

Terms and Conditions of supply of products and services

Company Name	
Company Address	
Company Registration Number	
Company VAT Number (If applicable)	
Company Contact Number	
Company Contact Email	

1 Terms and Conditions

1.1 The terms and conditions (“**Terms and Conditions**”) set out below govern all of the supply of Products and Services from Infinigate Cloud UK Limited (Company number: 10964910) with the registered address Delme Place, Cams Hall Estate, Delme 3, Fareham, PO16 8UX, (“**Infinigate** ”) to the Reseller or the End Customer (as the case may be) as defined below and specified in the Order Confirmation (“**you**”, “**your**”). They will replace all earlier Infinigate terms and conditions, and any conditions contained in any document used by you and purporting to have contractual effect. Your acceptance of any Products from Infinigate indicates your acceptance of these Terms and Conditions.

1.2 Definitions

In these conditions, “**Affiliates**” means any entity now or hereafter in Control, Controlled by or in common Control with Infinigate (*with Control meaning the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be interpreted accordingly*) “**End Customer**” means the individual or organisation that buys and uses the Products and/or Services; “**Reseller**” means the individual or organisation that sells the Products and/or Services to the End Customer; “**Software**” includes all relevant computer software, documentation, manuals, printed and written matter as supplied to you from time to time by Infinigate or Infinigate Affiliates or Supplier or Reseller; “**Supplier(s)**” means Infinigate’s suppliers; “**Order Confirmation**” means Infinigate’s or Reseller’s confirmation of your order in respect of the Products and/or Services; “**Products**” means computer hardware, peripherals, ; accessories, Software and other goods or services; “**Services**” means the activities, services, functions and responsibilities described in your Order Confirmation.

1.3 Your terms and conditions are not acknowledged even if Infinigate has not expressly objected to these. By placing an order at Infinigate for any product or service you expressly accept these Terms and Conditions and are waiving your right to rely on any other terms or conditions (including, for the avoidance of doubt, your standard terms and conditions). Any deviations, supplements and / or additional agreements to these Terms and Conditions always require an express written agreement with Infinigate to become effective. Any other conditions not included in these Terms and Conditions are only binding if Infinigate has acknowledged and agreed to them in writing and if there are any inconsistencies between such conditions and these Terms and Conditions, then these Terms and Conditions shall prevail to the extent of such inconsistencies.

1.4 All orders, contracts and any specific assurances from Infinigate require written confirmation by Infinigate. Also, the waiver of the written form can only be made under a written agreement and no failure or delay by Infinigate to exercise any right or remedy provided under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 1.5 You confirm that as a Reseller you are not dealing as a consumer and that you are buying the Products and/or Services for use in your business or business of an End-Customer.
- 1.6 Infinigate and or its Affiliates may supply the Products and or Service. Infinigate shall be responsible for its obligations under these Terms and Conditions and for the consequence of any breach arising in connection with its provision and or those of its Affiliates.

2 Prices and Quotations

- 2.1 The price of the Products shall be the price set out in the Order Confirmation or portal provided by Infinigate.
- 2.2 Prices and pricelists may be amended by Infinigate without notice to you prior to Infinigate sending you the Order Confirmation. After Infinigate sends you the Order Confirmation the provisions of clause 2.6 below shall apply.
- 2.3 The only prices binding on Infinigate and you are the prices displayed in the Order Confirmation for each order by you.
- 2.4 Prices are exclusive of VAT or other applicable sales taxes, and you shall, on receipt of a valid VAT / sales tax invoice from Infinigate, pay to Infinigate such additional amounts in respect of VAT / sales tax as are chargeable on the supply of the Products.
- 2.5 The commercial packaging of the Products supplied by Infinigate to you is included in the prices set out in the Order Confirmation. Other ancillary services or costs, including (without limitation) in relation to freight, toll, insurance, environmental, handling and transportation charges will be invoiced to you separately.
- 2.6 Infinigate reserves the right to increase the price from that set out in the Order Confirmation at its discretion if, after confirming the order, cost increases occur, including (without limitation) as a result of agreed changes in the specifications between Infinigate and you, or changes in any taxes, duties or levies charged on or in relation to price increases by Suppliers or exchange rate fluctuations.

3 Contract of Sale

- 3.1 Any information provided by Infinigate to you or any representative of you from time to time in promotional materials and / or on-line shall be construed at law as an invitation to treat only and shall be non-binding on Infinigate. Such information may be valid only for a limited time. In no way shall such information be construed as an offer to conclude a contract of sale / purchase agreement.
- 3.2 A contract is only concluded with a written – i.e. by letter or e-mail - Order Confirmation sent by Infinigate to you.
- 3.3 Content and scope of Products to be delivered by Infinigate are determined in the Order Confirmation sent to you by Infinigate. Infinigate is not obliged to provide any installation, configuration and data back-up services.
- 3.4 Infinigate or its Suppliers reserve the right to change the Products (including, without limitation, the description of the Products), at its/their discretion, especially in the course of product improvements / developments, provided that this does not detrimentally affect the performance of the Products.

4 Payment

- 4.1 Infinigate may invoice you for the Products at any time upon or after sending you the Order Confirmation.
- 4.2 Unless Infinigate has agreed to extend credit to you, you must pay Infinigate in the currency set out in the invoice, either by direct debit or by bank transfer into Infinigate's bank account as Infinigate will notify to you in writing (including, without limitation, by email) or by credit card, within the period detailed in the invoice or where not detailed in the invoice, within 14 days after Infinigate has sent you the Order Confirmation and, in any event, in advance of the Products being provided to you. Time for payment shall be of essence.

- 4.3 Where Infinigate has agreed in writing to extend credit to you, you must pay in full within the period detailed in Infinigate's invoice or where not stated in the invoice, within 14 days of delivery of the Products to you. Your payment is made only when funds have fully cleared through the banking system into Infinigate's bank account. Infinigate has sole discretion to determine the amount of credit it will extend to you at any time.
- 4.4 You agree to pay all applicable subscription charges when due and for the Products in full and cleared funds without deduction or set-off and to pay VAT pursuant to clause 2.4 and to pay any other government duties, levies and/or taxes in respect of the Products.
- 4.5 If payment is not made in full by the due date pursuant to either clause 4.2, clause 4.3 and/or clause 4.4, Infinigate is entitled to charge you interest on the unpaid overdue balance at the rate of 4% per annum above the base rate of the Bank of England from time to time in force until payment in full is received by Infinigate, and Infinigate may charge you costs incurred (including collection costs and legal costs on a solicitor-client basis) and suspend delivery of further Products or performance of further Services until the outstanding account is fully settled. Infinigate's right to claim further damages remains unaffected by this clause.
- 4.6 Infinigate may, without prejudice to any other right or remedy which may be available to it, whether under these Terms and Conditions or otherwise, set off against any sums payable by Infinigate to you hereunder, and/or deduct or withhold from payment of any such sums, any liability of you to Infinigate, howsoever arising, whether in contract, tort (including negligence), breach of statutory duty or otherwise.
- 4.7 Subject to the remainder of this clause 4.7, you are only entitled to offset your claims against Infinigate's liabilities if your claims against Infinigate are undisputed or recognised by a court of competent jurisdiction. If any Product that you have ordered is faulty, and Infinigate agree in writing that there is such a fault, then you may withhold payment in respect of the invoice in relation to that particular Product only, and only to the extent that such a fault remains unresolved and/or unremedied by Infinigate.
- 4.8 Notwithstanding clause 4.2 and 4.3, 4.4 above, all payments shall immediately become due by you to Infinigate if Infinigate reasonably believes that the information which you have given Infinigate in your application for credit is incorrect or no longer correct and you have failed to give Infinigate correct information satisfactory to Infinigate within 5 days of Infinigate's request, if you become subject to any of the events listed in clause 12.2 or if you fail to comply with any of the provisions of these Terms and Conditions.
- 4.9 For the avoidance of doubt, your obligations to pay Infinigate shall apply irrespective of whether you receive payment for the Products and Services from any End Customer.

5 Project Specific Provisions

- 5.1 Subject to approval by the relevant Supplier(s), Infinigate may from time to time offer special quotes and/or prices to you for a specific project with you (where you are a Reseller) in turn then agreeing to supply any Products under the project to named End Customers (this is subject to the Reseller clearly identifying the scope of the project from the outset and clearly naming all End Customers (or naming you as the End Customer, where you are an End Customer and not a Reseller). Any such discounted prices will be set out in the Order Confirmation and, for the avoidance doubt, shall be subject to the terms set out in clause 2.
- 5.2 You undertake to:-
- 5.2.1 comply with all terms in regards to the specific project (including, without limitation, these Terms and Conditions and the Order Confirmation) and, in particular, keep all related End Customer documents such as delivery notes and invoices available for a minimum period of 12 months after receipt of such information from the End Customer (or keep such information about yourself for a minimum period of 12 months where you are the End Customer) and to submit these on the reasonable request of Infinigate and / or the Supplier to Infinigate and / or the Supplier (as the case may be) provided always that Infinigate shall ensure the Supplier is bound by obligations to ensure such documents and their contents remain confidential.;

5.2.2 (where you are a Reseller) sell only to the authorised End Customer, as provided by the Supplier at the start of the project; and

5.2.3 not to exceed the maximum retail price agreed for the Products in relation to the specific project.

5.3 Where you breach any terms and conditions that the Supplier has in place from time to time, Infinigate has the right, at its sole discretion and without prejudice to its right to further claims, to charge you for the difference between the special price confirmed for the specific project and the regular purchase price of the Products invoiced.

6 Delivery

6.1 Infinigate will use reasonable endeavours to ensure that delivery of Products and performance of Services is on time, however, delivery dates and deadlines are always subject to change and are given as guidelines only, without being binding on Infinigate.

6.2 Partial deliveries of Products by Infinigate are allowed and can be invoiced separately to you.

6.3 For the avoidance of doubt, time shall not be of the essence in relation to any estimated delivery dates given by Infinigate to you.

6.4 Delivery and performance dates shall be reasonably extended for the benefit of Infinigate in case of disturbances due to force majeure and other reasons beyond the reasonable control of Infinigate, including (without limitation) disruptions in the delivery by Suppliers, strikes, lockouts, operational disruptions or inclement weather. Infinigate reserves the right to withdraw from the contract and you may also be entitled to withdraw from the contract if delivery delay caused by such events lasts for longer than six weeks and such withdrawal right is available from the Supplier.

6.5 Infinigate will not be liable to you for any claim, loss, expense or damage arising in any way from any delay in delivery or performance.

6.6 You are responsible for insurance and risk in the Products from the time they are handed to the carrier to when they are received by you from the carrier, or from when they are collected by you or your agent and/or other authorised representative from Infinigate's or the Supplier's premises (as notified to you in writing prior to your collection of the Products). For the avoidance of doubt, where the Products are collected by you from Infinigate's or the Supplier's premises, delivery is deemed to take place from your collection of the Products, and if the Products are being made available to you by a carrier then delivery shall take place from when the Products are handed by Infinigate to the carrier for transportation to you at a location as agreed in writing between Infinigate and you prior to delivery.

6.7 You agree to pay and/or reimburse (as the case may be) Infinigate for all delivery costs.

6.8 Where you ask Infinigate to deliver Products directly to another person and that person takes possession of the Products for you as your agent and/or authorised representative, you are nevertheless still directly responsible to Infinigate under these Terms and Conditions.

6.9 The risk of damage or loss of the Products (other than Software) shall be transferred from Infinigate to you at the time the Products are handed over to the carrier in preparation for transportation of the Products to you.

6.10 The delivery of Software shall be deemed to have taken place upon Infinigate or the Supplier sending you a licence key in order to download and/or use the Software (any Software will include the Suppliers' terms and conditions of use and you will be deemed to accept any such terms and conditions of use upon your use of the Software).

7 Retention of Title

7.1 Infinigate retains property, title and ownership to all Products supplied to you, whether in their original form or incorporated in or attached to another product, until receipt of full payment in cleared funds by Infinigate from you of the price for the Products and all related amounts owed, including (without limitation) future receivables and/or any amounts owed by you to Infinigate pursuant to clause 2.5 and/or 4.5.

- 7.2 This clause 7.2 only applies where you are a Reseller. For the avoidance of doubt, where you are an End Customer, you will not be permitted to resell the Products. You may resell the Products in the ordinary course of business even if title to the Products has not passed to you. You must assign all future claims arising from the distribution and/or sale of such Products to Infinigate until full payment of all outstanding amounts for the relevant Products has been received from you by Infinigate. You are authorised to collect any claim from the distribution and/or sale of any such Products even after assignment. Infinigate's right to collect the claim itself remains unaffected. If any of the aforementioned is the case you are obliged to disclose to Infinigate at Infinigate's request, the names and addresses of End Customers to which you sold the Products as well as the nature and scope of your existing claims against these End Customers. A copy of all related documents must be handed by you to Infinigate and you must also notify End Customers of the assigned Products of Infinigate's right to claim any outstanding amounts from such Products.
- 7.3 You must not pledge or transfer ownership of Products where title has not fully passed to you pursuant to clause 7.1. If you become subject to any of the events listed in clause 12.2, you will inform all relevant parties about Infinigate's ownership in such Products and notify Infinigate immediately in writing.
- 7.4 Where Infinigate reasonably believes you are or will be in breach of any part of clauses 4 and / or 7 of these Terms and Conditions, Infinigate or Infinigate's agent may without notice enter any premises under your control to remove any Products which are the property of Infinigate, whether or not those Products are installed in or attached to any other goods, and without prejudice to any other of Infinigate's rights. You shall indemnify Infinigate against all direct losses, costs and / or claims in respect of Infinigate's exercise of Infinigate's rights under this clause 7.
- 7.5 You are obliged to treat the Products for which title has not passed pursuant to clause 7.1 with all reasonable care, in particular you are obliged to insure them (with a reputable insurer) at your own expense against fire, water and theft at replacement value. Products delivered for testing and demonstration purposes shall remain the property of Infinigate. You are obliged to handle the Products with proper care and store them in a manner to enable them to be identified and cross referenced to particular invoices provided to you by Infinigate. You are allowed to use such Products only within the terms agreed.
- 7.6 Quotations, system analysis, project documents, drawings, samples, drafts and other documents of Infinigate provided to you before a contract is concluded, may not be copied, used by you nor otherwise disclosed to any third party unless it is the End Customer and only to the extent needed.

8 Your Obligations and Responsibilities

- 8.1 It is your sole responsibility to ensure that you are clear as to the functionality, design and/or other features of the requested Products, and (where you are a Reseller) it is your sole responsibility to meet any needs or requirements of your End Customers in respect of the Products. For the avoidance of doubt (subject to clause 10.1) Infinigate shall have no liability in respect of any one or more of these matters.
- 8.2 You must check the Products (or, in the case of Software, test the relevant Software to ensure that it is working) promptly upon receipt for completeness, compliance with the delivery documents and defectiveness. If no written complaint within fourteen (14) days from the delivery or download date has been made by you, the Products are considered as accepted by you, unless it concerns a manifest defect which was not detectable at the time of first inspection by you.
- 8.3 If the delivered Products show visible damages or missing parts then you must record them on the notice of receipt of the transport company in writing upon delivery. The note must clearly state the damage or the shortfall.
- 8.4 In case Services have to be provided within your business environment and/or your premises, you must ensure that such services can be provided properly (including, without limitation, that the relevant area is clear and safe for any installations required in respect of the Services). If this is not the case and for this reason the Services cannot be provided as expected, you shall bear sole responsibility. You will support Infinigate by ensuring, using your reasonable endeavours and at your own expense, that the agreed Services can be provided by Infinigate and provide Infinigate with all information and documents necessary

for the provision of the relevant Services. Should you not comply with your obligations under this clause 8.4, Infinigate is not obliged to perform the relevant Services.

- 8.5 Where you are a Reseller under these Terms and Conditions you acknowledge and shall abide by the additional conditions provided at Schedule One Conditions of Supply.
- 8.6 Where you are a Reseller or End Customer of Managed Services or Software as a Service under these Terms and Conditions, you acknowledge and agree that you shall, abide by the additional conditions provided at Schedule Two.
- 8.7 You shall abide by Infinigate policies from time to time in place, and as may be updated by Infinigate from time to time.
- 8.8 You shall monitor your credit rating and immediately notify Infinigate in writing following the occurrence of you experiencing any financial indebtedness or any matter which could cause financial distress and impact on your continued performance in accordance with these Terms and Conditions.
- 8.9 If you are in default of any of your obligations under these Terms and Conditions or you provide any relevant information or carry out any action as required under these Terms and Conditions, then you are obliged to reimburse Infinigate for any costs, losses and/or expenses incurred by Infinigate due to any default, delay or omission on your part.

9 Warranties

- 9.1 Infinigate does not manufacture any of the Products and therefore, to the fullest extent permitted by law (and subject always to clause 10.1), all warranties, conditions and other terms in respect of quality, defects in design, workmanship, conformity with description and / or fitness for purpose are excluded and Infinigate makes no representations in respect of the same. Instead, Infinigate will use reasonable endeavours to pass on the benefit of any warranties of any Supplier in respect of the Products to you, and you and your End Customers shall use any Software in accordance with the terms of any End Customer licence agreements that any Supplier may have in place from time to time.
- 9.2 Upon receipt of written notice from you as to defects in quality, workmanship or otherwise in respect of the Products, Infinigate shall use its reasonable endeavours to contact the Supplier(s) of the relevant Products and provide them with reasonable details of the relevant defect for them to respond to you directly. For the avoidance of doubt, Infinigate shall not be liable or responsible for any response (or failure to respond) on the part of any such Supplier.
- 9.3 Infinigate's obligations under clause 9.2 do not apply where the relevant Products have been altered, modified and/or otherwise changed by you and / or a third party without the prior written consent of Infinigate), where you have not used the Products in accordance with either Infinigate's or the Supplier's instructions, where the issue with the Products is caused by fair wear and tear, where you have used parts and / or accessories with the Products that have not been approved by Infinigate and / or the Supplier. In addition, Infinigate's obligations do not apply to Software that is not used by you and / or a third party in the agreed system environment (as Infinigate may notify you in writing from time to time) or in accordance with any provided licence agreement.
- 9.4 You undertake that you shall not bring any warranty claims against Infinigate directly (as you acknowledge that Infinigate does not manufacture any of the Products) whether in relation to defects in the Products or otherwise and you acknowledge that Infinigate has no control over the actions of the Supplier in relation to any defective Products; therefore, you undertake that you will not bring any claim against Infinigate for any failures or inaction on the part of any Supplier to repair and/or replace any such Products.
- 9.5 Furthermore, you acknowledge that in any case a defect is existent only when it is notified in detail immediately after discovery by you in writing to Infinigate and comprises a relevant and reproducible error. Any warranty by the Supplier is excluded for defects which are caused by:
 - 9.5.1 insufficient maintenance of the Products by you;
 - 9.5.2 failure to observe the operating or installation instructions in relation to Product;

- 9.5.3 inappropriate use of the Products;
 - 9.5.4 use of non-approved parts and accessories;
 - 9.5.5 common wearing of any Product;
 - 9.5.6 improper handling or transportation of the any Product;
 - 9.5.7 modifications or repair attempts in relation to any Product; and / or
 - 9.5.8 external influences, in particular, force majeure (e.g. failure of the power supply or the air-conditioning, natural hazards) and other reasons for which neither Infinigate nor manufacturer / supplier are responsible for.
- 9.6 Where Infinigate and / or the Supplier replaces any faulty Product for you then you must, at your own cost, within 30 days after receipt of the replacement Product, send to Infinigate the faulty Product. In the case of Software, copies of Software may not be retained by you. Upon Infinigate and/or the Supplier receiving the faulty Product, if Infinigate (and/or the Supplier (as the case may be) deem the Product not to be faulty, then Infinigate will be entitled to charge you for the replacement Products.
- 9.7 If you have made any warranty claims and no defect existed, you are liable for its claim and must reimburse Infinigate for any costs incurred (whether in relation to contacting the Supplier or otherwise). Additionally, Infinigate can claim reimbursement of costs incurred on such claims made by you where you have not provided any evidence of any such defect.
- 9.8 The assignment of any claims by you under this clause 9 is not permitted, unless Infinigate expressly approves such assignment in writing.

10 Liabilities

- 10.1 Nothing in these Terms and Conditions shall limit or exclude Infinigate's liability for:
- 10.1.1 death or personal injury caused by Infinigate's negligence, or the negligence of any of Infinigate's employees, agents or subcontractors (as applicable);
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 10.1.4 any other matter in respect of which it would be unlawful for Infinigate to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- 10.2.1 Neither party shall, under no circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, any loss of revenue, business, contracts or goodwill or any indirect or consequential loss arising under or in connection with these Terms and Conditions, any contract entered between the parties and/or the Order Confirmation; and
 - 10.2.2 Infinigate's total liability to you in respect of all other losses arising under or in connection with these Terms and Conditions and/or the Order Confirmation, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the charges under the Order Confirmation.
- 10.3 In the event of a decision or recommendation by a competent authority, governmental entity, a court, or a similar public authority to recall any Products due to such Products having been deemed to be the root cause of a threat to public health or safety ("Product Recall"), Infinigate and/or the Supplier (as applicable) shall conduct such Product Recall in accordance with good industry practice.

11 Data Protection Act

- 11.1 In this clause “**Data Protection Legislation**” means (a) to the extent that the UK GDPR (having the meaning given to it in Section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018) (**UK GDPR**) and the Data Protection Act 2018 (**DPA**) apply, all applicable data protection and privacy legislation in force from time to time in the UK; or (b) to the extent that the General Data Protection Regulation (EU 2016/679) (**GDPR**) applies, the law of the European Union or any member state of the European Union to which the Supplier is subject; and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party and any national implementing laws, regulation and secondary (as amended or re-enacted from time to time). “**Personal Data**” has the meanings as defined in the Data Protection Legislation and “**Agreed Purpose**” means for each party to meet their respective obligations as set out in these Terms and Conditions and any Order Confirmation (including but not limited to the supply of Products and Services); to comply with a legal obligation that each party is subject to; and where it is necessary for the legitimate interest of a party (or those of a third party) and the other party’s interests and fundamental rights do not override those interests.
- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation and where there are inconsistencies between the contents of this clause 11 and the Data Protection Legislation, then the provisions under the Data Protection Legislation shall always prevail to the extent of such inconsistencies.
- 11.3 Orders are processed within the Infinigate group of companies with the help of automatic data processing. You hereby confirm and warrant that you have all necessary consents and notices in place in order to enable the lawful transfer and processing of the Personal Data by Infinigate which it has obtained in the course of its business with you (including without limitation under these Terms and Conditions) and particularly in the context of contractual relations that are necessary for the correct processing of orders (including, without limitation, names, telephone numbers, email addresses and other identifiers). Each party warrants that it will only use Personal Data for the Agreed Purpose and, Infinigate shall whenever required in the ordinary course of business, be entitled to pass these on to the Suppliers of the Products.
- 11.4 Without prejudice to the generality of clause 11.2, Infinigate shall, in relation to any Personal Data processed in connection with the performance by Infinigate of its obligations under these Terms and Conditions:
- 11.4.1 process personal data only on documented instructions from you, unless required to do so by applicable law to which Infinigate is subject; in which case Infinigate shall inform you of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The parties acknowledge that these Terms and Conditions constitute your written instructions and that the parties will set out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects when entering into these Terms and Conditions;
- 11.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 11.4.3 taking into account the nature of the processing, assist you by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising data subjects rights;
- 11.4.4 respect the conditions referred to in clauses 11.5 and 11.6 for engaging another processor;

- 11.4.5 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 11.4.6 not transfer any Personal Data outside of the UK/European Economic Area unless the prior written consent of the End Customer has been obtained and the following conditions are fulfilled:
 - (a) either party has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - (c) Infinigate complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) Infinigate complies with reasonable instructions notified to it in advance by the Supplier with respect to the processing of the Personal Data;
- 11.4.7 Assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators);
- 11.4.8 notify you without undue delay on becoming aware of a Personal Data breach;
- 11.4.9 at your written direction, delete or return Personal Data and copies thereof to you on termination of the contract unless required by law to store the Personal Data; and
- 11.4.10 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and make such information available to you on reasonable request
- 11.5 Infinigate shall not engage another processor without your prior specific or general written authorisation. In the case of general written authorisation, Infinigate shall inform you of any intended changes concerning the addition or replacement of other processors, thereby giving you the opportunity to object to such changes.
- 11.6 Where Infinigate engages another processor for carrying out specific processing activities on your behalf, it will ensure it has in place a written contract with each such processor which contains provisions no less protective than those set out in this clause 11.
- 11.7 Infinigate reserves the right to request and collect data about you from commercial credit reporting agencies or credit insurers to obtain information regarding your creditworthiness and to report back data - in case of non-contractual settlement, e.g. filing of court order for undisputed claims, issued enforcement order or enforcement actions. The data will only be shared with members of the Infinigate group of companies for the Agreed Purpose. In any case Infinigate will comply with the relevant Data Protection legislation.

12 Termination

- 12.1 If you become subject to any of the events listed in clause 12.2, you must notify Infinigate immediately and Infinigate may terminate these Terms and Conditions and any contract Infinigate has in place with you from time to time with immediate effect by giving written notice to you.
- 12.2 For the purposes of clause 12.1, the relevant events are:
 - 12.2.1 you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or admit inability to pay your debts, or (if you are a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) you have any partner to whom any of the foregoing apply;

- 12.2.2 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors;
 - 12.2.3 (if you are a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up;
 - 12.2.4 (if you are a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you;
 - 12.2.5 (if you are a company) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;
 - 12.2.6 a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
 - 12.2.7 (if you are an individual) you are the subject of a bankruptcy petition or order;
 - 12.2.8 a creditor or encumbrancer of you attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
 - 12.2.9 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2.1) to clause 12.2.10) (inclusive);
 - 12.2.10 you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;
 - 12.2.11 your financial position deteriorates to such an extent that in Infinigate's opinion your capability to adequately fulfil your obligations under these Terms and Conditions and/or any contract that is in place between you and Infinigate from time to time has been placed in jeopardy; and
 - 12.2.12 (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or becomes a patient under any mental health legislation.
- 12.3 Without limiting Infinigate's other rights or remedies, Infinigate may suspend provision of the Products (whether pursuant to these Terms and Conditions or otherwise) if you become subject to any of the events listed in clause 12.2.1) to clause 12.2.12), or Infinigate reasonably believes that you are about to become subject to any of them, or you fail to pay any amount due under these Terms and Conditions on the due date for payment.
- 12.4 Infinigate may terminate these Terms and Conditions and any other contractual arrangements Infinigate may have in place with you with immediate effect on written notice to you if you are in material breach of these Terms and Conditions and such breach (if capable of remedy) has not been remedied within the time period specified by Infinigate to do so.
- 12.5 Notwithstanding any other provisions in this clause 12, either party may terminate these Terms and Conditions and the contractual arrangement in place without cause by giving the other party not less than 90 days written notice.
- 12.6 You may terminate these Terms and Conditions and the contractual arrangement in place, with immediate effect on written notice to Infinigate, if Infinigate is in material breach of these Terms and Conditions and such breach (if capable of remedy) has not been remedied within 30 days of written notice to Infinigate.
- 12.7 On termination of these Terms and Conditions for any reason except for the material breach by Infinigate, you shall pay Infinigate all of Infinigate's outstanding unpaid invoices and interests within their payment terms.

- 12.8 In the event of expiry or termination of this Agreement in whole or in part End Customers shall be given the option of contracting with Infinigate for the continued provision of the Products, Software and / or Services (as applicable).
- 12.9 In the event of End Customers contracting with Infinigate, you shall not be liable to make any further payments in respect of the Products, Software and / or Services (as applicable) for the continued provision of such Products, Software and / or Services after the date that Infinigate takes direct responsibility but this shall not affect liability for any payments in respect of the period prior to that date.
- 12.10 In the event of End Customers not choosing to contract with Infinigate for the continued provision of the Products, Software and / or Services, Infinigate shall provide assistance to you for the migration of End Customers, subject to the payment of Infinigate's professional services fees.
- 12.11 The termination of these Terms and Conditions shall not of itself give rise to any liability on the part of Infinigate to pay any compensation to you as Reseller or End Customer for loss of profits or goodwill, to reimburse for any costs relating to or resulting from such termination, or for any other loss or damage.
- 12.12 Termination of these Term and Conditions, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 12.13 Clauses which expressly or by implication survive termination of these Terms and Conditions (if any) shall continue in full force and effect.

13 Intellectual Property

- 13.1 All intellectual property in relation to the Products shall remain the property of Infinigate or any Supplier entitled to it (for the avoidance of doubt, in practice, virtually all the intellectual property rights in respect of the Products shall be owned by the Supplier), and neither Infinigate nor any of the Suppliers transfer any right, title or interest in any intellectual property to you other than the applicable licences granted herein.
- 13.2 You are not permitted to alter any Software, copy it, adapt it for use on non-compatible hardware or edit it in any other way, and you shall indemnify Infinigate against any costs, expenses and/or other losses incurred in respect of any breach by you of this clause 13.2 and/or of any other provisions in this clause 13 generally.
- 13.3 The use of each Product (whether software or hardware) is subject to the relevant licence terms and conditions of the relevant Supplier. You undertake to comply with those licence terms and conditions and (where you are a Reseller) to pass on a corresponding obligation to your End Customers. You must (where you are a Reseller) report any breaches to Infinigate by an End Customer of any such obligations without delay. In addition you undertake to comply with the general terms and conditions of each relevant Supplier, especially its marketing and sales obligations with special attention to the valid national and international export and compliance regulations including (without limitation) anti-corruption provisions.
- 13.4 You agree to dispatch the Products only under the trade marks under which they are supplied by Infinigate, and under no circumstances shall apply any other trade marks to any Product which is not a trade mark supplied by Infinigate. Any notes on the Products in regards to copyright, trademark or other intellectual property rights may not be removed, altered, concealed or made otherwise invisible by you. You are authorised only with prior written consent of Infinigate to translate supplied documentations for any commercial purpose.
- 13.5 You will inform Infinigate immediately if a third party raises any claims of infringement of any intellectual property rights (whether in relation to infringement of trade marks, copyright or otherwise) against you as a result of the use and/or sale of the Products and/or Services delivered. You will not acknowledge the alleged infringement of intellectual property rights and shall leave any dispute, including any extrajudicial settlement either to Infinigate or conduct any action in consultation with Infinigate or the Suppliers.

14 Export/Import

- 14.1 All Products, Services and technical expertise are delivered by Infinigate in compliance with the currently valid Export Control Act 2002 and/or EC Dual-Use Regulation and the US export regulations, and shall be

used and remain in the country agreed with you according to your sales order information. If you intend to re-export any Products, you must comply with US, European and UK export regulations.

- 14.2 If you intend to export products supplied by Infinigate, you are required to enquire about the rules and regulations currently in force (including without limitation the Department for Business, Innovation and Skills, the US Department of Commerce and Office of Export Administration, Washington, DC 20230). Regardless of whether you indicate the final destination of the contractual Products supplied, it is your responsibility to obtain necessary approval of the relevant foreign trade authorities before exporting such Products. Infinigate has no obligation to provide any such information to you.
- 14.3 Any delivery of Products by you to a third party, with or without the knowledge of Infinigate, requires the simultaneous transfer of the export license conditions. You are liable to the full extent of non-compliance with the relevant provisions and/or regulations.
- 14.4 Without prior administrative approval, you – and (where you are a Reseller) your End Customers – are not allowed to deliver the supplied products directly or indirectly to any country subject to US embargo, or to natural or legal persons of these countries as well as to natural or legal persons on US, European, UK or national ban lists (e.g. "entity list", "Denied Persons List", "Designated Nationals and Blocked Persons Specifically"). It is prohibited to supply Products to natural or legal persons who are in any way connected to the support, development, production or use of chemical, biological or nuclear weapons of mass destruction.

15 Purchase Tax/Import Turnover Tax

- 15.1 If you have headquarters outside the United Kingdom, you must comply with the provisions of purchase tax and/or import turnover tax rules of the relevant Economic Area when purchasing the Products, in particular you must disclose the sales tax identification number as well as any other information necessary. You must indemnify Infinigate against any costs, expenses or other losses suffered or incurred by Infinigate pursuant to or as a result of your non-compliance with this clause 15.1.

16 General

- 16.1 Infinigate reserves the right to alter these Terms and Conditions at its sole discretion from time to time by giving you written notice of the same.
- 16.2 You may not assign any rights or obligations under these Terms and Conditions without the prior written consent of Infinigate.
- 16.3 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms and Conditions.
- 16.4 Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified. All notices shall be deemed to be delivered after posting if the recipient is located in the same jurisdiction as the sender and seven (7) days after posting if the recipient is located in a different jurisdiction from the sender..
- 16.5 These Terms and Conditions are governed by the laws of England and any dispute under it shall be subject to the exclusive jurisdiction of the courts of England. The Vienna UN Convention (UNCITRAL) on the International Sale of Goods is excluded.
- 16.6 No party shall have any rights to enforce the terms contained within these Terms and Conditions other than you or Infinigate.
- 16.7 Any reference to any statute or legislation shall be deemed to include any amendments, re-enactments or replacements unless otherwise stated.
- 16.8 You are an independent contractor, not an Infinigate agent, joint venturer, partner, or fiduciary.

- 16.9 Infinigate has no obligation to deal exclusively with you and shall be free to utilise others to fulfil obligations similar to or equivalent under these Terms and Conditions.
- 16.10 Infinigate reserves the right to control, direct and establish technical procedures for the Servers and the provision of the Services and Infinigate may make reasonable operational changes to the Services without prior notice when necessary.
- 16.11 The parties shall:
- 16.11.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“Relevant Requirements”);
 - 16.11.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 16.11.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
 - 16.11.4 promptly report to the other any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of these Terms and Conditions;
 - 16.11.5 immediately notify the other in writing if a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in it, and each Party warrants to the other that it has no foreign public officials as officers, employees or direct or indirect owners at the date of these Terms and Conditions;
 - 16.11.6 within 1 month of being requested to do so, and annually thereafter, certify to the other in writing signed by an officer, compliance with this clause by it and all persons associated with it. Each party shall provide such supporting evidence of compliance as the other may reasonably request. For the purpose of this clause 16.12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.
- 16.12 In performing your obligations under these Terms and Conditions, you shall:
- 16.12.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force (Anti-Slavery Laws) including but not limited to the Modern Slavery Act 2015;
 - 16.12.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015.
 - 16.12.3 include in contracts with your subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 16.13
 - 16.12.4 notify Infinigate as soon as you become aware of any actual or suspected breach of this clause.
 - 16.12.5 represent and warrant that you not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

Schedule One

Conditions of Supply

- 1 Where appointed by Infinigate as a Reseller you acknowledge that the End Customer will be responsible for obtaining and maintaining their own compatible computer system being all such equipment, software and communications lines, including any public lines required by the End Customer to access the Services ("End Customer's Equipment"). Infinigate has no responsibility for or liability with respect to the End Customer's Equipment.
- 2 All Software made available for use by the End Customer under these Terms and Conditions are provided subject to the licensing conditions and restrictions of the Software manufacturer, supplier or licensor, including (but not limited to): (i) in respect of the Microsoft Software the licensing conditions set out at <https://www.microsoft.com/licensing/terms/> or available upon request; and (ii) in respect of other Software the licensing conditions set out at <https://portal.infinigate.cloud/legal> or available upon request ("License Terms") and you shall procure that all End Customers accept the License Terms applicable to each component of the Services.
- 3 You represent, warrant and undertake:
 - 3.1 to at all times work in good faith to protect and promote the interests of Infinigate;
 - 3.2 to deal promptly with any complaints, claims or actions relating to the Services and keep Infinigate fully informed of any matters relating to defects or alleged defects in the same;
 - 3.3 to at all times use commercially reasonable endeavours to promote and extend sales of the Services;
 - 3.4 to obtain the prior written approval from Infinigate (such approval not to be unreasonably withheld), where any reference to Infinigate and or its Affiliates name or mark is made in any publication, advertising or marketing materials;
 - 3.5 not to make any representations regarding the Services other than those contained within service description provided by Infinigate or its Affiliates in their marketing materials;
 - 3.6 to maintain sufficient personnel adequately skilled and trained for the appropriate support of the Services;
 - 3.7 at your own expense, provide the End Customer with training on the use of the Services;
- 4 You acknowledge and agree that the Services are supplied subject to the condition that there will be no abuse or fraudulent use thereof. Abuse and fraudulent use of the Services shall include (without limitation):
 - 4.1 obtaining, or attempting to obtain, the Service by rearranging, tampering with, or making connection with any facilities of Infinigate and or its Affiliates, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices whatsoever, with intent to avoid payment, in whole or in part, of the regular charges for the Services;
 - 4.2 attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of Infinigate, its Affiliates or of another customer of Infinigate/its Affiliates;
 - 4.3 using the Services in such a manner as to interfere unreasonably with the use of the Services by any other user or authorised person.

- 5 Infinigate shall take reasonable steps to protect the End Customer's information in accordance with the provisions of ISO 27001:2013, however the parties acknowledge that the Internet is not secure and accordingly that Infinigate cannot guarantee the privacy of the End Customer's information.
- 6 You shall make it a condition that the End Customer shall use the Services in accordance with the Acceptable Use Policy of Supplier. Information on the applicable terms be provided upon request.
- 7 Where applicable, you shall make it a condition upon the customer that the customer shall use an up-to-date virus-scanning program on all customer material.
- 8 You shall procure that the customer maintains confidentiality of its login names, passwords and other confidential information relating to the customer's access to the Services.
- 9 Where applicable, you shall maintain confidentiality of login names, passwords and other confidential information relating to the Services.
- 10 You acknowledge that neither Infinigate nor its Affiliates operate or exercise control over, nor accept responsibility for the content of customer material.
- 11 You warrant and represent to Infinigate that you have no financial or other economic interest, either directly or indirectly with any competitor of Infinigate.

Schedule Two

Services and Performances of Software as a Service

1. Subject to the prior written agreement of Infinigate, the Services support shall exclusively comprise support and advice to the End Customer by telephone or e-mail.
2. To the extent it is agreed by Infinigate that the Services can be provided on your premises, you shall provide sufficient workplaces and work equipment free of charge upon Infinigate's request.
3. You are obliged to support Infinigate in the performance of the owed Services to the best of your ability as far as reasonable, necessary and appropriate and to create in your operation all conditions necessary for the proper execution of the order. You shall in particular provide the necessary information and, if required, enable remote access to systems relevant to performance. You shall further ensure that competent personnel are available to support Infinigate.
4. You shall comply with Infinigate's technical instructions.
5. You shall, prior to the commencement of the Services, designate one or more responsible contact persons with decision-making authority who shall be available to Infinigate's employees or vicarious agents and who shall be authorised to make binding declarations.
6. You shall not have any rights to issue instructions with regard to the performance of the Services and support.
7. You shall inform Infinigate without undue delay of any malfunction or failure of the Software in connection with the performance of the Services and shall pass on all necessary information.

8. You are obliged to describe any malfunction or failure as precisely as possible to Infinigate. Where you fail to provide a description which is comprehensible to Infinigate, Infinigate shall not be liable for the consequences of a delayed or incomplete notification of faults or malfunctions.
9. You shall refrain from any action which makes it difficult or impossible for Infinigate to provide the Services and support. Otherwise Infinigate shall be released from its obligation to perform.
10. The proper and regular data backup is regularly not part of Infinigate's Services and is exclusively your responsibility and also in the context of the provision of Services. Reference is made to the limitation of liability pursuant to clause 10 in the Terms and Conditions.
11. You are obliged to comply with all operating and licence conditions prescribed by Suppliers or Infinigate and will not change any settings or configurations of the Products provided by them on your own authority.
12. To the extent Infinigate comes into contact with data stored on your systems in the course of services or performances in the context of Software as a Service, you shall be responsible for compliance with the provisions of Data Protection Legislation. You shall indemnify Infinigate against any claims in this respect.
13. To the extent Infinigate is to provide Services to third parties on the basis of separate agreements with you, you shall ensure that the End Customer complies with the conditions and obligations to cooperate set out herein.
14. If you don't or insufficiently comply with the conditions and duties to cooperate set out herein, Infinigate is entitled to charge you for any additional expenses caused thereby.



Signed for and on behalf of INFINIGATE CLOUD

Name:

Title:

Date:

Signature:

Signed for and on behalf of RESELLER

Name:

Title:

Date:

Signature: