

Infinidat® Performance Guarantee

If agreed to in writing between the Parties in an Infinidat-approved Quotation or otherwise, Infinidat Ltd. and its affiliates (collectively “**Infinidat**”) commit to the performance criteria set forth in such writing in accordance with the following terms and conditions. For the avoidance of doubt, this guarantee (the “**Performance Guarantee**”) shall be comprised of both the technical specifications and other Product specific aspects of the Performance Guarantee, as specified in such writing, and these terms and conditions.

All capitalized terms not defined herein shall have the same meaning ascribed to them under Infinidat’s General Terms and Conditions, available at: <https://www.infinidat.com/en/sites/default/files/resource-pdfs/INFINIDAT-Customer-Product-Online-TCs.pdf>.

During the first thirty (30) calendar days following the installation date of the Product (the “**Performance Guarantee Period**”), if the Product does not meet the performance criteria set forth in writing (the “**Performance Criteria**”), and provided that the Remedy Process (as defined below) is followed, Infinidat will provide End User with the performance guarantee remedy herein.

If a Product does not meet the Performance Criteria during the Performance Guarantee Period, End User must immediately give Infinidat written notice, whether directly or through an authorized Reseller or Distributor, detailing the performance deficiencies. Infinidat will thereafter, over a mutually agreed period not to exceed thirty (30) calendar days after receipt of such notice (the “**Remedy Period**”), have an opportunity to modify, adjust, or replace the deficient Product (in whole or in part) to satisfy such Performance Criteria (the “**Remedy Process**”). If at the end of the Remedy Period the Product still does not meet the Performance Criteria, then End User may request in writing, and Infinidat shall provide, whether directly or through a Reseller or Distributor, credit for three (3) months of Support Services free of charge, or, for FLX model Product purchases, credit for a one hundred percent (100%) discount on the next month’s Committed Capacity charges. Upon Infinidat’s verification of End User’s claim, Infinidat shall apply the full amount of such credit toward the fees for an extension of Support Services, or toward the discount on the Committed Capacity charges, as applicable.

The credit described above is the sole and exclusive remedy available to End User under the Performance Guarantee, and Infinidat will have no other liability to End User or to any other party for any failure to meet the Performance Criteria. For the avoidance of doubt, if End User’s total Infinidat estate is comprised of multiple Products and only one Product fails to meet the Performance Criteria, then End User may only exercise its remedy for the Product failing to meet the Performance Criteria. End User shall be eligible for one (1) applicable remedy per Product during the Performance Guarantee Period.

The following conditions are a prerequisite to any claim under the Performance Guarantee:

- The Product must at all times be configured according to Infinidat best practices and Documentation, including running the most current version of Infinidat’s software with the Call Home feature and InfiniVerse® support cloud activated. The Performance Guarantee shall be available to End User while the Product is covered under a valid, paid-up, uninterrupted Support Services agreement.
- In the event of a claim, End User must cooperate with Infinidat’s instructions and provide reasonable access to the Product to enable verification of the claim and remediation measures.

- End User must not be in violation of any agreed-to terms, including payment terms, with respect to the Product.

The Performance Guarantee shall not apply in the event the Product has been 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 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.

End User shall not be eligible to receive the remedy listed above if the deficiency in performance is caused by: (i) any third party activities; (ii) End User's operating environment or facilities; (iii) any utilization of beta or non-generally available functions; (iv) any non-Infinidat hardware or software; (v) any channel path error where channel path redundancy is absent; (vi) scheduled maintenance or change windows, (vii) any Force Majeure event; or (viii) End User's failure to follow any instructions or Documentation provided concerning the operation of the Product.

The terms herein constitute the entire agreement between Infinidat and End User and supersede all other agreements and understandings, both written and oral, between Infinidat and Purchaser with respect to the subject matter hereof.

The Performance Guarantee is not intended to constitute an offer to insure, does not constitute insurance or an insurance contract, and does not take the place of insurance obtained or obtainable by the End User. Any fees paid by End User in connection with the Product are solely for the use of such Product and are not to be construed as an insurance premium.