INFINIDAT® General Terms and Conditions

These General Terms and Conditions ("**Terms**") apply to the sale of Products, Support Services and/or 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, Support Services and/or Professional Services for its own use or a third party's use (in case of Reseller or Distributor), unless any of Reseller, Distributor or End User has entered into a separate executed agreement with Infinidat which explicitly governs the subject matter described herein.

Infinidat and Purchaser (as defined below) shall hereinafter collectively be referred to as the "**Parties**" and individually as a "**Party**".

THESE TERMS SHOULD BE READ CAREFULLY. By ordering, accepting delivery, installing, keeping or using the Product, Support Services 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/en/sites/default/files/resource-pdfs/INFINIDAT-Customer-Product-Online-TCs.pdf

1.   **Definitions**

"Affiliate"	means an entity which (i) controls, is controlled by, or is under common control with Infinidat, or (ii) 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.
"Billable Capacity"	means either the higher of the total capacity in the Quotations(s) for the InfiniBox Product appearing as "virtually allocated within pools" or "physically allocated within pools" within the InfiniBox dashboard, or the total capacity for the InfiniGuard Product appearing as "used capacity for snapshots" plus the "data size after reduction" within the InfiniGuard dashboard. See Appendix A (Infinidat-Specific Purchase Models Terms and Conditions) for additional information.
"Business Day"	means Sunday to Thursday, or Monday to Friday for Purchasers acquiring from an Infinidat legal entity other than Infinidat LTD., excluding applicable national holidays.

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"Confidential Information"	means any information related to a Party's business, including (but not limited to): (i) (a) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software, (b) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats, and (c) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (ii) the research and development or investigations of a Party; or (iii) 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 Discloser (as defined below) protects against unrestricted disclosure to others that (iv) the Discloser or its representatives identifies as confidential at the time of disclosure; or (v) 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.
"Distributor"	means a legal entity which, on a non-exclusive basis, is engaged with Infinidat, by way of executed agreement, for the sale and distribution of Products to third parties.
"Documentation"	means Infinidat's then-current, generally available user manuals and technical documentation.
"End User"	means a pre-approved in writing third party, who purchases Products, Support Services, and Professional Services directly from Infinidat, or through an authorized Distributor or Reseller, as applicable, for its own use.
"EULA"	means Infinidat's End User License Agreement, as amended from time to time and accepted as part of utilization of the Products, located at: https://www.infinidat.com/en/resource-pdfs/infinidat-end-user-license-agreement.pdf .
"Hardware"	means Infinidat Product hardware, comprised of proprietary components and third-party hardware, manufactured, developed, licensed or otherwise made available by Infinidat and provided to Purchaser, as a constituent part of the Product.

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"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; or (v) other intellectual property rights.
"License"	means the Infinidat-granted software license provided in accordance with and subject to Infinidat's EULA.
"Product(s)"	means any Infinidat product or products (however branded), excluding any Beta, non-generally available products or end of life products. Specific terms concerning the methods and structure of particular Products sold are described in Appendix A (Infinidat-Specific Purchase Models Terms and Conditions).
"Professional Services"	means Infinidat-offered consulting, installation, implementation, and other services that are not Support Services as per the terms specified in Appendix C (Infinidat Additional Services) attached hereto.
"Purchase Order"	means a formal written, binding and irrevocable order received by Infinidat from Purchaser, for the acquisition of Products, Support Services and/or Professional Services, and in the case of a Distributor or Reseller on behalf of an End User, in accordance with Section 2 (Purchase Orders, Delivery, and Acceptance) hereunder.
"Purchaser"	means Reseller, Distributor or End User, as applicable.

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"Quotation"	means an Infinidat-approved official quotation for the acquisition of Products, Support Services or Professional Services by a Purchaser.
"Reseller"	means a legal entity that, on a non- exclusive basis, is engaged with Infinidat or a Distributor, by way of executed agreement, for the resale of Products to End User(s).
"Site"	means End User's designated location for the Product, in respect of which an Infinidat site survey ("**ISS**") has been undertaken, and as specified in the applicable Purchase Order and Quotation.
"Software"	means Infinidat software (however branded), provided in object code, integrated with the Hardware to be utilized by an End User under the EULA.
"Support Services"	means services for the support of acquired Products in accordance with Infinidat's then-current Support Services Terms and Conditions, available at: https://www.infinidat.com/en/resource-pdfs/infinidat-support-services.pdf .
"Third-Party Products"	means hardware, software, or services that are not proprietary to Infinidat. 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) the names of the Product and Product model; (ii) confirmation of completed ISS, date thereof and confirmed Site location; (iii) agreed-to 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 Product referenced therein, however such prices may change due to increase of manufacturing costs, shortage, shipping costs, or other factors at Infinidat's sole discretion.

    2.3. All Products are deemed automatically accepted by End User upon delivery, unless otherwise agreed in writing by Infinidat.

    2.4. **Delivery**. Products shall be delivered Ex Works (Incoterms 2020), unless otherwise explicitly agreed between Infinidat and Purchaser. Risk of loss to the Product will pass upon delivery.

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2.5. **Transfer of Title.** Title to the Product (excluding Software) will pass upon full payment of the Product unit price.

2.6. **Changed, Discontinued, or End of Life Products**. Infinidat may revise, discontinue, or terminate (i.e., "end of life") a Product, at any time, prior to Infinidat's shipment of the Product.

2.7. "**End of Life Notification**" means written notice sent by Infinidat to its customer base stating that certain Products or components will no longer be supported due to obsolescence or to a third-party supplier's decision to stop supporting that Product or component model or version.

2.8. **Packaging, Labeling.** Infinidat shall supply the Product packed and labeled according to its required specifications, and the same shall not be modified by any third party or Purchaser.

2.9. **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. In the event Purchaser requests and Infinidat agrees in writing (via Quotation or otherwise) to install the Product using components not provided by Infinidat, the terms of Appendix E (Installation Using Third-Party Equipment) shall apply.

2.10. **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.

3. **Payment**

3.1. Unless explicitly agreed otherwise in writing, Infinidat will issue an invoice to Purchaser immediately upon shipment of the Product, or in the case of Professional Services or Support Services extensions/renewals, on the same date as receipt of the applicable Purchase Order.

3.2. Purchaser will make full payment for the Product within thirty (30) days of the Infinidat invoice date, in the currency specified in the applicable invoice.

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 one and a half percent (1.5%) per month (eighteen percent (18%) per annum) or such amount as may be allowable under applicable law.

3.4. Unless specifically agreed otherwise in writing, 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 Support Services and/or Professional Services 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.

3.6. **Taxes**. All invoiced amounts will be paid by Purchaser free and clear of any set-off, counterclaim or withholding and will be billed exclusive of any deduction on account of value-added tax, withholding tax and any other similar related tax-like duties, fees, charges and surcharges which Purchaser shall pay in the manner and at the rate from time to time prescribed by applicable law. If under applicable law any sum cannot be paid by Purchaser to Infinidat without a deduction or withholding, then Purchaser shall increase such payments such that the net amounts received by Infinidat after such deduction or withholding (and the payment of any other amount that must be deducted or withheld as a result of such increase) shall be equivalent to the full amount that Infinidat would have received had such payments not been subject to any deduction or withholding.

3.7. Infinidat shall be entitled to set off amounts owing to it by Purchaser against amounts it owes to Purchaser.

4. **Infinidat End User License Terms**

4.1. **License Grant**. Subject to End User's compliance with all of the Terms hereto and further subject to the terms under the EULA, 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 to use the Documentation in support of End User's use of the Software.

4.2. **Third-Party Licenses and Open Source Software**. The Software may contain third-party software components, including (but not limited to) open-source software components embedded in Software ("**Third-Party Software**"). Any such Third-Party Software is subject to its own license terms which shall be applicable to End User. Infinidat shall have no liability whatsoever with respect to Third-Party Software.

5. **Warranty**

5.1. **Hardware Warranty.** Infinidat warrants to End User that for a period of twelve (12) months from the Product delivery date ("**Hardware Warranty Period**"), the materials and workmanship of the Hardware will conform to the standards of the industry and will be free of material defects in materials and workmanship. Purchaser shall promptly notify Infinidat in writing with a description of a warranty claim within the Hardware Warranty Period. Following such notification, Infinidat shall consider the claim, and Infinidat will, upon determination of the claim validity, at its expense, as Purchaser's sole and exclusive remedy, either repair or replace any Hardware which does not comply with this warranty.

5.2. **Software Warranty.** Infinidat warrants to End User that the Software will substantially conform to the specifications contained in the Documentation for ninety (90) days from the Product delivery date ("**Software Warranty Period**"). Infinidat does not warrant that the Software will operate uninterrupted or that it will be free from defects or errors that do not materially affect its performance, or that the applications contained in the Software are designed to meet all of End User's business requirements. If any reproducible faults in Software are discovered and reported by Purchaser during the Software Warranty Period, Infinidat shall consider the claim, and upon determination of the claim validity, Infinidat will (at its option): (i) repair, replace or upgrade the Software concerned, or (ii) refund the portion of License fees paid for the applicable Software

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concerned in exchange for a return of such Software. This is End User's sole and exclusive remedy under this warranty.

5.3. 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 PRODUCT, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, NON-INFRINGEMENT, 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.

5.4. The warranties provided in this Section (Warranty) are contingent upon proper use and care by Purchaser of the Product. This warranty shall not apply to defects or failures of any Product which was subjected to: (i) accident, neglect or misuse; (ii) failure of or defect in electrical power, external electrical circuitry, air-conditioning or humidity control; (iii) the use of software, components or equipment not provided by Infinidat; (iv) electrical static discharges; (v) unusual operational or environmental stress; or (vi) modification, adjustment, repair, service, relocation or installation by any party other than Infinidat or persons authorized and certified by Infinidat.

5.5. The obligations of Infinidat under this Section (Warranty) are subject to: (i) Purchaser providing accurate and prompt notice of any claimed defect, and the ability to reproduce such defect; (ii) Purchaser's fulfillment of all of its obligations under the Support Terms; (iii) the immediate opening by End User of a suitable and continuous digital remote access connection between the Product and Infinidat's technical support facility; (iv) the opening by End User of a voice link between Infinidat's engineers and English-speaking, appropriately qualified certified End User engineers at the Site; (v) should an Infinidat engineer be dispatched to the Site, twenty-four (24) hour physical access to the Site and an English-speaking, appropriately qualified End User engineer who shall accompany and assist the Infinidat engineer at the Site; (vi) Purchaser's full and complete cooperation with Infinidat in the problem identification and analysis process; and (vii) the provision by End User of all reasonable or necessary assistance required by visiting Infinidat personnel.

6. **Support Services**

6.1. Support Services are provided by or on behalf of Infinidat to Purchaser for the benefit of End User, in accordance with the terms stipulated in the Support Services Terms and Conditions ("Support Terms") located at https://www.infinidat.com/en/resource-pdfs/infinidat-support-services.pdf, provided that that no breach of the Software License has occurred, that Purchaser has ordered and paid for such Support Services, and that the Product has not been desupported in accordance with an End of Life Notification.

6.2. Support Services are invoiced and payable in advance as per the applicable Quotation. Accordingly, the payment terms as stated in Section 3 (Payment) shall apply.

6.3. If Support Services are allowed to lapse, Infinidat will be under no obligation to reinstate Support Services at a later date.

6.4. Purchaser shall be solely responsible to remove the Hardware from the Site following the decommissioning of the Product in accordance with applicable laws.

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7. **Intellectual Property**

7.1. Infinidat or the relevant supplier of Infinidat, shall be, and shall at all times remain the sole and exclusive owner of all brands, copyright, database rights, IPR and all other rights to the Product, Documentation, Infinidat websites whenever provided or referenced, and in all derivative rights arising in connection therewith. No ownership or other rights in IPR shall be granted or deemed to be granted to Purchaser in connection with the above other than as expressly stated in these Terms.

7.2. Purchaser shall not copy, incorporate or store any Infinidat information, publications or other works of any kind on other websites or electronic retrieval systems. The content available on any Infinidat websites, including text, graphics, photographs, audio, illustrations and Software is owned by Infinidat, its licensees and/or content providers.

7.3. 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.

7.4. Purchaser shall not, remove, alter or permit the removal or alteration of, any Infinidat or third-party trademarks, copyright notices, tags, labels or other identifying markings placed on any Product, packages or containers provided hereunder without the prior written consent of Infinidat

8. **Confidential Information**

8.1. These Terms impose no obligation upon a party receiving the Confidential Information (hereinafter, "**Recipient**") with respect to information designated as Confidential Information which: (i) the Recipient can demonstrate was already in its possession before receipt from the party disclosing the Confidential Information (hereinafter, "**Discloser**"); (ii) is or becomes publicly available through no fault of the Recipient or its Representatives (as defined below); (iii) is rightfully received by the Recipient from a third party who has no duty of confidentiality; or (iv) 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 and/or seek a protective order.

8.2. Recipient will use Confidential Information only for the purpose for which the Confidential Information was disclosed. Recipient may disclose Confidential Information to its directors, officers, or employees, (collectively, "**Representatives**") provided those individuals: (i) have a "need to know" such information in their work for Recipient in furtherance of the potential or continued business transaction or relationship, and (ii) are bound by obligations of confidentiality at least as restrictive as those imposed on Recipient in herein. Recipient is fully liable for any breach of Confidential Information by its Representatives. Recipient shall protect Confidential Information against unauthorized disclosure using the same degree of care, but no less than reasonable care, as Recipient uses with respect to its own information of a similar nature. Recipient's duty to protect Confidential Information shall remain in full force and effect until earlier terminated by

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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.

9. **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 concerning its operation or environment.

10. **Limitation of Liability**

10.1. 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 PRODUCT SHALL BE LIMITED TO THE AMOUNTS ACTUALLY RECEIVED BY INFINIDAT FROM PURCHASER PURSUANT TO THE PURCHASE ORDER FOR THE PRODUCT 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 LOWER OF: (I) AMOUNTS ACTUALLY RECEIVED BY INFINIDAT FROM PURCHASER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM; OR (II) FIVE HUNDRED THOUSAND DOLLARS ($USD 500,000.00).

10.2. **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 goodwill, loss of data, loss of use, or procurement of substitute products or services.

10.3. **Data Security and Regular Back-ups**. End User shall be solely responsible for its use of the Product, for maintaining and securing the Site, and for maintaining data that is managed or stored using the Product. End User must back up its data before Infinidat performs any activities on End User's systems.

10.4. **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 a period, then claims must be made one hundred and twenty (120) days after the cause of action accrues.

10.5. **No Indemnity for Customer Claims**. Neither Party shall be liable to the other Party's customers in any manner whatsoever. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold the other Party (the "**Indemnified Party**") harmless from and against, and reimburse the Indemnified Party with respect to any and all losses, damages, liabilities, claims, judgments, settlements, fines, costs, and expenses (including reasonable attorney's fees of any nature) incurred by the Indemnified Party by reason of or arising out of or in connection with any claim, proceeding or suit instituted by any of the Indemnifying Party's customers.

11. **Compliance with Laws**

11.1.   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.

11.2.   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 in applicable data protection laws (including but not limited to the EU General Data Protection Regulations 2016/679 ("GDPR") and the California Consumer Privacy Act of 2018 ("CCPA")), all Parties will ensure that such Personal Data is disclosed and handled in accordance with such applicable laws.

12.   **Export**

Purchaser acknowledges that Products supplied by Infinidat under these Terms may be subject to controls under the laws and regulations of Israel, 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: (i) it 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 (a) United Nations, U.S., European Union or other applicable embargoes, including but not limited to Cuba, Iran, Libya, Sudan, Iraq, North Korea, Syria, Russia, Belarus, Crimea, Donetsk, Luhansk, or any destination defined as country group E in Supplement No. 1 to Part 740 of the U.S. Export Administration Regulations ("EAR"), or (b) trade sanctions programs; (ii) it 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 (iii) it will not use Products or technology for any purposes prohibited by United States law, including without limitation the development, design, manufacture, production, or use of nuclear, missile, chemical or biological weaponry, other weapons of mass destruction, nuclear programs, maritime nuclear propulsion projects, or any other prohibited end-use under applicable laws and regulations; (iv) to its knowledge, except as authorized under applicable laws and regulations, the Products will not be used directly or indirectly, sold, re-exported, transferred, or incorporated into products for "military end use," "military end users", "military-intelligence end use", or "military-intelligence end users", as such terms are defined in Part 744 of the EAR; and (v) the Products will not be used in activities that involve the development or production of advanced semiconductors, semiconductor manufacturing equipment, or related parts and components, or for the development, production or use of supercomputers or related parts and components in China, Hong Kong, or Macau, as provided in Part 744.23 of the EAR. 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 Products, as required. Purchaser shall remain liable for any third party's acts or omissions related to this Section (Export).

13.   **Miscellaneous**

13.1.   **Term and Termination**. These Terms shall continue in full force and effect until terminated as set forth in this paragraph. 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 term intended to survive by

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its nature, together with all accrued rights to payment, shall survive termination of these Terms for any reason.

13.2. **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 Purchaser is an agency, department, employee or other entity of the United States Government, then Purchaser's 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.

13.3. **Force Majeure**. Except with respect to Purchaser's payment obligations, neither Party will be liable to the other Party for any for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortages of supply, breakdowns, malfunctions, pandemics, earthquakes and/or fires.

13.4. **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.

13.5. **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.

13.6. **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.

13.7. **Subcontractors**. Infinidat may utilize the services of subcontractors, located in different geographical locations, to fulfill any of its obligations under these Terms.

13.8. **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/employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

13.9. **Audit**. Purchaser grants Infinidat and its independent accountants the right to audit End User once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses capacity increases or breach of the Software License, or any other material noncompliance, Purchaser will promptly pay Infinidat any additional fees invoiced to Purchaser, together with the reasonable costs of conducting such an audit.

13.10. **Governing Law**. These Terms will be governed by and interpreted in accordance with the laws of: (i) the State of Delaware, United States, excluding its conflicts of law provisions, if Purchaser is located in the United States, and 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 (ii) 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, and 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 (iii) England and Wales, excluding its conflicts of law provisions, if Purchaser is located in the United Kingdom, and 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.

13.11. **Entire Agreement**. These Terms, together with the Appendices attached hereto and 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, Distributor, Reseller, or Purchaser quote, terms and conditions, click-wrap or click-thru agreement, Purchase Order, acknowledgement, or similar communications between the Parties even if Infinidat does not expressly object to such terms when accepting a Purchase Order or similar document provided by Distributor, Reseller, or Purchaser, except where the Parties expressly agree in writing to specific variations of particular terms thereto in a mutually agreeable executed document (including, but not limited to, under Reseller and Distribution agreements, as applicable).

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Appendix A

Infinidat-Specific Purchase Models Terms and Conditions

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A. Capacity On Demand Model Purchase

1. The Capacity on Demand ("**COD**") model for the InfiniBox® and InfiniGuard® Products 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 Billable Capacity levels daily by way of enabling the InfiniBox and InfiniGuard's Call Home feature (described in Infinidat's Documentation).

2. The Billable 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 the purchased capacity increases and exceeds the purchased capacity, such (additional) capacity will be charged for and paid in accordance with the then-current Quotation. Billable Capacity increases are charged on a monthly basis according to the highest-level Billable Capacity increase at any time occurring during such applicable month (the "**Highest Watermark**"). Infinidat will provide a Billable Capacity usage statement to Purchaser referencing the Billable Capacity increase (a "**Usage Statement**") and a Purchase Order shall be issued to Infinidat within thirty (30) calendar days following the delivery of such Usage 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 Billable Capacity increase charges for COD are made based on ten (10) terabyte increments, rounded up, for the InfiniBox Product, and fifty (50) terabyte increments for the InfiniGuard Product.

4. Billable Capacity increase payments do not extend any original warranty period or any purchased Support Services term. Failure to pay for any Billable Capacity increase during the Purchase Order Period will entitle Infinidat, in its sole discretion, to terminate Support Services and/or the License to the InfiniBox and InfiniGuard, and pursue any remedy available in law or equity. Failure by Infinidat to provide a Usage Statement shall not negate any payment obligation arising hereunder.

5. Purchaser is not entitled to deductions or refunds in the event it decreases its Billable Capacity usage.

B. Infinidat FLX® Model

1. Purchaser may subscribe to use an InfiniBox or InfiniGuard Product under the Infinidat FLX model, which allows End User to use the Product in accordance with End User's capacity storage needs. Accordingly, End User will allow Infinidat to remotely monitor the Billable Capacity levels daily by way of enabling the InfiniBox and InfiniGuard's Call Home feature (described in Infinidat's Documentation).

2. Under the FLX model, for the duration stated on the Quotation (the Committed Duration, "**CD**"), Purchaser commits to pay a monthly usage fee comprising of: (i) the Billable Capacity stated on the applicable Quotation (the Committed Capacity, "**CC**"), plus, if applicable, (ii) the Billable Capacity representing the additional usage exceeding the CC. The CC and CD together comprise the Committed Payment ("**CP**").

3. Any Product capacity may be increased in any month, above the CC (a "**Capacity Increase**"). Any Capacity Increases are measured on a daily basis, to the nearest whole terabyte rounded up. Infinidat will provide a capacity usage statement referencing any Capacity Increase (a "**Capacity Increase Statement**"). Infinidat will automatically provide Purchaser with an invoice at the beginning of the month following any such Capacity Increase. Capacity Increases will be invoiced according to the price calculation as referenced in the applicable Quotation (an "**Increase Payment**"). Failure by Infinidat to provide a Capacity Increase Statement shall not negate any payment obligation arising hereunder.

4. Unless otherwise agreed in writing, Purchaser shall provide to Infinidat two Purchase Orders. One Purchase Order shall represent the entire CC amount. The second Purchase Order shall allow Infinidat to invoice against it for any Capacity Increases for the duration of the CD. Any failure of Purchaser to issue a Capacity Increase Purchase Order shall not preclude Infinidat from invoicing Purchaser for any Capacity Increases. Notwithstanding, in the event Purchaser fails to issue a Capacity Increase Purchase Order in a timely manner, such delay will constitute a breach of Purchaser's license for the Product, and the following shall apply: (i) Customer shall pay Infinidat an additional monthly amount equal to ten percent (10%) of Capacity Increase value; and (ii) Infinidat may suspend the Support Services provided for the Product.

5. Upon the earlier of: (i) installation of the Product; or (ii) seven (7) calendar days after receipt of the Product, Infinidat shall invoice the CC monthly fee. Following the initial invoice, and at the beginning of every month for the duration of the CD, Infinidat will invoice Purchaser the CD monthly fee together with any Increase Payments (as defined below).

6. Payment is due within thirty (30) days from the date of Infinidat's invoice.

7. The CD shall be automatically renewed for an additional twelve (12) month duration (a "**CD Renewal**") at the conclusion of the applicable CD unless Purchaser has provided Infinidat with written notice no later than sixty (60) days prior to the conclusion of the CD of its intention to not renew the CD. The CD shall be deemed automatically so renewed if the Product is not returned pursuant to the requirements described herein. If a CD Renewal occurs under the terms of this paragraph, the CP amount for the CD Renewal shall automatically increase by ten percent (10%) per terabyte per month from the original terabyte per month amount on the applicable Quotation and Purchaser agrees to immediately issue a new Purchase Order representing the entire CD Renewal amount. Infinidat may at any time on three (3) month's written notice, notify Purchaser (as applicable) that it wishes to end any CD Renewal 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 below. Infinidat shall at the start of every month automatically invoice Purchaser accordingly.

8. At the conclusion of the CD or any CD Renewal, End User or Distributor/Reseller, as applicable, shall ensure that End User assists Infinidat with all logistics (including but not limited to entry onto End User's premises) to coordinate the prompt return of the Product to Infinidat in the same condition as it was originally received, subject to any minor and expected wear and tear. Purchaser shall bear the expense of returning the Product to Infinidat. 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 of any data stored on the Product at the time of return.

9. These FLX Model terms do not convey to Purchaser an interest in or to the Product, but only a limited revocable right of use as described herein. All right, title and interest in and to the Product is and will remain with Infinidat. Accordingly, Purchaser agrees to be fully liable for any damage to the Product (other than normal wear and tear) throughout the duration of the CD or any CD renewal and for any period thereafter during which the Product is under the possession, custody or control of Purchaser, and until such time as the Product is duly returned to Infinidat and received by Infinidat in accordance with the terms set forth herein and to Infinidat's satisfaction. During such period, Purchaser shall treat the Product with the same degree of care as with its own similar property and in no event less than a reasonable degree of care, including in terms of security, insurance, and other protective treatments.

10. As of delivery of the Product on Site and throughout the duration of the CD or any CD renewal, and for any period thereafter during which the Product is under the possession, custody or control of End User, End User shall maintain, at minimum, in effect, a Property All Risks insurance policy (the "**Policy**") against any loss or damage including but not limited to fire, smoke, soot, explosion, theft, burglary, malicious damage, water damage, natural hazards, and earthquake whilst the Product is in transit, loading, unloading, at rest or operation. End User's Policy shall include any property in the ownership, care, custody or control of Purchaser, all at full reinstatement value including the Product. Sums insured shall always reflect the full replacement value of the property as new. The Policy shall be maintained solely at End User's expense. All insurer's rights of subrogation against Infinidat for losses or claims arising out of the Product shall be waived under the Policy or any other complementary insurance policy End User may take. The Policy shall contain a primary and non-contributory clause to the benefit of Infinidat and its insurance company. The Policy shall not be cancelled unless Infinidat is given written notice of said cancellation at least thirty (30) days in advance and said Policy is replaced by similar policy with similar coverage levels. End User shall provide a certificate of insurance evidencing said Policy at Infinidat's request.

11. End User may be entitled to an Infinidat Hardware refresh ("**Refresh**") subject to the following conditions:

    i.   Completion of a minimum CD of three (3) years ("**Refresh Eligibility Duration"**); and

    ii. At least seventy percent (70%) of any eligible Product has been consistently used by End User (the "**Refresh Minimum**") for a duration of at least a twelve-month period prior to any Refresh; and

    iii. Purchaser shall issue a Purchase Order for CD Renewal of at least an additional three (3) years.

    iv. Purchaser shall notify Infinidat at least sixty (60) days in advance and in writing of its request to exercise the Refresh right.

12. Any 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 Product at such time. Infinidat shall bear the expense of returning Products related to any Refresh. Entitlement to a Refresh is conditioned upon full compliance with these Terms, including the EULA.

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Appendix B

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, provided that such End User is under a current contract for Support Services with respect to the specific Product to which the InfiniVerse is requested to be provided.

2. InfiniVerse service shall only be provided if the Product's Call Home feature is enabled by End User.

3. End User agrees that collection and transmission of its Product information is necessary to enable InfiniVerse and may be subject to third party terms and conditions. In such cases, separate terms and conditions with such third party in addition to the Terms herein may apply to the InfiniVerse, and Infinidat accepts no liability or responsibility with respect to any such third party's terms and conditions or terms of use. 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 issues deriving from or related to inaccurate or undelivered information.

B. Host PowerTools; InfiniMetrics®; InfiniSDK

End User may elect to utilize any of Host PowerTools, InfiniMetrics®, InfiniSDK (collectively, "**Infinibox Optional Features**"), subject to these Terms, including the Documentation, and any Infinidat requirements related to their usage.

Appendix C

Infinidat Additional Services

A. Professional Services ("PS")

1. Infinidat may, upon request of End User, agree to provide End User with certain professional, technical or educational services subject to the execution of a statement of work ("**SOW**").

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.

3. Alternatively, PS provided by Infinidat may be for an agreed-upon fixed price, in which case payment shall be made in advance according to the applicable Quotation. The description of the PS, including any deliverables, and the manner and timing of the PS shall be as stated in the applicable SOW.

B. Data Migration Services ("DMS")

Infinidat may, upon written request of End User, agree to provide End User with certain capabilities to enable the migration of End User data either from or to an Infinidat Product. The quantity of data to be transferred and the details concerning the timing and activities for such migration shall be as drafted in accordance with the terms of a specific SOW executed by the Parties. Exceeding time or data limits in the SOW may require additional payments to be made by End User. End User is obligated to back up all data, software, and programs stored on the Product prior to any migration. Infinidat shall not be liable for the loss of any End User's data stored on or migrated from the Product. To enable DMS, End User must provide Infinidat authorized personnel with access, including virtual and onsite physical access, to its premises and the Product. For the avoidance of doubt, Infinidat shall have no liability towards Purchaser for any unused DMS or data not migrated within the agreed-upon SOW term.

C. Deinstallation and Reinstallation Services

In the event Purchaser and Infinidat agree in writing via Quotation to a relocation of a Product from its original installation site to a different site, Infinidat shall assist with the relocation by deinstalling, and reinstalling the Product in accordance with the following terms:

1. All relevant information concerning the origin and destination Sites, including any ISS, if required in Infinidat's sole discretion, target relocation date, key personnel contacts, and expiry of the services term shall be included in an SOW for deinstallation and relocation services with Infinidat-provided transportation.

2. To assist with the relocation of the Product, the following steps shall be performed by Infinidat or End User, as applicable:

Step 1: Deinstallation:

(i)   Perform a media sanitization of the Product array pursuant to the standards for secure erasure and media sanitization set forth by the National Institute for Standards and Technology (an "NIST Standard Erasure") (if explicitly agreed to via Quotation). (Infinidat)
(ii)   Power off the Product and unplug all power cords and other Product cables. (End User)
(iii) Unload and label all drives with pre-provided labels to mark locations in the Product. (Infinidat)

(iv)   Package drives in shipping container. (Infinidat)

(v)   Secure the Product for relocation. (Infinidat)

Step 2: Transportation:

(i)   Move the Product to the loading dock, crate the Product and drive boxes, and load the Product and drive boxes onto a moving vehicle. (End User)

(ii)   Transport the Product to the destination location. (End User)

(iii)   Uncrate the Product and drive boxes, move the Product and drive boxes to final location within data center. (End User)

Step 3: Reinstallation:

(i)   Unpack and install drives into the Product as labeled at the origin location. (Infinidat)

(ii)   Plug in all power cords and other Product cables as directed by Infinidat personnel. (End User)

(iii)   Power on the Product. (Infinidat)

(iv)   Perform health checks. (Infinidat)

(v)   Validate remote support. (Infinidat)

(vi)   Update inventory application for the new site. (Infinidat)

(vii)   Establish support call tree structure and new site contacts. (Infinidat)

3. In addition, End User shall:

(i)   Develop and own the overall relocation plan and schedule;

(ii)   Maintain responsibility for overall Services management during the service term, negotiating application change windows, remediating hosts, administering storage area networks, and make source storage array and host configuration changes in all power cords and other Product cables as directed by Infinidat personnel;

(iii)   Validate host interoperability on the Infinidat Support Portal (http://support.infinidat.com) prior to performing any necessary migrations;

(iv)   Procure and run fiber channel, network and power cables required to connect the Product, and secure such connections;

(v)   Manage all change control windows and communication with End User's staff, internal users, and application owners;

(vi)   Perform preparatory tasks including: i) completing a full backup of all data on the Product that is to be relocated prior to the relocation; ii) storage area network zoning; (iii) storage array mapping/masking changes; and iv) host rescanning; and application validation;

(vii)   Manage all processes including those related to data availability, integrity, recover, security, and service level agreements;

(viii)   Perform cutover, including, but not limited to, remediating the operating systems, host bus adapter driver, and multi-pathing software on the migrated servers to a version supported by the Product, if required; and

(ix)   Maintain responsibility for all data on the Product that is to be relocated, and maintain responsibility for any data loss or corruption resulting from the relocation.

4. The deinstallation and reinstallation services are based on the following assumptions:

(i)   End User has sufficient data center resources, including rack space, power, LAN, and storage area network ports (on the same core switches as the source arrays) to connect the Product;

(ii)   End User will provide Infinidat personnel with any access or resource needed to support the Relocation, such as: badge, laptop use, adequate on-site workspace (i.e., desk, internet, telephone);

(iii)   Host hardware and software are validated to be at a supported level with the Systems prior to the Relocation; and

(iv)   The Relocation services depend upon End User's cooperation with Infinidat's reasonable instructions related to the Relocation, and the accuracy and completeness of any information provided to Infinidat.

5. Infinidat and End User shall specify key personnel contacts responsible for ensuring that the Parties maintain adequate communication and cooperation in order to ensure the timely and efficient delivery of deinstallation and reinstallation services.

6. Infinidat shall not, as from the date of the relocation (or at any time of any preparation preceding the same) be obligated to perform Support Services or meet any service level targets for the relocated Product.

7. Infinidat shall not be liable in any manner for any incomplete act, or resultant issues, deriving from or relating to the deinstallation and reinstallation services. End User assumes all risks related to the relocation of the Product, and Infinidat provides no representations or warranty regarding the services. End User agrees that any relocation activities undertaken without Infinidat's prior written consent shall invalidate any existing warranty on the Product.

8. End User 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 the Product as a result of the deinstallation and reinstallation services.

9. End User shall maintain full responsibility for the Product during the relocation. End User shall maintain adequate insurance (i.e., property insurance covering the full replacement cost of the Systems) to cover any damage to the Product during the relocation, and shall present a certificate of insurance evidencing such coverage prior to the relocation upon Infinidat's request.

10. INFINIDAT SHALL HAVE NO LIABILITY FOR (i) ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING FROM THE RELOCATION; (ii) ANY THIRD-PARTY ACTIVITIES; (iii) MISUSE OF ANY EQUIPMENT OR UNDERTAKING ANY ACTS NOT APPROVED BY INFINIDAT, INCLUDING RELOCATION TO AN UNNAPPROVED SITE; AND (iv) END USER OR ANY THIRD PARTY NOT FULFILLING DESIGNATED RESPONSIBILITES. INFINIDAT SHALL HAVE NO LIABILITY FOR LOSS OF, DAMAGE TO, DESTRUCTION OF, OR RECOVERY (OR LACK OF ABILITY TO RECOVER) OF DATA OR PROGRAMS ARISING OUT OF THE SERVICES OR SUPPORT OR ANY ACT OR OMISSION, INCLUDING NEGLIGENT ACTS OR OMISSIONS, BY INFINIDAT OR ANY THIRD-PARTY SERVICE PROVIDER. IF APPLICABLE, END USER IS RESPONSIBLE FOR BACKING UP ALL DATA FROM THE PRODUCT PRIOR TO INFINIDAT PERFORMING AN NIST STANDARD ERASURE OF THE ARRAY TO THE EXTENT END USER NEEDS OR DESIRES TO RETAIN SUCH DATA ELSEWHERE.

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D. Data Sanitization

1. Infinidat may, upon written request by an authorized representative of End User, agree to provide End User with certain data sanitization services to enable the sanitization of End User's data, as stored on certain End User drives. Such requesting representative shall be deemed for all purposes and means, a duly authorized representative of End User with the right, power and authority to legally request the same.

2. Data sanitization services shall be undertaken in accordance with the National Institute of Standards and Technology (NIST) procedures and subject to applicable laws.

3. Data sanitization services are conditioned upon End User providing Infinidat with full and complete remote access to the applicable Product components. Data sanitization services may not be possible with respect to all drives, including local End User drives. End User understands and agrees that Infinidat shall not be liable for the loss of any End User data stored on End User's drives and that any sanitized data cannot be retrieved. Any End User data to be sanitized hereunder shall first be backed up by End User, to the extent End User needs or desires to retain it elsewhere.

Appendix D

Optional Infinidat and Third-Party Add-Ons

A. Infinidat Add Ons

1. **Acceleration Kit**. Purchaser may acquire from Infinidat an Acceleration Kit, at the pricing agreed to in the applicable Quotation. 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.

2. **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 to 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 under the Support Terms and/or warranties and Infinidat takes no responsibility for their continued use or functionality in any manner.

B. Third-Party Add-Ons

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 End User's intended purpose.

<u>**Appendix E**</u>

<u>**Non-Standard Installation; Use of Third-Party Equipment**</u>

The terms of this Appendix E (Non-Standard Installation; Use of Third-Party Equipment) modify the Terms as follows in the event Purchaser requests and Infinidat agrees in writing (via Quotation or otherwise) to either: (A) install the Product in deviation from Infinidat's standard installation requirements ("**Non-Standard Installation**"), or (B) install the Product using any of the following components not provided by Infinidat ("**Third-Party Equipment**"): (i) End User's server rack, including any server rack which (a) contains any non-Infinidat product, (b) shares a power source with any non-Infinidat product, (c) utilizes a cooling method other than Infinidat's, or (d) splits the Infinidat components onto adjacent server racks; (ii) external power distribution units, including power distribution units sharing a power source with any non-Infinidat products; (iii) extension power cables connected to such external power distribution units; or (iv) any requested Third-Party Equipment deemed in Infinidat's sole discretion to impact the standard installation of the Product:

1. All capitalized terms used herein without definition shall have the meaning ascribed to them in Section 1 (Definitions) of the Terms. In the event of any conflict between the terms of this Appendix E and the Terms, the terms of this Appendix E shall prevail.

2. The definition of Hardware in the Section 1 (Definitions) of the Terms shall be amended to include the following at the end of the sentence: "but shall specifically exclude Third-Party Equipment".

3. Section 5.1 (Hardware Warranty) of the Terms shall be amended to include the following at the end of the first sentence: "it being understood that such Hardware does not include Third-Party Equipment, and that to the extent the use by Purchaser of Third-Party Equipment affects the Hardware specifications and accordingly Infinidat's compliance with this Section and with said specifications, the Hardware Warranty shall not apply."

4. Section 5.4 (Hardware Warranty) of the Terms shall be amended to include the following at the end: "or (vii) damage caused or repairs, replacements or fixes required to be made as a result of the use by Purchaser of Third-Party Equipment with the Infinidat Product and/or a Non-Standard Installation."

5. Section 9 (Indemnification) of the Terms shall be amended to include the following at the end of the paragraph: "Any reference to Hardware as set forth in this Section (Indemnification) shall exclude Third-Party Equipment."

6. Section 10 (Limitation of Liability) of the Terms shall be amended to add the following as a new paragraph: "Infinidat shall have no liability under this Section 10 (Limitation of Liability) or otherwise for any claim arising from or in any way related to use of Third-Party Equipment with Infinidat's Product and or to a Non-Standard Installation. In respect of the same, liability rests solely with Purchaser."

7. The following shall be added as a new paragraph to the end of Section 13 (Miscellaneous):

    Purchaser agrees, confirms, and understands the following terms concerning Purchaser's use of Third-Party Equipment in connection with the Product and/or a Non-Standard Installation:

    i)   Purchaser understands that the use of Third-Party Equipment and/or a Non-Standard Installation may impact the flow of electrical power to the Product. Full

responsibility for power supply to the Product is with Purchaser at all times, and, even if Infinidat becomes aware of power supply issues, Infinidat shall have no obligation to action, resolve or notify Purchaser of the same.

ii) Any damage caused to the Product, physically or operationally, by the use of Third-Party Equipment or due to a Non-Standard Installation is the responsibility of Purchaser. Infinidat is not obligated to provide support coverage, or to repair or replace the Product, in the event of such damages occur, even if the Product is on active support.

iii) Infinidat may not have the ability to remotely power up or down the Product even if the same is required for the correct operation of the Product. Infinidat will not be responsible for the Product not operating in such circumstances.

iv) Certain services related to Third-Party Equipment may not be provided to Purchaser, including, but not limited to the following: certain product tests, power consumption measurement, remote system power on an off, clearance of system messages by Infinidat (as they refer directly or indirectly to power), system temperature control, and any services related to the Product that are impacted by Third-Party Equipment as determined by Infinidat in its sole discretion. Infinidat shall not be responsible for any damages resulting from the lack of such services being provided to Purchaser.

8. Section 3.1 (Product Description) of the Support Services Terms and Conditions shall be amended to read as follows: ""**Hardware**" means the Infinidat "InfiniBox", including firmware components contained within the InfiniBox but specifically excluding any Third-Party Equipment."

9. Except as modified in this Appendix E, all Terms shall remain in full force and effect.

[END OF INFINIDAT GENERAL TERMS AND CONDITIONS.]