CUSTOMER PRODUCT TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS (THE "**AGREEMENT**") SET FORTH LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF OUR PRODUCTS AND SERVICES. YOUR SUBMISSION OF A PO (AS DEFINED BELOW) CONSTITUTES YOUR FULL ACCEPTANCE OF THIS AGREEMENT. YOU AND INFINIDAT LTD. ("**INFINIDAT**", "**WE**", "**US**" OR "**OUR**") SHALL BE SUBJECT TO THIS AGREEMENT UPON EACH PARTY'S SIGNING AND RETURNING A COPY OF THE PO TO THE OTHER PARTY. NO TERMS OR CONDITIONS OTHER THAN THOSE CONTAINED IN THIS AGREEMENT SHALL BE BINDING ON INFINIDAT UNLESS IT EXPRESSLY AGREES OTHERWISE IN WRITING.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY AND CAPACITY TO DO SO AND TO BIND SUCH ENTITY TO THIS AGREEMENT, AND IN WHICH CASE THE TERMS "**you**" OR "**your**" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH RIGHT, AUTHORITY AND CAPACITY, OR IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT EXECUTE THE PO, OR USE ANY OF OUR PRODUCTS OR SERVICES.

Infinidat reserves the right to modify these terms and conditions at any time, and such modifications shall become effective as soon as the newly modified Agreement is posted online at Infinidat Product_Ts_and_Cs. The modified Agreement shall automatically apply to each PO or PO renewal executed after the modified Agreement becomes effective.

You hereby waive any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under the Laws of your jurisdiction. To the extent that any of the terms and conditions of this Agreement conflict with any of the terms and conditions in the PO, this Agreement will take precedence.

1.   Definitions

"**Documentation**" means our user manuals, instructions and similar materials that are delivered with the Product.

"**Enhancement**" means an upgrade, update (such as a fix or patch), modification, improvement, addition and/or customization, including those resulting in new features and functionality.

"**Export Control Laws**" means all export and re-export control Laws that apply to you, including without limitation the Export Administration Regulations (EAR) maintained by the US Department of Commerce, trade and economic sanctions maintained by the US Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations (ITAR) maintained by the US Department of State.

"**Fees**" has the meaning given to it in Section 10.1 below.

"**Hardware**" means those hardware components specified in the PO.

"**Intellectual Property Rights**" means all rights, titles and interests in, to and under patents, inventions, discoveries, copyrights, trademarks, trade names, trade dress, technical information, data, know-how, show-how, trade secrets, designs, drawings, models, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual and industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof.

"**Laws**" means any federal, state and local laws, statutes, ordinances, rules and regulations of any jurisdiction

"**Professional Services**" means consulting, set-up, installation, integration, customization, localization, configuration, design, and testing services.

"**Proprietary Legends**" means any copyright, trademark, patent, or other proprietary legend, notice or designation.

"**Product**" means, collectively, the Hardware and Software.

"**Software**" means those software components specified in the PO.

"**Support Services**" means those support and maintenance services specified in **Schedule A** below.

2.   License

Subject to the terms and conditions of this Agreement (including, without limitation, your timely payment of all Fees), Infinidat hereby grants you a limited, nonexclusive, nontransferable, non-sublicensable, revocable (solely in accordance with Section 14) license, during the Term, to (a) use, in object code only, the Software, solely as bundled in and with the Hardware, for your internal business purposes only; and (b) use the Documentation solely in connection with your use of the Product (collectively, the "**License**"). You may make one copy of the Software and the Documentation for backup or archival purposes only, provided that such copies fully retain all Proprietary Legends contained in the original.

3.   License Restrictions

Except to the extent expressly permitted otherwise in this Agreement, or expressly mandated otherwise by applicable Law, you shall not, and shall not permit or encourage any third party (including, without limitation, your personnel) to, do any of the following without obtaining the prior express written consent of Infinidat:

3.1.   Copy or reproduce the Software;

3.2.   sell, assign, lease, lend, rent, distribute, sublicense, or make available the Software to any third party, or otherwise use the Software to operate in, or as, a time-sharing, outsourcing, or service bureau environment;

3.3.   modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code (or the underlying structure, sequence or organization) of, the Software;

3.4.   reverse engineer or disassemble the Product's Hardware.

3.5.   Integrate, incorporate, include, or bundle the Software into or with any other

3.6.   remove, alter, or conceal, in whole or in part, Proprietary Legends displayed or contained on/in the Product;

3.7.   circumvent, disable or otherwise interfere with security-related features of the Software, or with features that prevent or restrict the use thereof;

3.8.   make a derivative work of the Software, or use the Software to develop any service or product that is the same as, or substantially similar to, the Software;

3.9.   use the Software to perform comparisons or other "benchmarking" activities, either alone or in connection with any other software or hardware, or disclose or publish the results thereof or other performance information;

3.10. use the Software in any way that is infringing, deceptive, harassing, or defamatory, or for any inappropriate purpose (as Infinidat shall determine at its sole and absolute discretion), or contrary to any Law; and/or

3.11. publish, transmit, or link to any robot, spider, crawler, virus, malware, Trojan horse, spyware, or similar malicious code or item intended (or that has the potential) to damage, disrupt, compromise, or exploit the Software or any other software or hardware.

References in this Section 3 *(License Restrictions)* to the Software and to the Hardware, respectively, shall be taken to mean (i) the Software, in whole or in part, and the Hardware, in whole or in part; (ii) the

Documentation, in whole or in part; and (iii) any Enhancements to the foregoing made available by Infinidat.

In addition, you hereby acknowledge and agree that: (a) your full compliance with the foregoing restrictions is a condition to the License; and (b) the Software (including its source code, structures, sequence and organization) constitutes (or otherwise contains) valuable information and trade secrets of Infinidat.

4.   Ownership

INFINIDAT DOES NOT SELL OR TRANSFER TITLE, AND SHALL NOT BE DEEMED TO HAVE SOLD OR TRANSFERRED TITLE, IN ANY SOFTWARE TO YOU. As between you and Infinidat, Infinidat is and shall remain the sole and exclusive owner of all Intellectual Property Rights in, to and under the Product and the Documentation. Infinidat reserves all rights not expressly granted hereunder, and nothing in this Agreement constitutes a waiver of Infinidat's Intellectual Property Rights under any Law.

5.   Professional Services

You hereby acknowledge and agree that, except for the Support Services, Infinidat is not obligated under this Agreement to provide Professional Services of any kind. In the event you wish to receive Professional Services beyond the scope of the Support Services, with respect to the Product, you may request same from us in writing, and, subject to our agreement (in our sole and absolute discretion) to provide the Professional Services: (a) the Professional Services shall be charged in accordance with our then-current rates (the "**Professional Services Fees**"); and (b) you must fully cooperate with us, and shall provide us with all information, materials, facilities, assistance, and equipment reasonably requested by us, in performance of the Professional Services (and you acknowledge that certain undertakings by us will be dependent on such cooperation and provision by you). In addition to the Professional Services Fees, you will also reimburse us for any reasonable and documented travel, per diem living, and other out-of-pocket expenses incurred in the performance of Professional Services (collectively, "**Travel Expenses**").

6.   Limited Product Warranty

6.1.   Hardware Warranty. Infinidat warrants that for a period of one (1) year commencing on the date that the Product is delivered to you (as evidenced by the Product's original sales receipt), and subject to the terms and conditions of this Section 6, the Hardware components included in the Product will be free from material defects in materials and workmanship and will substantially comply with the applicable specifications set out in the Documentation (the "**Hardware Warranty**").

6.2.   Software Warranty. Infinidat warrants that for a period of ninety (90) days commencing on the date that the Product is delivered to you (as evidenced by the Product's original sales receipt), and subject to the terms and conditions of this Section 6, the Software components included in the Product will substantially comply with the applicable specifications set out in the Documentation (the "**Software Warranty**", and together with the Hardware Warranty, the "**Product Warranty**").

6.3.   Warranty Service. If you notify us (or the Infinidat-authorized reseller from whom you purchased the Product), in writing within the applicable Product Warranty periods as specified above (the "**Warranty Period**"), of a warranty claim, we will (a) in the case of a Hardware Warranty claim, repair or replace the defective Hardware component(s) with new or refurbished part(s); and (b) in the case of a Software Warranty claim, make commercially reasonable efforts to provide a fix, patch or workaround, which may be included in a future Software release, at no additional charge to you. No services provided by us under this Section 6.3 shall be deemed to re-commence any Warranty Period, and any repairs, fixes or replacement parts provided as part of the foregoing warranty service are warranted for the remainder of the applicable Warranty Period, as then in effect.

6.4.   Warranty Service Exclusions. Warranty services described in Section 6.3 above exclude, and Infinidat shall have no responsibility hereunder to support, any and all of the following: (i) Products that have been altered, reconfigured or modified by you or any third party other than   Infinidat's

authorized customer support personnel; (ii) Software that has been incorporated or bundled with other software or hardware not provided or approved in writing by Infinidat; (iii) Products not installed by Infinidat's authorized customer support personnel; (iv) damage to the Hardware or Software caused by your negligence, abuse or use other than as specified in the Documentation, or by natural disasters or other factors beyond the control of Infinidat; or (v) Software problems not reproducible by Infinidat.

6.5.   Support of Third Party Components. Notwithstanding anything herein to the contrary, third party hardware and software components that are not part of the Product are supported solely by, and subject to the support terms and conditions of, their respective third party providers.

6.6.   Responsibilities for Problems Not Caused By Product Defects. If we determine that you do not have a valid Product Warranty claim, you shall pay Infinidat, at Infinidat's then-current and standard Professional Services rates, for all work performed in connection with such determination.

6.7.   Your Warranty Responsibilities. As a condition to Infinidat's obligations under this Section 6, you agree to comply with the following:

(a)   Authority to Grant Access. Prior to requesting Product Warranty services, you shall obtain permission for Infinidat and Infinidat's authorized third party providers to access and use the Product and the data on it for the purpose of providing these Product Warranty services.

(b)   Third Party Warranties. The Product Warranty services may require Infinidat or its authorized third party providers to access hardware or software that is not provided by Infinidat as part of the Product. Some manufacturers' warranties may become void if Infinidat, its authorized third party provider or anyone else other than the manufacturer works on such hardware or software. It is your responsibility to ensure that Infinidat or its authorized third party providers' performance of Product Warranty services will not affect such warranties or, if it does, that the effect will be acceptable to you. NEITHER INFINIDAT NOR ITS AUTHORIZED THIRD PARTY PROVIDERS SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE PRODUCT WARRANTY SERVICES MAY HAVE ON THOSE WARRANTIES.

(c)   Onsite Obligations. If Infinidat determines that in order to perform its Product Warranty services it must do so at your premises on which the Product is located and/or remotely, you must provide free, safe and sufficient access to your facilities and the Product and any associated computer equipment on which the Product is installed.

6.8.   High Risk Activities. You acknowledges that the Product is not specifically designed or intended for use in environments in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High Risk Activities**"). Without limiting the generality of Section 6.9 (*Warranty Disclaimer*) below, Infinidat expressly disclaims any express or implied warranty of fitness for High Risk Activities.

6.9.   Warranty Disclaimer. EXCEPT TO THE EXTENT EXPLICITLY STATED OTHERWISE IN THIS AGREEMENT, THE PRODUCT IS PROVIDED "AS IS", WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION OF ANY KIND WHATSOEVER (WHETHER EXPRESS, IMPLIED OR STATUTORY), INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR DEALING OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY DISCLAIMED BY INFINIDAT.

IN ADDITION, INFINIDAT MAKES NO REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION (i) THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS WHICH YOU MAY SELECT FOR USE; (ii) REGARDING THE CONTENT, EFFECTIVENESS, USEFULNESS, RELIABILITY, AVAILABILITY, TIMELINESS, QUALITY, ACCURACY OR COMPLETENESS OF THE PRODUCT OR DOCUMENTATION; (iii) THAT YOUR USE OF THE PRODUCT OR DOCUMENTATION WILL MEET YOUR REQUIRMENTS OR EXPECTATIONS, OR WILL   BE

UNINTERRUPTED, SECURE OR ERROR-FREE; or (iv) THAT ANY ERROR CONDITIONS WILL BE CORRECTED.

THIS SECTION 6.9 *(Warranty Disclaimer)* CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

7.   <u>**Third Party Software**</u>

The Software may contain third party, including open source, software ("**Third Party Software**") that may be subject to third party terms and conditions ("**Third Party Terms**"). In such a case, we will make available a list of any such Third Party Software and related Third Party Terms in the Documentation, and will comply with any request you submit to us for exercising your rights under such Third Party Terms. To the extent of any conflict between any Third Party Terms and the terms or conditions of this Agreement, the Third Party Terms shall prevail in connection with the corresponding Third Party Software (but only to the extent of the conflict). Notwithstanding anything in this Agreement to the contrary, Infinidat does not make any representation, warranty, guarantee, condition, and does not undertake any defense or indemnification, with respect to any Third Party Software.

8.   <u>**Feedback**</u>

If you provide us with any feedback, ideas or suggestions regarding the Software, Hardware and/or Documentation ("**Feedback**"), you hereby grant us a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use, edit, aggregate, reproduce, distribute, create derivative works of, publicly display, publicly perform, and otherwise fully exploit such Feedback, for any use or purpose whatsoever.

9.   <u>**Support Services**</u>

If, under the PO, you purchase Support Services directly from Infinidat, then, for the initial period specified in the PO (the "**Initial Support Term**"), Infinidat will provide such services to you in accordance with the *Support Services* terms and conditions set out in <u>**Schedule A**</u> below. Unless specified otherwise in the PO, Support Services will automatically be extended each year for an additional twelve (12) month period (each, a "**Renewed Support Term**"), payable at Infinidat's then current Support Services rates; *provided, however,* that either party may terminate Support Services at the end of the Initial Support Term or at the end of any Renewed Support Term by giving written notice to the other party of its intent not to renew at least ninety (90) days prior to the end of such applicable term. In addition to the foregoing, we have the right to suspend or cancel Support Services if you breach any of this Agreement, the terms of the PO, or any other material term or condition of <u>**Schedule A**</u>, and such breach, if curable, is not cured by you within thirty (30) days after you receive notice of the breach.

10.   <u>**Payment**</u>

10.1.   If you purchase the Product and/or Support Services directly from Infinidat, you agree to pay Infinidat the fees set forth in the PO and the expenses as specified in Section X (*Shipment Terms*) below, if applicable (collectively, the "**Fees**").

10.2.   The Fees shall be due and payable within thirty (30) days of Infinidat's invoice and shall be paid in US dollars by wire transfer in accordance with the instructions of Infinidat. Fees for Support Services for each Product purchased by you under the PO will be paid annually in advance of the period for which such Support Services will be provided to you. Any payment which is properly due hereunder and is not paid by the due date will incur interest at a rate of 1.5% per month, not to exceed the maximum amount allowed by applicable Law.

10.3.   Where you order the Product directly from Infinidat, then, unless otherwise stated in the PO, Infinidat will ship the Product. Title to the Hardware components of the Product will pass to you upon your payment in full of the Fees specified in the applicable PO.

10.4. All amounts payable to Infinidat under this Agreement are exclusive of applicable taxes (including without limitation VAT), withholdings or duties, and the Fees are the net amounts which you have to pay Infinidat. You shall be responsible for the payment of all taxes, withholdings and duties of any kind payable with respect to your access to and use of the Product, as well as for any Professional Services arising out of or in connection with this Agreement (if any), other than taxes based on Infinidat's net income. In the event that you are required by applicable Law to withhold or deduct taxes imposed upon you for any payment under this Agreement, then the amounts due to Infinidat shall be increased by the amount necessary so that Infinidat receives an amount equal to the sum it would have received had you not made any withholding or deduction.

11. Indemnification

11.1. In the event of any claim, action, proceeding or suit by a third party against you claiming that the Product infringes such third party's patent or copyright (an "**Infringement Claim**"), Infinidat defend and hold you harmless against the Infringement Claim, and will pay (a) the amounts awarded (and then-currently payable) against you in such Infringement Claim (to the extent of such infringement); or (b) the amounts agreed to settle such Infringement Claim.

11.2. Our obligations under Section 10.1 shall only apply if you (a) promptly notify us in writing of the Infringement Claim; (b) fully cooperate with us in, but permit us to assume full control of, the defense and/or settlement of the Infringement Claim; and (c) refrain from admitting any liability, or otherwise compromising the defense of any part of the Infringement Claim, without our prior express written consent. Infinidat agrees not to settle any Infringement Claim without your prior express written consent, not to be unreasonably withheld, conditioned or delayed.

11.3. Should the Product (or any part thereof) become, or in our opinion be likely to become, the subject of any Infringement Claim, then you hereby permit us, at our option and expense, to either (a) procure for you the right to continue using the Product or such part (as the case may be); or (b) replace or modify the Product or affected part it so that it becomes non-infringing, while maintaining substantially the same functionality. If neither (a) nor (b) is commercially practicable, then we may, in our sole and absolute discretion, terminate your rights under this Agreement with respect to the Product, and: (i) refund to you the Fees paid by you to Infinidat or its authorized reseller (as the case may be) with respect to the Product, subject to a 3 year straight-line depreciation schedule; and (b) in the case of Support Services purchased directly from Infinidat, provide a refund of any periodic fees paid to Infinidat for any portion of such Support Services not yet received with respect to the affected portion of the Product.

11.4. Infinidat shall have no obligation or liability with respect to an Infringement Claim that is based upon or results from: (a) the combination of the Product (or part thereof) with any equipment, hardware, firmware, or software not furnished or approved in writing by Infinidat, if there would have been no infringement but for such combination; (b) any modification to/of the Product (or part thereof) not performed by Infinidat; (c) unauthorized use of the Product (or part thereof); (d) your failure to install or have installed any Enhancements to the Product provided by Infinidat, if installation of such Enhancement would have avoided the infringement; and/or (e) our compliance with your specifications, designs and/or instructions. You hereby agree to defend (at your expense) and hold harmless Infinidat, its Affiliates and their respective directors, officers, employees, and agents against any third party action resulting from your (and/or your contractors') acts or omissions as described in items (a) through (e) inclusive of this Section 10.4, and you agree to pay (x) the amounts awarded (and then-currently payable) against Infinidat in such action; or (y) the amounts agreed to settle such action (provided that you may not settle any such action without the prior express written consent of Infinidat, not to be unreasonably withheld, conditioned or delayed).

11.5. This Section 10 *(Indemnification)* states the entire obligation and liability of Infinidat, and your sole and exclusive remedy, with respect to an Infringement Claim. \

12. Limitation of Liability

IN NO EVENT WILL INFINIDAT OR ITS AFFILIATES BE LIABLE FOR:

(i)	ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES;
(ii)	ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, OR LOSS OF ANTICIPATED SAVINGS;
(iii)	ANY LOSS OF, OR DAMAGE TO, DATA, REPUTATION, OR GOODWILL; AND/OR
(iv)	THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.

THE TOTAL CUMULATIVE LIABILITY OF INFINIDAT AND ITS AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED (A) THE AMOUNT PAID BY YOU TO, AND ACTUALLY RECEIVED BY, INFINIDAT UNDER THE PO IN WHICH THE LIABILITY WAS INCURRED, OR (B) IF NO SINGLE PO IS SO APPLICABLE, THE AMOUNT OF FEES (IF ANY) PAID BY YOU TO, AND ACTUALLY RECEIVED BY, INFINIDAT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (x) EVEN IF INFINIDAT OR ITS AFFILIATES HAVE BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES OR DAMAGES; (y) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; and (z) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY (SUCH AS, BUT NOT LIMITED TO, BREACH OF CONTRACT OR TORT).

13. <u>Confidentiality</u>

During the Term, each party may have access to certain non-public proprietary, confidential or trade secret information, data or materials of the other party, whether furnished before or after your entering into this Agreement, and in any form or media and regardless of the manner in which furnished, including, without limitation, trade secrets and other information related to the products, services, practices and methods, software, technology, data, know-how, or business of the other party, and any such other information that a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive (collectively, "**Confidential Information**"). Confidential Information shall exclude any information, data and materials that (i) is now, or subsequently becomes, generally available in the public domain through no fault or breach on the part of receiving party; (ii) the receiving party can demonstrate in its records to have had rightfully in its possession prior to disclosure of the Confidential Information by the disclosing party, and which is not subject to prior continuing obligations of confidentiality; (iii) receiving party rightfully obtains from a third party who has the right to transfer or disclose it, without default or breach of this Agreement; (iv) the receiving party can demonstrate in its records to have independently developed, without breach of this Agreement and/or any use of or reference to the disclosing party's Confidential Information. The receiving party agrees: (a) not to disclose the disclosing party's Confidential Information to any third parties other than to its, directors, officers, employees, advisors or consultants (collectively, the **"Representatives"**) on a strict "need to know" basis only and provided that such Representatives are bound by written agreements to comply with confidentiality obligations as protective as those contained herein, and in any event, the receiving party shall remain responsible for the acts or omissions of its Representatives to the same extent as if such acts or omissions were performed by the receiving party; (b) not to use or reproduce any of the disclosing party's Confidential Information for any purposes except to exercise its rights and perform its obligations under this Agreement; (c) to keep the disclosing party's Confidential Information confidential using at least the same degree of care it uses to protect its own confidential information, which shall in any event not be less than a reasonable degree of care. Notwithstanding the foregoing, in the event the receiving party is required to disclose Confidential Information of the disclosing party pursuant to any law, regulation, or governmental or judicial order, the receiving party shall promptly notify the disclosing party in writing of such law, regulation or order and shall reasonably cooperate with the disclosing party in opposing such disclosure or obtaining such other protective measures. In any event, any disclosure made pursuant to the foregoing shall be made solely to the extent required by such law, regulation or order (as the case may be).

Upon termination of this Agreement, or otherwise upon written request by the disclosing party, the receiving party shall promptly return the disclosing party's Confidential Information to the disclosing party or, if requested by the disclosing party, permanently and irretrievably delete   or

destroy (as instructed) such Confidential Information and certify such compliance in writing. Without limiting the generality of the foregoing sentence, upon termination of this Agreement you agree to promptly return to Infinidat, or if instructed by Infinidat, permanently and irretrievably delete or destroy all copies and partial copies of the Software and Documentation in your possession, including such that are fixed or resident in the memory or hard disks of your systems or other storage devices, and such that were made for your backup or archival purposes; and, thereafter, you agree to certify in writing to Infinidat compliance with such instructions, and that the Software and Documentation are no longer in use, and will not in the future be used, by you.

The parties' obligations with respect to Confidential Information shall expire five (5) years from the date of termination of this Agreement, unless a longer period of protection applies under applicable Law, either as trade secret information or otherwise.

Each party acknowledges that in the event of a breach or threatened breach of this Section *(Confidentiality)* by the other party, the non-breaching party may suffer irreparable harm or damage for which monetary damages will be inadequate, and will, therefore, be entitled to injunctive relief and specific performance to enforce the obligations under this Section (without the need to post a bond), without derogating from any other rights and remedies under this Agreement, at law or in equity.

14. Term and Termination

This Agreement shall continue until terminated as set forth in this Section. Either party may terminate this Agreement by giving written notice to the other party if the other party breaches a material provision of this Agreement and fails to cure the breach (if curable) within thirty (30) days after being given written notice thereof. Upon termination of this Agreement for any reason, the license rights to Software and Documentation under this Agreement shall immediately terminate. Sections 4, 6.9, 8, 12, 13, 14, and 17 through 21 (inclusive), and all accrued rights to payment, shall survive termination of this Agreement for any reason.

15. Reference Customer

Infinidat may use your name and logo on its website and in its promotional materials to state that you are a customer of Infinidat and a Product user. You agree to serve as a reference customer of Infinidat and shall cooperate with our reasonable marketing and referencing requests.

16. Export Controls

You shall comply with all, and shall be solely responsible for obtaining all required authorizations and licenses from applicable government authorities under, Export Control Laws, in connection with your use of the Product and Documentation.

17. US Government Rights

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 this Agreement.

18. Independent Contractors

You and Infinidat are solely independent contractors. Nothing in this Agreement shall create a partnership, joint venture, agency, or employment relationship between you and Infinidat. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

19. Assignment

This Agreement and any rights or obligations hereunder: (i) may not be assigned by you without the express prior written consent of Infinidat; but (ii) may be assigned by Infinidat, without obligation or restriction. Subject to the foregoing, this Agreement shall bind and benefit each party and its respective successors and permitted assigns. Any prohibited assignment shall be null and void.

20. Governing Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, USA without regard to its conflicts of law rules and principles. Any claim, dispute or controversy between you and Infinidat shall be subject to the exclusive jurisdiction and venue of the courts located in New York County, New York, USA and you hereby irrevocably submit to the personal jurisdiction of such courts and waive any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, Infinidat may seek injunctive relief or specific performance in any court worldwide that has jurisdiction. YOU AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, YOU AGREE THAT SUCH CAUSE OF ACTION SHALL BE DEEMED PERMANENTLY BARRED.

21. General

21.1. Entire Agreement. This Agreement (including its Schedules below) constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written statements, agreements and understandings regarding such subject matter.

21.2. Headings. Any section or sub-section headings used in this Agreement are for convenience only, and shall not be used or relied upon in interpreting any provision of this Agreement.

21.3. Notice. You agree that Infinidat may send you notices by email, by regular mail, and/or via postings on or through our website at: www.infinidat.com. You agree to send all notices to Infinidat, to _____.

21.4. Waiver. No failure or delay by either party in exercising or enforcing any right, power or remedy under this Agreement (or otherwise at law or in equity) will operate as a waiver thereof. Waivers shall apply only in the specific instance in which given. Any waiver by Infinidat of any provision of this Agreement shall only be valid if in writing, duly signed, and sent to you via regular mail.

21.5. Severability. If any court of law that has jurisdiction rules that any provision of this Agreement is invalid, then such invalid provision will not affect any of the remaining provisions of this Agreement, which shall remain in full force and effect.

Last Updated: 9/2017

SCHEDULE A

Support Services

These Support Services terms and conditions (the "**Support Terms**") are incorporated and made a part of the Customer Product Agreement ("**Agreement**"). Capitalized terms not otherwise defined herein shall have the same meaning as in the Agreement.

1.   <u>SUPPORT SERVICES</u>

Subject to the terms hereof, Infinidat shall provide the Support Services described herein with respect to the Product, described in Section 3 (*Product Description*) below and in the PO (the "**Product**").

2.   <u>DEFINITIONS</u>

2.1.   "**Infinidat Website**" means the Infinidat website located on the Internet at www.infinidat.com.

2.2.   "**Current Release**" means the current release of the Product as provided by Infinidat under the terms of these Support Terms.

2.3.   "**Error**" means any reproducible failure in the Product that causes the Product to fail to comply substantially with the Product specifications set out in the Documentation.

2.4.   "**Error Correction**" means the use of commercially reasonable efforts to correct Errors, provide a workaround, or replace a component, as determined solely by Infinidat, through the provision of Telephone Support, Online Support, Remote Support, Third Party Support, and/or Onsite Support, in accordance with these Support Terms.

2.5.   "**Installation Services**" means services to install the Product and Updates.

2.6.   "**Online Support**" means technical support provided by Infinidat during Support Hours concerning the installation and use of the Supported Release.

2.7.   "**Onsite Support**" means providing Error Correction services at your premises on which the Product is located, if required, as determined by Infinidat, in its sole and absolute discretion.

2.8.   "**Onsite Maintenance**" comprises the following:

2.8.1. Installation of engineering changes impacting the reliability of the Product, which Infinidat determines to be applicable to the Hardware.

2.8.2. Preventive maintenance for the Product, such as adjustment or replacement of unserviceable parts.

2.8.3. The following items are excluded from the scope of Onsite Maintenance:

(a)   Providing and maintaining a suitable environment for the Product, as specified by Infinidat;

(b)   The availability and performance of any electrical work external to the Product or the maintenance of accessories, attachments, equipment or other devices not listed hereto;

(c)   The painting, refinishing or other refurbishment of the Product;

(d)   Repair of damage resulting from accident, natural disaster, transportation, neglect or misuse, improper maintenance, failure to continually provide a suitable installation environment (including but not limited to failure of electrical power, air conditioning or humidity control), or from causes other than ordinary use;

(e)   Repair of Field Replacement Units (FRU) if the factory seal of the FRU has been broken;

(f)   The movement, rearrangement or reconfiguration of the Product or cables, additional wiring, or repair to a previously prepared site to make it operational;

(g) The installation or removal of accessories, attachments or other devices, or the furnishing of supplies, maintenance or other services on Infinidat provided equipment not installed and utilized with the Product;

(h) Physical installation, de-installation and replacement of Product equipment within your environment;

(i) Any maintenance service which is impractical for Infinidat's service personnel or representatives to render because of alterations in the Product or its connection by mechanical or electrical means to another machine or device.

2.9. "**Previous Sequential Release**" means at any time the release of a Product that has been replaced by Current Release of the same Product.

2.10. "**Priority A Error**" means an Error that renders a Product inoperative or causes a Product to fail.

2.11. "**Priority B Error**" means an Error that substantially degrades the performance of a Product or materially restricts your use of a Product.

2.12. "**Priority C Error**" means an Error that causes only a minor impact on the performance of a Product or your use of a Product.

2.13. "**Remote Support**" means remote troubleshooting assistance for common Product support issues, when available and with your consent, in which Infinidat's authorized customer support personnel connect directly to your system (can be over a secure Internet connection) to expedite and enhance the troubleshooting process.

2.14. "**Support Hours**" means the hours in which Telephone Support and Online Support are available, as specified in Section 4.2 (*Service Levels*) below.

2.15. "**Supported Release**" means the (i) Current Release; and (ii) Previous Sequential Release for a period of twelve (12) months from the release date of the Current Release.

2.16. "**Unsupported Release**" means a specific release that was declared as End of Life, with a 6-month notice.

2.17. "**Telephone Support**" means technical support provided by Infinidat over the telephone at the phone number provided on the Infinidat Website during Support Hours concerning the installation and use of the Supported Release.

2.18. "**Third Party Support**" means technical support, as specified in Section 5.5 (*Support of Third Party Components*) of the Agreement, for the resolution of Errors in the third party Hardware and/or Software components identified in Section 3 (*Product Description*) below.

2.19. "**Updates**" means all published revisions and corrections to the printed documentation and corrections and new releases of the Product, which are generally made available to Infinidat's supported customers at no additional cost or for media and handling charges only. Updates shall not include any options or future products, which Infinidat sells separately.

2.20. "**Upgrades**" means a new release of the Software issued by Infinidat provided for the purpose of materially enhancing the functionality or performance of the Product, made generally available to customers paying for and receiving Support Services.

2.21. "**Capacity on Demand (CoD)**" **–** Purchasing option that enables customers to purchase a portion of delivered storage array capacity. The accounting for billable CoD capacity is done by calculating the "**System CoD Capacity**"

2.22. "**Pool CoD Capacity**" - Billable capacity of a pool in InfiniBox system. The billable pool capacity is calculated as the higher value between pools' physical total and pools' total virtual capacity.

i.e. MAX(pool.physical_total , pool.virtual_total)

2.23. **"System CoD Capacity" -** Summation of **Pool CoD Capacity** of all the pools defined in the InfiniBox system.

3. <u>PRODUCT DESCRIPTION</u>

As further specified in the PO, the Product consists of both hardware and software components, generally described as follows:

3.1.   "**Hardware**" means the Infinidat "InfiniBox F Series", including firmware components contained within the InfiniBox.

3.2.   "**Software**" means software that is supplied by Infinidat, complementary to the Hardware.

4.   SUPPORT SERVICES

4.1.   Support Scope. As part of the Support Services, Infinidat shall provide Installation Services, Updates, Telephone Support, Online Support, Remote Support (if applicable), Third Party Support, and Onsite Support (if applicable), solely with respect to a Supported Release of the Product.

4.2.   Service Levels. Infinidat shall provide Telephone Support, Online Support and Error Correction services (other than Third Party Support) in accordance with the chart below:

	Priority A Errors	Priority B Errors	Priority C Errors
Support Hours	24 hours per day, 7 days per week.		
Response Times for Acknowledgement	1 hour	4 hours	Next business day
Error Correction Procedure	Assign senior engineer to correct the Error. Notify senior management that such Errors have been reported and that steps are being taken to correct the Error. Provide you with periodic reports on the status of the Error Correction. Exercise all commercially reasonable efforts on an urgent first priority basis to provide you with an Error Correction.	Commercially reasonable efforts to provide you with an Error Correction and to include the Error Correction in a maintenance release.	Infinidat may provides an interim workaround or patch and apply the Error Correction in a major release.
Onsite Support Availability	Within 24 hours from the point at which Infinidat determines, in its sole discretion, that Onsite Support is required.		

4.3.   Support Contacts. You shall designate one or more support contacts that are authorized to submit Product problems to Infinidat for resolution hereunder.

4.4.   Responsibilities for Problems Not Caused By Product Error. If Infinidat believes that a problem reported by you may not be due to an Error in the Product, Infinidat will so notify you. At that time, you may (i) instruct Infinidat to proceed with problem determination at your possible expense as set forth below, or (ii) instruct Infinidat that you do not wish the problem to be pursued at your possible expense.

4.4.1.   If you request that Infinidat will proceed with the problem determination at your possible expense and Infinidat determines that the problem was not due to an Error, you shall pay Infinidat, at Infinidat's then-current and standard Professional Services rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith.

4.4.2.   You shall not be liable for (i) problem determination or repair to the extent problems are due to Errors in a Product, (ii) work performed under this paragraph in excess of its written instructions, or (iii) work performed after you have notified Infinidat in writing that you no longer wish Infinidat to work on the problem determination to be continued at your possible expense (such notice shall be deemed given when actually received by Infinidat).

4.4.3.   If you instruct Infinidat that you do not wish the problem to be pursued at your possible expense or if such determination requires effort in excess of your instructions, Infinidat may, at its sole discretion, elect not to investigate the problem without liability.

4.5.   Spare & Replaced Parts. If spare parts have been shipped, shipping labels will be included in the event of a return of unused and defective parts after the service is complete. As part of the Support Services, you agree to return the replaced parts to Infinidat.

5.   EXCLUSIONS AND LIMITATIONS

Support Services excludes, and Infinidat shall have no responsibility hereunder to support, any and all of the following:

5.1.   Products that have been altered, modified or (in the case of Hardware) opened by you or any third party other than Infinidat's authorized customer support personnel.

5.2.   Software that has been incorporated or bundled with other software or hardware not provided by Infinidat;

5.3.   Products not installed by Infinidat's authorized customer support personnel.

5.4.   Damage to the Hardware or Software caused by your negligence, abuse or use other than as specified in the Documentation, natural disasters, acts of God (such as but not limited to, lightening, flooding, tornado, earthquakes and hurricanes), or other factors beyond the control of Infinidat.

5.5.   Any action or service not specifically mentioned in these Support Terms.

6.   YOUR RESPONSIBILITIES

As a condition to Infinidat's obligations under these Support Terms, you shall have the following responsibilities:

6.1.   Service Request. You should submit service requests according to Infinidat provided procedures.

6.2.   Software/Data Backup. It is your responsibility to complete a backup of all existing data, software, and programs connected to the Products prior to Infinidat performing any Onsite Support or Remote Support. NEITHER INFINIDAT NOR ITS AUTHORIZED THIRD PARTY PROVIDERS WILL BE RESPONSIBLE FOR LOSS OF OR RECOVERY OF DATA, PROGRAMS, SOFTWARE OR LOSS OF USE OF SYSTEM(S) OR NETWORK.

6.3.   Authority to Grant Access. You represent and warrant that you have obtained permission for Infinidat and Infinidat's authorized third party providers to access and use the Product, the data on it, and all Hardware and Software components included in it, for the purpose of providing these Support Services, including without limitation, when providing Onsite Support and Remote Support. If you do not already have that permission, it is your sole

responsibility to obtain it, at your expense, before you seek performance of these Support Services.

6.4. <u>Cooperate with Infinidat's Support Personnel</u>. You agree to cooperate with and follow the instructions given by Telephone Support, Online Support, Onsite Support and Third Party Support personnel.

6.5. <u>Supported Releases</u>. The support entitlement is extended to all supported versions of the Product as published by Infinidat from time to time. It is your responsibility to keep the Product updated with a supported version.

6.6. <u>Third Party Warranties</u>. These Support Services may require Infinidat or its authorized third party providers to access hardware or software that is not provided by Infinidat as part of the Product. Some manufacturers' warranties may become void if Infinidat, its authorized third party providers or anyone else other than the manufacturer works on such hardware or software. It is your responsibility to ensure that Infinidat or its authorized third party providers' performance of Services will not affect such warranties or, if it does, that the effect will be acceptable to you. NEITHER INFINIDAT NOR ITS AUTHORIZED THIRD PARTY PROVIDERS TAKES RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE SUPPORT SERVICES MAY HAVE ON THOSE WARRANTIES.

6.7. <u>Onsite Obligations</u>. Where Support Services require Onsite Support or Remote Support, you must provide free, safe and sufficient access to your facilities and the Product and any associated computer equipment on which the Product is installed. Sufficient access includes ample working space, electricity, VPN and a local telephone line.

7. <u>GENERAL</u>

Infinidat may assign and delegate these Support Services to qualified third party service providers. Infinidat shall not be liable for any failure or delay in performance under these Support Terms due to causes beyond its reasonable control.

Any illegal or unenforceable provision shall be severed from these Support Terms.

You agree that any information received pursuant to these Support Terms shall be deemed to be subject to the non-disclosure obligations set forth in the Agreement. Your obligation of payment of moneys under these Support Terms shall survive termination of these Support Terms or the Agreement.

Support Services will only be provided in the country where the Support Services have been purchased, unless stated otherwise.

You agree to allow Infinidat to store and use your contact information, including names, phone numbers, and e-mail addresses. Such information will be processed and used in connection with Infinidat's support personnel and Infinidat's authorized third party providers.