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## INFINIDAT® End User License Agreement

IMPORTANT – PLEASE READ THIS CAREFULLY: THIS IS A LEGAL AGREEMENT (THIS "EULA") BETWEEN INFINIDAT WHICH MEANS INFINIDAT FEDERAL, INC. ("INFINIDAT", "OUR", "US" OR "WE") AND YOU, EITHER AS AN INDIVIDUAL OR AS AN AUTHORIZED REPRESENTATIVE OF AN ENTITY ("YOU" OR "YOUR"), THAT THAT HAS OBTAINED THE PRODUCT AND/OR SOFTWARE, AS DEFINED BELOW, DIRECTLY FROM INFINIDAT OR FROM AN AUTHORIZED INFINIDAT PARTNER. BY CLICKING ON THE "ACCEPT" BUTTON AT THE END OF THIS EULA OR BY USING THE PRODUCT AND/OR SOFTWARE IN ANY WAY YOU ACCEPT THIS EULA AND AGREE TO BE BOUND BY ITS TERMS.

THIS EULA SHALL AUTOMATICALLY GOVERN YOUR USE OF THE PRODUCT AND/OR SOFTWARE UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT IN EFFECT WITH INFINIDAT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF AND IS EXPLICITLY STATED TO TAKE PRIORITY OVER THIS EULA.

IF YOU ARE ENTERING INTO THIS EULA 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 EULA, IN IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY.


1. Definitions

"**Affiliate**" means any corporation, company or other business entity that directly or indirectly controls, is controlled by or is under common control with Infinidat.

"**Documentation**" means our user manuals, instructions and similar materials that are delivered with the Product, including any updates or supplements thereto.

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

"**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 you, as a constituent part of the Product.

"**Intellectual Property Rights**" means all rights, titles and interest 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 applicable laws, statutes, ordinances, rules and regulations of any jurisdiction (including for the avoidance of doubt any federal, state, provincial or local laws).

"**Product**" means, collectively, the Hardware and Software, and any Enhancement thereto provided by Infinidat at any time.

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

"**Software**" means the Infinidat proprietary software product licensed and provided at any time, including firmware embedded in the software programs provided by Infinidat and any Enhancement thereto.

2. **License**. Subject to the terms and conditions of this EULA and payment of the applicable fees, Infinidat hereby grants you a limited, nonexclusive, nontransferable, non-sublicensable, revocable (solely in accordance with the termination provisions below) license to: (i) use, in object code only, the Software for your internal business purposes only; and (ii) use the Documentation solely in connection with your use of the Product (collectively, the "**License**").

3. **Limited License Capacity**. If the Products are subject to a specified capacity limit, you are only authorized to use the Software at or below the limit you paid for. Infinidat or its authorized partner, may invoice you, and you shall pay, for the additional capacity in the Product after your usage exceeds the specified capacity limit. You shall enable the Product's Phone Home feature to allow us to monitor capacity usage. We reserve the right to inspect or otherwise verify compliance with this Section 3 (Limited License Capacity). Failure to pay for additional capacity shall enable Infinidat in its discretion to terminate the License or Support Services.

4. **License Restrictions**. Except to the extent expressly permitted otherwise in this EULA, 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: (i) copy or reproduce the Software; (ii) sell, assign, lease, lend, rent, distribute, sublicence, 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; (iii) 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; (iv) reverse engineer or disassemble the Product's hardware; (v) integrate, incorporate, include, or bundle the Software into or with any other hardware or software; (vi) remove, alter, or conceal, in whole or in part, any Proprietary Legends displayed or contained on/in the Product; (vii) circumvent, disable or otherwise interfere with security-related features of the Software, or with features that are intended to prevent or restrict the use thereof; (viii) 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; (ix) 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; or (x) use the Software for any inappropriate purpose (as Infinidat shall determine in its sole and absolute discretion), or contrary to any Law.

5. **Ownership**. INFINIDAT AND ITS LICENSORS DO 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 and its licensors are and shall remain the sole and exclusive owners of all Intellectual Property Rights in, to and under the Product, the Software and the Documentation. Infinidat reserves all rights not expressly granted hereunder, and nothing in this EULA constitutes a waiver of Infinidat's Intellectual Property Rights under any Law.

6. **Limited Product Warranties**.

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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), unless otherwise required by applicable law, and subject to the terms and conditions of this Section 6 (Limited Product Warranties), 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, unless otherwise required by applicable law, and subject to the terms and conditions of this Section 6 (Limited Product Warranties), 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 "**Limited Product Warranty**").

6.3.   **Warranty Service**. If you notify us in writing within the applicable Product Warranty periods as specified above (the "**Warranty Period**"), of a warranty claim, we will: (i) in the case of a Hardware Warranty claim, repair or replace the defective hardware component(s) with new or refurbished part(s); and (ii) 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 (Warranty Service) 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 herein above exclude, and Infinidat shall have no responsibility hereunder to repair, replace, fix or provide any support or any other remedial services for, 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, and which have not been operated, repaired or maintained in accordance with Infinidat's instructions; (iv) Products which have been operated outside of the environmental specifications for the Product; (v) 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 (vi) Software errors not reproducible by Infinidat.

6.5.   **Your Warranty Responsibilities**. As a condition to Infinidat's obligations under this Section 6 (Limited Product Warranties), you agree that 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. For the avoidance of doubt, the license referenced herein, together with the Limited Product Warranty remain valid only on the basis of Infinidat's ability to remotely access and/or control the Product as may be required at any time.  As part of this remote access the Product will send to Infinidat monitoring data information on a regular basis.

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6.6. **High Risk Activities**. You acknowledge 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, including, without limitation, any nuclear, chemical or weapons production facility or activity, aircraft control devices, aerospace equipment, or medical life support equipment (collectively, "**High Risk Activities**"). Without limiting the generality of the disclaimer referenced below, Infinidat expressly disclaims any express or implied warranty of fitness for High Risk Activities, and any liability for any damage arising as a result of the use of the Product in any High Risk Activity.

6.7. EXCEPT TO THE EXTENT EXPLICITLY STATED OTHERWISE IN THIS EULA, THE PRODUCT IS PROVIDED "AS IS", WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION OF ANY KIND WHATSOEVER ARE HEREBY DISCLAIMED BY INFINIDAT. INFINIDAT MAKES NO REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION (i) THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS WHICH YOU MAY SELECT FOR USE; (ii) THAT YOUR USE OF THE PRODUCT WILL MEET YOUR EXPECTATIONS, BE ERROR-FREE AND THAT ANY ERROR CONDITIONS WILL BE CORRECTED.

7. **Third-Party Software**. The Software may contain third party, including open source software and software products specifically under license to Infinidat ("**Third-Party Software**") that may be subject to third party end-user terms and conditions ("**Third-Party Terms**"). In such a case, upon receipt of a written request from you, we will make available a list of any such Third-Party Software and related Third Party Terms in the Documentation, and will use commercially reasonable efforts to comply with any reasonable 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 EULA, the Third-Party Terms shall prevail in connection with the corresponding Third-Party Software (but only to the extent of the conflict, and not in connection with any of our Software). Notwithstanding anything in this EULA 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. **Indemnification**.

8.1. 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 U.S. patent or copyright (an "**Infringement Claim**"), Infinidat shall defend and hold you harmless against the Infringement Claim, and will pay: (i) the amounts awarded (and then-currently payable) against you in such Infringement Claim (to the extent of such infringement); or (ii) the amounts agreed to settle such Infringement Claim.

8.2. Our obligations under this Section 8 (Indemnification) shall only apply if you: (i) promptly notify us in writing of the Infringement Claim; (ii) fully cooperate with us in, but permit us to assume full control of, the defense and/or settlement of the Infringement Claim; and (iii) 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.

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8.3.     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: (i) procure for you the right to continue using the Product or such part (as the case may be); or (ii) replace or modify the Product (or affected part thereof) so that it becomes non-infringing, while maintaining substantially the same functionality. If neither (i) nor (ii) is commercially practicable, then we may, in our sole and absolute discretion, terminate your rights under this EULA with respect to the Product, and: (iii) refund to you on a pro rata basis the Fees paid by you to Infinidat or its authorized reseller or distributor (as the case may be) with respect to the Product, subject to a 3 year straight-line depreciation schedule; and (iv) 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.

8.4.     Infinidat shall have no obligation or liability with respect to an Infringement Claim that is based upon or results from: (i) 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; (ii) any modification to/of the Product (or part thereof) not performed by Infinidat; (iii) unauthorized use of the Product (or part thereof); (iv) 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 (v) our compliance with your specifications, designs and/or instructions. This Section (Indemnification) states the entire obligation and liability of Infinidat, and your sole and exclusive remedy, with respect to an Infringement Claim.

9. **Limitation of Liability**. IN NO EVENT WILL INFINIDAT OR ITS AFFILIATES OR BE LIABLE FOR: (i) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; (ii) ANY LOSS OF PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF REVENUE, OR LOSS OF ANTICIPATED SAVINGS; (iii) ANY LOSS OR CORRUPTION 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 EULA SHALL NOT EXCEED THE AMOUNT PAID BY YOU TO, AND ACTUALLY RECEIVED BY, INFINIDAT OR AN AUTHORIZED PARTNER FOR THE PRODUCT IN WHICH THE LIABILITY WAS INCURRED, OR IF NO SINGLE QUOTE IS SO APPLICABLE, THE AMOUNT OF FEES (IF ANY) PAID BY YOU, AND ACTUALLY RECEIVED BY, INFINIDAT OR AN AUTHORIZED PARTNER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (a) EVEN IF INFINIDAT OR ITS AFFILIATES HAVE BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES OR DAMAGES; (b) EVEN IF ANY REMEDY IN THIS EULA FAILS OF ITS ESSENTIAL PURPOSE; AND (c) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY (SUCH AS, BUT NOT LIMITED TO, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR TORT). SOME JURISDICTIONS MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR THE PRODUCTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU WHERE, AND TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY.

10. **Confidentiality**. During the Term, each party may have access to certain information of the other party, whether furnished before or after your entering into this EULA, and in any form or media and regardless of the manner in which furnished (collectively, "Confidential Information"). The receiving party agrees: (i) not to disclose the disclosing party's Confidential Information to any third parties other than to its employees, consultants or Affiliates on a strict "need to know" basis only; (ii) 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 EULA; (iii) use at least reasonable care to keep and protect the disclosing party's Confidential Information confidential. Notwithstanding the foregoing, the disclosing party may disclose Confidential Information if required by law provided that the receiving party has given the disclosing party prompt notice.

11. **Term and Termination**. This EULA shall be applicable for the entire duration of the License period granted to you under the purchase documents and as applicable, those clauses that inherently apply post termination, shall accordingly be valid for a period of seven years, following the termination of any License.

12. **Export Controls**. You shall comply with, 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.

13. **U.S. Government Rights**. To the extent applicable it is confirmed that 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 EULA

14. **Assignment**. This EULA and any rights or obligations hereunder: (i) may not be assigned, sublicensed or otherwise transferred 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 This EULA shall bind and benefit and be enforceable by each party and its respective successors and permitted assigns. Any prohibited assignment shall be null and void.

15. **Governing Law and Jurisdiction**. This this EULA shall be governed by, and construed exclusively in accordance with: (i) the laws of the State of Delaware without regard to its conflicts of law rules and principles. The U.N. Convention on Contracts for International Sale of Goods shall not apply to this EULA. Any claim, dispute or controversy between you and Infinidat arising out of or in connection with this shall be subject to the exclusive jurisdiction and venue of courts located where Infinidat Federal is domiciled. YOU AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS EULA 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.

16. **General**.

    16.1. **Entire Agreement**. This EULA (i) constitutes the entire agreement between the parties with respect to the subject matter hereof; and (ii) may be modified only by a writing signed by

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both parties. All terms of any purchase order or similar document provided by you and any terms that are inconsistent or conflict with this EULA, shall be null and void and of no legal force or effect, even if Infinidat does not expressly object to such terms when accepting a purchase order or similar document provided by you.

16.2.    **Notice**. You agree that Infinidat may send you notices by email, by regular mail, and/or via postings on or through the Infinidat website. You agree to send all notices to Infinidat Legal Department, Infinidat Federal, Inc., 6116 Executive Boulevard, Suite 355, North Bethesda, Maryland 20852.

16.3.    **Waiver**. No failure or delay by either party in exercising or enforcing any right, power or remedy under this EULA (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 EULA shall only be valid if in writing, duly signed, and sent to you via regular mail.

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

[END OF INFINIDAT END USER LICENSE AGREEMENT.]