER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.
- 12.2. **No Indirect Damages.** Infinidat shall have no liability to any party for special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, loss of revenue, loss of data, or loss of use, or procurement of substitute products or services.
- 12.3. **Data Security and Regular Back-ups.** End User is solely responsible for its use of the Product and for the Site at which the Product is located, this includes responsibility for data managed or stored using the Product. End User must back up its data before Infinidat performs any activities on End User's systems.
- 12.4. **Limitation Period.** All claims must be made within the period specified by applicable law. If the law allows the Parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made one hundred and twenty (120) days after the cause of action accrues.

## 13. **Compliance with Laws.**

- 13.1. Each Party will comply with all applicable laws and regulations, at any time enforceable, including all applicable laws relating to anti-bribery and anti- corruption.



- 13.2. To the extent applicable, in the event Purchaser provides Infinidat with access to any of Purchaser's Personal Data (namely, contact telephone numbers for End User), as such term is defined under the EU General Data Protection Regulations 2016/679 ("GDPR"), all Parties will ensure that such Personal Data is disclosed and handled accordingly.
- 13.3. **Export.** Purchaser acknowledges that Products supplied by Infinidat under these Terms may be subject to controls under the laws and regulations of the United States, the European Union and other countries as applicable. Purchaser agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly import, export, re-export or divert Products to (or use Products in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it import, export, re-export or divert to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products or technology for any purposes prohibited by United States law, including without limitation the development, design, manufacture, or production of nuclear, missile, chemical or biological weaponry or other weapons of mass destruction. Purchaser agrees to provide Infinidat with destination end use and end user information upon its request. Purchaser will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Purchaser shall remain liable for any third parties' acts or omissions related to this Section.
14. **Miscellaneous**
- 14.1. **Term and Termination.** These Terms shall continue in full force and effect until terminated as set forth in this Section. Either Party may terminate these Terms by giving written notice to the other party if the other party breaches a material provision of these Terms and fails to cure the breach (if curable) within thirty (30) days after being given written notice thereof. Upon termination of these Terms for any reason, any License rights granted by Infinidat shall immediately terminate. Any Section intended to survive by its nature, together with all accrued rights to payment, shall survive termination of these Terms for any reason.
- 14.2. **US Federal Customers.** The Software is "commercial computer software" and the Documentation is "commercial computer software documentation," pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. If you are an agency, department, employee or other entity of the United States Government, then your access to and use of any part of the Software and/or the Documentation shall be subject solely to the terms and conditions of these Terms.
- 14.3. **Force Majeure.** Other than with respect to Purchaser's payment obligations, neither Party will be liable to the other for any for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, earthquakes and fire.
- 14.4. **Waiver.** Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party's exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.
- 14.5. **Severability.** In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

- 14.6. **Assignment.** Purchaser may not assign any rights or delegate any obligations under these Terms without the prior written consent of Infinidat. Any assignment whatsoever by Purchaser without Infinidat's prior written consent will be null and void.
- 14.7. **Subcontractors.** Infinidat may utilize the services of subcontractors, located in different geographical locations, to fulfill any of its obligations.
- 14.8. **Independent Contractors.** The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.
- 14.9. **Audit.** Purchaser, as applicable, grants Infinidat and its independent accountants the right to audit Purchaser once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses capacity increases or breach of License of the Software, or any other material noncompliance, Purchaser, if applicable, will promptly pay Infinidat any additional fees notified to Purchaser, together with reasonable costs of conducting such audit.
- 14.10. **Governing Law.** These Terms will be governed by and interpreted in accordance with to the laws of (a) the State of Delaware, United States, excluding its conflicts of law provisions, if Purchaser is located in the United States. The courts of competent jurisdiction in Delaware shall have the exclusive jurisdiction with respect to any dispute arising under or in connection with these Terms; or (b) Israel, and excluding the Convention on Contracts for the International Sale of Goods and that body of law known as conflicts of laws, if Purchaser is located in Europe, Middle-East and Africa (excluding the United Kingdom) and Asia, Pacific and Japan. The courts of competent jurisdiction in Tel-Aviv-Jaffa shall have the exclusive jurisdiction with respect to any dispute arising under or in connection with these Terms; or (c) England and Wales excluding its conflicts of law provisions, if Purchaser is located in the United Kingdom. The courts of competent jurisdiction in London shall have the exclusive jurisdiction with respect to any dispute arising under or in connection with these Terms.
- 1.1. **Entire Agreement.** These Terms, together with the Appendices attached hereto or any documentation incorporated by reference, represent the entire agreement and understanding between Infinidat and Purchaser with respect to the Products acquired hereunder. These Terms supersede any previous communications, representations or agreements between Infinidat and Purchaser and prevail over any conflicting or additional terms in any third party's or Purchaser's quote, terms and conditions, click wrap agreement, Purchase Order, acknowledgement, or similar communications between the Parties, **except** specifically where the Parties expressly agree in writing to specific variations of particular terms thereto within a mutually agreed executed document (including, but not limited to, under Reseller and Distribution agreements, as applicable).

## Appendix A

### Infinidat® Specific Purchase Models Terms and Conditions

#### A. Capacity On Demand Model Purchase

1. Purchaser may purchase a “Capacity on Demand” (“**COD**”) model with respect to InfiniBox® and InfiniGuard® Products, which allows Purchaser to purchase a certain amount of capacity in accordance with End User’s capacity storage needs and to be granted a License by Infinidat to use the specific capacity purchased. Accordingly, End User will allow Infinidat to remotely monitor the Effective Capacity levels daily by way of enabling the InfiniBox® and InfiniGuard®’s call home feature.
2. Any Effective Capacity may be increased by providing Infinidat in advance with a Purchase Order for such capacity. In the event Purchaser fails to issue such prior Purchase Order to Infinidat, and whereby the purchased Effective Capacity increases and exceeds the initial purchased Effective Capacity or any capacity previously purchased, such (additional) capacity will be charged for and paid in accordance with the then current Quotation. Effective Capacity increases are charged on a monthly basis according to the highest-level Effective Capacity increase at any time occurring during such applicable month (“**Highest Watermark**”). Infinidat will provide an Effective Capacity usage statement to Purchaser referencing the Effective Capacity increase (“**Statement**”) and a Purchase Order shall be issued to Infinidat within thirty (30) calendar days following such Statement (the “**Purchase Order Period**”). If a Purchase Order is not received by Infinidat within the Purchase Order Period, Infinidat will automatically issue a formal invoice for the capacity increase.
3. Any Effective Capacity increase charges for COD are made based on ten (10) Terabyte increments, rounded-up.
4. Effective Capacity increase payments do not extend any original Warranty Period or any purchased Support Services period. Failure to pay any capacity increase during the Purchase Order Period will entitle Infinidat, in its sole discretion, to terminate any License rights to the InfiniBox® and InfiniGuard®, and pursue any remedy available to it in law or equity. Failure by Infinidat to provide a Statement shall not negate any payment obligation arising hereunder.
5. Purchaser is not entitled to deductions or refunds in the event it decreases its Effective Capacity usage.

#### B. Infinidat FLX® Model Purchase

1. In accordance with the “FLX”® model Purchaser commits to pay monthly according to provisioned capacity, by way of a Minimum Monthly Commitment (“**MMC**”) payment. Accordingly, End User will allow Infinidat to remotely monitor the Effective Capacity levels daily by way of enabling the InfiniBox® and InfiniGuard®’s call home feature.
2. Notwithstanding anything herein to the contrary, in no event with this Model purchase will title to any Product transfer to the Purchaser. Failure to pay any amounts due shall entitle Infinidat to reclaim its possession of the Product.
3. Purchaser’s is expected, upon shipment of the Product(s) to End User, and subsequently the receipt of an invoice from Infinidat, to provide a singular Purchase Order representing the entire MMC amount to be made over the full number of months in respect of which the MMC is payable (the “**MMC Duration**”) and to make payment at such time for the first month of MMC.
4. Notwithstanding the foregoing, at the beginning of every month, Infinidat will invoice Purchaser, as applicable, in respect of the singular MMC due for the then commencing period of the MMC Duration together with any increase payments (there is no requirement for an additional Purchase Order).
5. Any Product capacity may be increased in any month, beyond the MMC, during the MMC Duration (an “**MMC Increase**”). Upon any occurrence of an MMC Increase, Infinidat will automatically provide

- Purchaser with an invoice at the beginning of the month following any such MMC Increase. MMC Increases will be invoiced according to the price calculation as referenced in the applicable Quotation.
6. Any increases are measured on a daily basis, and calculated according to said usage measurements during said month. Payment shall be undertaken in accordance with the terms of the applicable invoice (an "**Increase Payment**").
  7. Infinidat will provide a capacity usage statement referencing any MMC Increase (a "**Statement**") accompanied by a formally issued invoice for the Increase Payment deriving therefrom. Failure by Infinidat to provide a Statement shall not negate any payment obligation arising hereunder.
  8. At the conclusion of the MMC Duration, End User shall ensure, or Distributor/Reseller shall procure that End User assists Infinidat with all logistics (including but not limited to entry onto End User's premises) to co-ordinate the prompt return of the Product(s) to Infinidat in the same condition as they were originally received, subject to any minor and expected wear and tear. Failure to do so shall entitle Infinidat to take enforcement steps to ensure the safe return of its property independently or to invoice for the immediate payment of the entire purchase price of the Product. Equally, in the event the Product is returned damaged, Purchaser shall be obligated to make prompt payment of such sum as represents the cost of restoring the Product to "as new" condition. End User is solely responsible for the removal/migration off of any data stored on the Product at the time of return.
  9. As an alternative to end of MMC Duration return, as referenced above, the MMC Duration may be extended by Purchaser, (and will be deemed automatically so extended if the Product is not returned), (a "**MMC Duration Extension**"), and the Licenses granted hereunder renewed (together with the Support period), by virtue of payment, by Purchaser of continued monthly payments in an amount equivalent to the monthly MMC amount (as paid during the MMC Duration), together with any Increase Payment, (as also reflected within a provided Statement).
  10. Infinidat shall at the start of every month automatically invoice the Purchaser accordingly. Any MMC Duration Extension shall not require a new Purchase Order. The foregoing shall not change the ownership of the Product which such ownership shall remain at all times with Infinidat.
  11. Infinidat may at any time on three (3) month's written notice, notify Purchaser (as applicable) that it wishes to end the MMC Duration Extension and have the Product returned. Purchaser shall ensure that upon the conclusion of such three-month period, it shall promptly facilitate the return of the Product in the same manner as referenced above.
  12. Notwithstanding anything to the contrary, in the event that any Infinibox FLX® and InfiniGuard FLX®'s Product has a stated MMC of zero, it is required that the End User utilizes at least twenty-five per cent (25%) of the Product's available Effective Capacity (the "**Commitment Percentage**"). Should such Product usage, at any time after the first three (3) months following installation (including as applicable of a Refresh, as such term in defined below), fall below the Commitment Percentage and not be remedied within a period of thirty (30) calendar days back to the Commitment Percentage (as determined by Infinidat), Infinidat may at any such time, and at its sole election, refuse additional hardware updates, recover possession of the Product and terminate any applicable contract and License thereto, and End User shall facilitate the same.
  13. End User may be entitled to an Infinidat Hardware Refresh ("**Refresh**") subject to the following conditions:
    - a) Completion of a minimum three (3) years period utilizing Infinibox FLX® or InfiniGuard FLX® following installation ("**ROP**");and
    - b) At least fifty per cent (50%) of any "F6000 Series" Infinibox FLX® or at least seventy (70%) on any "F4000 Series" Infinibox FLX® or at least seventy (70%) on InfiniGuard FLX® products, of the Effective Capacity (in respect of InfiniBox FLX® Products) or physical capacity (in respect

of InfiniGuard FLX® products) has been consistently used by End User (the “**Refresh Minimum**”) for a duration of one-year prior to any Refresh.

- c) Purchaser shall notify Infinidat in advance and in writing of its request to exercise the Refresh right.
14. The option to undertake a Refresh shall renew subject to these terms and following the completion of any additional ROP from the date of a previous Refresh. The Refresh shall be for identical, equivalent or improved sized and/or performance Infinidat Hardware Product as solely determined by Infinidat. If applicable, Infinidat may, acting in its discretion, provide a larger capacity Infinidat Hardware InfiniBox FLX® or InfiniGuard FLX® Product at such time.
15. Entitlement to the Refresh is conditioned upon full compliance with these Terms, including the EULA.
16. Maintenance and Support services together with the Warranty are included upon exercise of the Refresh, as if it was a new purchase.
17. In the event that, at the time of the Refresh, the committed period in any applicable Purchase Order is concluding or has concluded, Purchaser shall be required to provide a new Purchase Order in respect of the post Refresh period.
18. Purchaser shall take all actions as may be appropriate to ensure the protection of the Hardware while it is within its possession or control, including, as may be applicable, fully insuring the product for loss or damage.
19. Purchaser may be required to make a lump sum down payment as an advance on MMC payable (an “**Advance**”). The Advance shall be paid to Infinidat together with an applicable set up fee (as stated within the applicable Quotation) on shipment of the Product to End User and will thereafter be credited automatically in equal divisible amounts towards the payments made by Purchaser each month of the MMC Duration as the same is specified in the applicable Quotation. The payment of the Advance, in and of itself, does not grant any ownership or license rights to End User. In no event is the Advance, or any amount thereof, refundable to End User. Failure to pay the Advance by Purchaser shall entitle Infinidat to freely and fully set off any amounts due against any sum of Advance held at such time or to undertake any other remedies.

## Appendix B

### Neutrix® Terms and Conditions (“Neutrix® Terms”)

1. Purchaser may purchase Infinidat Neutrix Cloud® (“**Neutrix**”), which is Infinidat’s cloud storage solution subject to this Neutrix® Terms.
2. Infinidat grants End User a revocable License to access, use and receive any supported interface and support services designated to the Neutrix, together with Infinidat’s Documentation.
3. Neutrix, as a subscription service, shall be charged in accordance with End User’s monthly capacity usage. Infinidat will issue to Purchaser a formal invoice which shall be paid in full by Purchaser within thirty (30) days on the invoice date. Any payment which is not paid by the due date shall automatically incur interest rate of 1.5% per month, unless a lower rate is required under applicable laws.
4. Purchaser shall be required to purchase a minimum amount of storage capacity (the “**Minimum Neutrix Commitment**”). The cost of any additional storage capacity beyond the initial Minimum Neutrix Commitment will be charged in accordance with the respective invoice.
5. End User retains all right, title, and interest in and to its data stored on the Neutrix Cloud® product. End User must backup all End User data, software, and programs. Infinidat is and shall not be liable for the loss of any End User’s data stored on the system in the use of the Neutrix. End User fully assumes the potential risk of loss of End User’s data and must provide for additional protection and retrieval methods for all End User’s Data. Infinidat does not provide any technical controls over End User’s data, which is End User’s sole and absolute obligation.
6. Any use of the Neutrix services shall automatically mean that End User is bound and agrees to fulfil all terms and conditions set forth under the Neutrix “Acceptable Use Policy” as can be found here- [https://www.infinidat.com/sites/default/files/resource-pdfs/Neutrix\\_Acceptable\\_Use\\_Policy.pdf](https://www.infinidat.com/sites/default/files/resource-pdfs/Neutrix_Acceptable_Use_Policy.pdf) as may be updated from time to time.

## Appendix C

### Infinidat Terms and Conditions- Specific Features

#### A. InfiniVerse® Terms and Conditions (“InfiniVerse® Terms”)

1. End User, subject to prior written request and registration, may receive predictive analytics, monitoring, and reporting as an Infinidat service (“**InfiniVerse**”) as part of its purchase of Infinidat’s Products.
2. InfiniVerse service shall only be provided if Call Home is enabled by End User.
3. End User agrees that collection and transmission of its Product(s) information is necessary to enable InfiniVerse. Infinidat will retain such collected information shall be used in accordance with applicable laws and regulations. For the avoidance of doubt, Infinidat retains all right, title and interest to the referenced information collected.
4. Infinidat does not accept any liability for any problems or issues deriving from or related to inaccurate or undelivered information.

#### B. Always On- Active Active

In respect of “Active Active” feature, the specific terms and conditions as set forth in the following link shall apply and govern:

<https://www.google.com/url?q=https://www.infinidat.com/sites/default/files/resource-pdfs/Always%2520On%2520Terms%2520%2526%2520Conditions.pdf&sa=D&source=hangouts&ust=1570455259641000&usg=AFQjCNFDB6xt0g2WU--6KU-uVrmmzUeQzQ>

#### C. Host PowerTools; InfiniMetrics®; InfiniSDK

End User may elect to utilize any of Host PowerTools; InfiniMetrics®; InfiniSDK (collectively: “**Infinibox**® optional features”), subject to these Terms and any Infinidat requirements related to their usage.

## Appendix D

### Infinidat Additional Services

#### A. Professional Services (“PS”)

- 1.1. Infinidat may agree upon request of End User to provide End User with certain professional, technical or educational services.
- 1.2. PS provided may be chargeable on an hourly basis, in which case the PS shall be used in the manner only as agreed specifically between Infinidat and Purchaser in an applicable executed SOW.
- 1.3. Alternatively, PS provided by Infinidat may be for a fixed agreed price, in which case payment shall be made in advance according to the applicable Quotation. The manner and timing of utilizing of purchased Professional Services shall be as stated in the applicable SOW.

#### B. Data Migration Services (“DMS”)

Infinidat may upon written request of End User provide it with certain capabilities to enable migration of its data either from or to an Infinidat Product. The exact quantity of data to be transferred and the details concerning timing and activities for such migration shall be as drafted in accordance with the terms of a specific SOW provided by Infinidat and to be executed by End User. Exceeding time or data limits in the SOW may require additional payments to be made. End User is obliged to backup all of its data, software, and programs stored on the Infinidat Product(s) prior to any migration. Infinidat is and shall not be liable for the loss of any End User’s data stored on or migrated from the Product(s). The migration services shall be provided only to the extent End User provides Infinidat with full and complete access to its premises and the Product(s). For the avoidance of doubt, Infinidat shall have no liability towards Purchaser for any unused DMS or data not migrated within the agreed SOW term.

#### C. Infinidat agreement to use of End User’s Components

Purchaser may request in writing that Infinidat authorize it to install certain non-standard components with, inside or attaching to , purchased Infinidat Product(s) (“**Non Infinidat Components**”). Infinidat may be entitled to deny such request in its sole discretion. The following terms and conditions shall apply with respect to any such approved request:

1. End User shall ensure that any Non Infinidat Components, and/or any work performed by any party with respect to or as a result of the Non Infinidat Components, shall not damage, effect, or alter the Product(s) in any way, whether physically or otherwise.
2. In the event any maintenance or Support Services are required by or provided to End User in connection with or as a result of the Non Infinidat Components, such support services shall not be included in the scope of the standard Infinidat’s SLA terms and shall, in each case, be charged separately in accordance with the fees to be agreed by Purchaser and Infinidat in writing.
3. Infinidat shall have no liability, whether direct or indirect regarding any damage or loss which results from or is related to the Non Infinidat Components or work (including maintenance by third parties) performed with respect to or as a result of the Non Infinidat Components, including but not limited to losses such as (i) any damage to the Product(s) caused by the Non Infinidat Components including water or heat; (ii) any lack of or degradation of performance of the Product(s) (iii) any damage caused to a third party; and (iv) any damage caused to the Non Infinidat Components itself by the Product(s).



4. Depending on the nature of any use of any Non Infinidat Components the warranty existing on the Product may be invalidated.
5. There shall be no guarantee to Purchaser of interoperability, suitability, or operational functionality as concerns the Product(s) and the Non Infinidat Components.
6. Any reference to Hardware as set forth in these Terms shall exclude Non Infinidat Components. In addition, any Infinidat's indemnification obligations shall exclude claims relating to Non Infinidat Components.
7. Acceptance and understanding of this Section by Purchaser shall be assumed. In any event that the Purchaser does not intend to agree or comply with the foregoing, Purchaser shall not proceed with any of the referenced activities herein, and if it does so, undertakes the same at its own risk.

#### **D. Relocation Services**

Purchaser may request in writing that Infinidat authorize it to relocate Infinidat Product(s) ("**Relocation**") at the pricing as agreed between Infinidat and Purchaser in the applicable Quotation. Infinidat may be entitled to deny such request in its sole discretion. The following terms and conditions shall apply with respect to any such approved request:

1. Any Product relocation from its original Site to a different site ("**Relocation**") shall be initiated solely following Infinidat's prior written approval of such activity. Infinidat only takes responsibility and liability for the activities it performs for the Relocation services.
2. Notwithstanding the foregoing, Infinidat shall not be liable for (i) any indirect, special, consequential, punitive damages; and (ii) any third party's activities; and (iii) misuse of any equipment, or undertaking acts that are not approved by Infinidat prior to, post or during any Relocation, including Relocation to any unapproved or unnotified location; and (iv) Purchaser or any third party not fulfilling their designated responsibilities as required in respect of the Relocation.
3. In the event Purchaser, or any third party's on Purchaser's behalf, undertakes the Relocation, it is hereby agreed and understood that Purchaser assumes all risks with regards to such Relocation and waives any liability on the part of Infinidat. Purchaser agrees forever to refrain from commencing, instituting or prosecuting any lawsuit, action, claim or other proceeding against Infinidat with respect to the Relocation.
4. Infinidat shall not be liable in any manner for any incomplete act or the like, or resultant problems, deriving from or relating to the Relocation, including loss of data, loss of profits, loss of business, during the Relocation and thereafter. Furthermore, Infinidat does not provide any warranty or representation whatsoever regarding the Relocation, its process, support and performance (during or thereafter), or impact on the Product.
5. Infinidat shall not, as from the date of Relocation (or at any time of any preparation proceeding the same) be liable and/or obligated under Infinidat's SLA (as the same may be valid from time to time). Any Relocation activities as undertaken by Purchaser also serve to invalidate any warranty existing on the Products.
6. Infinidat will not be party to any third-party agreement and/or arrangement, between Purchaser and any other party which is not Infinidat, unless Infinidat provides its prior written consent to the terms and conditions between Purchaser and such third party.
7. Purchaser shall inform Infinidat promptly of any exceptional or irregular circumstances occurring during the Relocation or thereafter, however full responsibility for the Product is with Purchaser at all times.

8. Purchaser shall indemnify Infinidat from and against any and all damages, liability, claims, suits, losses, costs and legal fees caused by, arising out of, resulting from, or related to damages incurred to Infinidat's Product as a result of the Relocation.

## **E. Data Sanitization**

Infinidat may, upon formal written request from an individual at End User with the required level of authority, provide End User with certain data sanitization services to enable the erasure of End User's data, as stored on certain of End User's drives. The foregoing shall be undertaken in accordance with National Institute of Standards and Technology (NIST) procedures and subject to applicable laws.

The data sanitization services are conditioned upon End User providing Infinidat with full and complete remote access to the intended components. Further, such erasure may not be possible in respect to all drives, for instance as concerns local End User's drives. End User understands and agrees that Infinidat shall not be liable for the loss of any End User's data stored on End User's drives and that any such erased data cannot be retrieved, once erased. Any End User data to be sanitized hereunder shall first be backed up by End User, to the extent End User needs or wants to retain it elsewhere.

For the avoidance of doubt, any representative of End User who shall request Infinidat to provide the foregoing data sanitization services, shall be deemed for all purposes and means, a duly authorized representative of End User with such right, power and authority to legally request the same.

Sanitized components shall not be utilized for resale by End User.

## Appendix E

### Optional Infinidat and Third Party Add-Ons

#### A. Infinidat Add On

- 1.4. **Acceleration Kit.** Purchaser may acquire from Infinidat an Acceleration Kit, at the pricing agreed in the applicable Quotation. Infinidat will provide support servicing for so long as End User purchases such Acceleration Kit and is under a current contract for Support Services. The Acceleration Kit may not be resold or utilized for anything other than its intended purpose. Acceleration Kits will only be effective if installed and utilized in the correct operating environment. Infinidat will not accordingly be responsible in the event that the foregoing is not complied with.
- 1.5. **Disk Retention.** Purchaser may request from Infinidat Disk Retention and accordingly will not return unused or replaced disks to Infinidat, for some or all of End User's disks, at the pricing agreed in the applicable Quotation. As concerns Disk Retention, it is confirmed and agreed that upon payment to Infinidat, any disks retained are the sole responsibility of End User and Infinidat retains no title, risk of loss or other liability in respect thereof including as concerns the disk itself or the data thereupon. It is confirmed and agreed that such disks are not to be resold by End User or any third party and not to be utilized further on any Infinidat Product. Any retained disks are not covered by Infinidat's Support services and/or warranties and Infinidat takes no responsibility for their continued use or functionality in any manner.

#### B. Third Party Add On

Any Third Party Products are provided "as is" without Infinidat warranty of any kind, either expressed or implied. Purchaser acknowledges that no representation has been made by Infinidat as to the fitness of the Third Party Products for the End User's intended purpose.

- 1.1. **Commvault.** As concerns Commvault, it is understood that Commvault's terms and conditions shall apply in full and that for the avoidance of doubt any support included in the pricing shall be undertaken directly by Commvault and shall not be the responsibility of Infinidat. Accordingly, Infinidat's warranties and SLA shall not apply.
- 1.2. **Brocade Fabric Switches.** As concerns Brocade's Fabric Switches, it is understood that Brocade's terms and conditions shall apply in full and that for the avoidance of doubt, any support included in the pricing shall be undertaken directly by Brocade and shall not be the responsibility of Infinidat. Accordingly, Infinidat's warranties and SLA shall not apply.

#### B. Other Options

- 1.1. **SMB.** Any provision of an SMB Node is subject to full compliance with all third party terms licensing terms including as set out at: [https://s3-us-west-1.amazonaws.com/smbnode-docs/LicTrmsWndwsStrgeSrvr\\_2016\\_EULA OEMStndrdWrkgrpFNL.rtf](https://s3-us-west-1.amazonaws.com/smbnode-docs/LicTrmsWndwsStrgeSrvr_2016_EULA OEMStndrdWrkgrpFNL.rtf) Title to the Item(s) provided, in the event it is a sold hardware Product, shall pass on shipment.