



Service and Maintenance Agreement

V1.07

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Product Service and Maintenance Agreement

THIS IS A LEGALLY BINDING AGREEMENT BETWEEN THE CUSTOMER, AND INFINICORE INC. BEFORE YOU CONTINUE WITH THE REGISTRATION OF YOUR SERVICE CONTRACT (THE "SERVICES CONTRACT") CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE "ACCEPT" BUTTON, YOU AS THE CUSTOMER, CONSENT TO BE BOUND BY AND BECOME A PARTY TO THIS AGREEMENT ("AGREEMENT") AND YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND HAVE HAD SUFFICIENT OPPORTUNITY TO CONSULT WITH COUNSEL, PRIOR TO AGREEING TO THE TERMS HEREIN AND SUBMITTING YOUR REGISTRATION. IF YOU HAVE ANY QUESTIONS OR CONCERNS OR DESIRE TO SUGGEST ANY MODIFICATIONS TO THIS AGREEMENT, PLEASE CONTACT THE LOCAL INFINICORE SALES REPRESENTATIVE TO BE REFERRED TO INFINICORE LEGAL. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT CONTINUE WITH THE REGISTRATION PROCESS.

The parties to this agreement are the end customer, and either (i) where you have purchased your Product within the Americas, Infinicore, Inc., or (ii) where you have purchased your Product outside of the Americas. The effective date of this Agreement shall commence upon Customer's acceptance of this Agreement. Service Contracts are available for InfiniCORE's networking products and related equipment, including hardware products with embedded software, and software products sold and licensed to you pursuant to InfiniCORE's End User License Agreement ("EULA" provided to you with the products, which EULA is incorporated herein by reference and is available at <http://www.infinicoreinc.com/doc/legal/EULA.pdf> "Terms and Conditions of Sale"). This Agreement and the Terms and Conditions of Sale represent the entire agreement between the parties with respect to maintenance and support services and shall supersede all prior representations, discussions, negotiations and agreements, whether written or oral.

1. DEFINITIONS

1.1. "Customer" means any person or entity that has purchased a Service Contract.



1.2. "Defective Unit" means a Product purchased by the Customer which has ceased to operate in accordance with InfiniCORE's Product Documentation.

1.3. "Partner" means an InfiniCORE authorized distributor or an InfiniCORE authorized reseller of InfiniCORE Products and Services.

1.4. "Hardware" means the InfiniCORE's computer peripheral devices excluding all Software incorporated in or bundled with such devices.

1.5. "No Trouble Found Unit(s)" means a Product that has been returned to InfiniCORE as a Defective Unit by the Customer, and is later discovered to be in proper working order.

1.6. "Product(s)" means any InfiniCORE Hardware with associated Software or stand-alone Software product which is/are available for sale through distributor and reseller or directly from InfiniCORE.

1.7. "Registration Date" means the date when the Service Contract is registered via InfiniCORE's website: <http://www.infinicoreinc.com/support>.

1.8. "Renewal Service Contract" means a Service Contract, as identified in InfiniCORE's then current price list, which may be purchased for any hardware that has previously been registered with an accompanying Service Contract at InfiniCORE's Support site.

1.9. "Return Merchandise Authorization" or "RMA" means the required number or code obtained from InfiniCORE prior to returning a Defective Unit for a Replacement Unit.

1.10. "Replacement Unit" means a Product shipped by InfiniCORE to replace a Customer reported Defective Unit for which the Customer has obtained an RMA.

1.11. "Service Contract" means this Agreement for the Services purchased by the Customer as evidenced by their Service Contract Registration Document.

1.12. "Service Plan Documentation" means the InfiniCORE issued collateral, product description, or documentation which outlines the Services to be performed by InfiniCORE.

1.13. "Service Contract Registration Document" means the electronic document emailed by InfiniCORE with a contract registration number to the email address provided for in the Order Documentation which contains the Customer's entitlements.

1.14. "Services" means any individual or combination of Support and/or Subscription services purchased by the Customer and evidenced in the Customer's Service Entitlement Document.

1.15. "Software" means the InfiniCORE computer software which is licensed in object code form, including any error corrections, updates and bug fixes provided by InfiniCORE.

1.16. "Subscription Services" means InfiniCORE suite of services.

1.17. "Support" or "Support Services" means InfiniCORE's technical telephone, email, and web assistance provided by InfiniCORE or its partners, per InfiniCORE's current Customer Support Services Reference Guide, to help the Customer with problem resolutions.



2. SUPPORT AND SUBSCRIPTION SERVICE CONTRACTS OFFERED

2.1. Service Contracts Offered. InfiniCORE offers various Support and Subscription Service Contracts ranging in hours of operation and included Services. In addition, InfiniCORE offers Subscription Services and other Product service offerings to protect your newly purchased assets.

2.2. Ordering and Use. Each Service Contract purchased by Customer is valid for a single unit of Product and expires in accordance with Section 3.1 (Term) of this Agreement. An attempt to use a Service Contract with more than one unit of Product, (i.e. in addition to the unit of Product the Service Contract was originally purchased for) is considered a material breach of this Agreement and will result in the termination of such Service Contract without refund of any fees paid by Customer and additional fees will be immediately due by Customer to InfiniCORE based on InfiniCORE's then-current list price for the incremental, additional Services. For clarity, the use of a Service Contract with a replacement unit, or with certain upgraded units identified by InfiniCORE as applicable to the Service Contract, shall not be considered a material breach of this Agreement.

3. TERMS OF SERVICE

3.1. Term and Termination. This Agreement is valid for the length of time provided for in the Customer's Service Entitlement Document, starting from (a) the Registration Date; or (b) in the event of a Renewal Service Contract that has been registered prior to the expiration date of the previous Service Contract, starting from the calendar day following the expiration date of the previous Service Contract; or (c) in the event of a Renewal Service Contract that has not been registered within ten (10) calendar days following the expiration of the previous Service Contract, starting from the later of (i) the calendar day following the expiration date of the previous Service Contract or (ii) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. InfiniCORE reserves the right to terminate this Service Contract and/or any and all Services being provided hereunder, in its discretion, in the event of a breach of any terms herein by Customer or in the event of non-payment to InfiniCORE for any Services, with such termination having an immediate effect, if such breach has not been cured within fifteen (15) calendar days after written notice by InfiniCORE to Customer or immediately upon notice of termination in the event of a breach that by its nature cannot be remedied within fifteen (15) calendar days. Upon such termination, InfiniCORE shall have no obligation to provide the Services hereunder.

3.2. Registration. Customer must register this Agreement and the Product for which the Service Contract was purchased within three hundred sixty-five (365) days from the date of the original shipment by InfiniCORE of the applicable Product and Service Contract to its distributor, Partner or Customer, whichever originally purchased directly from InfiniCORE. SERVICE CONTRACTS THAT ARE NOT REGISTERED WITHIN THREE HUNDRED SIXTY-FIVE (365) DAYS FROM THE DATE THE SERVICE CONTRACT WAS ORIGINALLY SHIPPED FROM INFINICORE SHALL BE FORFEITED AND INFINICORE SHALL HAVE NO OBLIGATION TO THE CUSTOMER REGARDING THIS AGREEMENT OR ANY RELATED SUPPORT SERVICES. It is Customer's responsibility to ensure it knows the deadline to register the Service Contract within the three hundred sixty-five (365) day period and please make sure your Partner makes clear when this contract was originally shipped from InfiniCORE. Notwithstanding anything to the contrary, InfiniCORE may register any Renewal Service Contract upon invoicing. Upon renewal of the Service Contract, Customer authorizes InfiniCORE to automatically register the Renewal Service Contract for subsequent renewal periods for which a purchase order has been placed.



3.2. Renewal Registration. In order to maintain a continual service period, the effective date of any Renewal Service Contract shall begin as set forth herein, (the “Renewal Service Contract Effective Date”). In the event that registration of a Renewal Service Contract is beyond ten (10) calendar days following the expiration date of the previous Service Contract, such Renewal Service Contract Effective Date will be the later of (a) the calendar day following the expiration date of the Customer’s previous service Contract and (b) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. The above does not apply if Renewal Service Contracts are registered and started within ten (10) calendar days following the expiration date of the Customer’s previous Services Contract. In such case, the start date shall be the date of registration.

For example and illustration purposes only, in the event a one-year Renewal Service Contract is registered ninety (90) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 275 days (365 – 90) from the date of registration of such Renewal Service Contract. As another example, in the event a one-year Renewal Service Contract is registered two hundred (200) days after the expiration date of the Services contract being renewed, the term of such Renewal Service Contract will terminate 180 days from the date of registration of such Renewal Service Contract.

3.3. Support Policy. The delivery of all Services shall be subject to and provided in accordance with InfiniCORE's service offerings. For clarity, notwithstanding anything to the contrary, the service level agreements are neither a guarantee nor a warranty regarding such support services. The Reference Guide is available at the following link <http://www.InfiniCORE.com/Login/login> The Reference Guide is subject to change and InfiniCORE shall post notices of any changes on the support website <http://www.InfiniCORE.com/Login/login> with no less than thirty (30) days notice prior to the effective date of the change. The Customer hereby agrees and acknowledges that by continuing to accept Services beyond the effective date of the change as provide for in any notification, the Customer accepts and agrees on the changes to the Reference Guide. Furthermore, the Customer hereby acknowledges and agrees that Customer is solely responsible for adhering to and monitoring InfiniCORE's support website for updates and changes to the Reference Guide.

3.4. Product Life Cycle Policy. All Services provided hereunder are subject to InfiniCORE's Product Life Cycle Policy which is available on InfiniCORE's Support website.

4. POINT OF CONTACT

InfiniCORE may, at its option, provide the Services directly or indirectly, through any of its Partners, agents, or sub-contractors.

5. DESCRIPTION OF PROGRAMS

5.1. Principle Period of Services. Services are provided during the hours described in the Reference Guide.

5.2. Telephone and Email Support. All telephone and email support will be delivered in accordance with any Service Plan Documentation and InfiniCORE's Support Policy.

5.3. Web-based Support. The InfiniCORE corporate website www.InfiniCORE.com provides access to a variety of information including online documentation. To engage Customer Services and Support on an ongoing basis, an account must be created on the InfiniCORE support website <https://www.InfiniCORE.com/support>. This site includes Subscription Service updates, Maintenance and



Feature Releases, and technical support alerts. Login information and passwords are provided upon registration of the account. Customer hereby agrees and warrants that only authorized information technology personnel shall have access to the login and password information. InfiniCORE shall use reasonable efforts to ensure web access is available on a 24x7x365 basis, but will not be responsible for internet downtime beyond its reasonable control.

5.4. Hardware Support. If the Customer's Service Contract includes hardware support, the Services shall be delivered as described in the applicable Service Plan Documentation and shall be provided in accordance with InfiniCORE's Support Policy. Please refer to InfiniCORE's Support Policy regarding the Hardware Support claim process. For Service Contracts containing Advanced Hardware repair or replacement, InfiniCORE is not responsible for any delays in delivery related to export or customer regulations or processes. Should the Customer fail to return a Defective Unit within thirty (30) days from the receipt of the Replacement Unit for such Defective Unit, or should a defective unit sent in by Customer be determined to be a No Trouble Found Unit, Customer may be assessed the service and freight charge on the Replacement Unit. InfiniCORE shall be entitled, in InfiniCORE's discretion, to discontinue Services for the Defective Unit and/or Replacement Unit until such Defective Unit is received. For any Service Contract which incorporates four-hour replacement Services, Customer acknowledges that InfiniCORE shall have 30-days from the date of Product's Registration Date to stage replacement Product in a local depot ("Staging Period"). As such Customer's four-hour replacement Services shall not commence until the end of such a Staging Period.

5.5. Software/Firmware Updates. If Customer's Service Contract includes software/firmware updates, all official software and firmware maintenance releases and feature updates shall be included in this agreement. Customer may access such updates via password-protected web access. Customer may install only one (1) copy of the upgrade per product covered by a Service Contract. Using software/firmware updates on more than one (1) Product (without having additional Service Contracts) is considered a material breach of this Agreement and shall give InfiniCORE the right to terminate this Agreement and any other Service Contract that the Customer may have without refund to the Customer. Support shall be provided on the then-current major release of Product and the previous release of the software. At InfiniCORE's option, InfiniCORE may provide technical assistance on older versions of a registered Product, but such services may be limited and are not guaranteed. Support Services do not include education/training-related services or professional services such as installation or network configuration. Training and/or other on-site services may be purchased in addition to Support Services, at the then-current standard rates.

6. EXCLUSIONS

6.1. General. Customer acknowledges that software and/or hardware is/are neither perfect nor error-free and that, despite commercially reasonable efforts, InfiniCORE may be unable to provide answers to, or be able to resolve, some or all requests for software or hardware support. The Services provided by InfiniCORE hereunder do not include a warranty, support and/or maintenance for any third-party software or hardware, whether or not such third-party software or hardware is provided by InfiniCORE. InfiniCORE is not required to provide Services for problems arising from: (i) Customer's failure to implement all maintenance or features issued under this Agreement; (ii) any alterations of or additions to the Products performed by parties other than InfiniCORE; (iii) accident, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); or (iv) interconnection of the Products with other products not supplied by InfiniCORE.



6.2 On-Site Support Not Included. Support Services are strictly limited to telephone and electronic support. On-site professional services are available for purchase directly from InfiniCORE or through one of InfiniCORE's Partners.

7. LICENSE

All updates or upgrades to Software or Hardware provided for under this Agreement shall be deemed to be included within the Products and subject to the terms and conditions of InfiniCORE's EULA. Further, Customer hereby agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the Product or support updates or software, or any part thereof, or to aid or to permit others to do so, except and only to the extent as expressly required by applicable law; (ii) not to remove any identification or notices of any proprietary or copyright restrictions from any Product or support updates or software; (iii) not to copy the Product or support updates or software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or include any portion of the Software in any other software program; (iv) only to use the Product and support updates and software for internal business purposes, and (v) to keep confidential any software and support updates and not share them with third parties.

8. WARRANTY

Except as expressly stated otherwise, maintenance releases, updates and upgrades provided hereunder are warranted for the remaining software warranty period of the original Product purchased, if any, as specified in InfiniCORE's EULA. Nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. In the event of a conflict between this Agreement and the EULA, the EULA shall govern. InfiniCORE cannot guarantee that every question or problem raised in connection with the Services will be addressed or resolved. EXCEPT FOR WARRANTIES CLEARLY AND EXPRESSLY STATED HEREIN, NOTWITHSTANDING ANYTHING TO THE CONTRARY, INFINICORE MAKES, AND YOU RECEIVE, NO OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES HEREUNDER, AND, TO THE EXTENT PERMISSIBLE BY LAW, INFINICORE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

9. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL INFINICORE BE LIABLE TO THE CUSTOMER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS OR LOSS OF DATA HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT INFINICORE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, INFINICORE TOTAL LIABILITY TO THE CUSTOMER ARISING FROM OR IN RELATION TO THIS AGREEMENT AND THE SERVICES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, SHALL BE LIMITED TO THE TOTAL PAYMENTS MADE BY CUSTOMER TO INFINICORE UNDER THIS AGREEMENT DURING THE THREE HUNDRED SIXTY-FIVE (365) CALENDAR DAYS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO THE LIABILITY.



THIS LIMITATION WILL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE. IN NO EVENT WILL INFINICORE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO DAMAGES ARISING FROM DEATH OR PERSONAL INJURY IN ANY JURISDICTION WHERE SUCH LIMITATION IS PROHIBITED BY APPLICABLE LAW.

10. GENERAL PROVISIONS

10.1. Survival of Terms. The terms contained herein which by their nature are intended to survive the termination of this Agreement shall do so.

10.2. Transferability. Customer may not assign or otherwise transfer this Agreement without written consent from InfiniCORE. Any attempted assignment or attempted transfer without InfiniCORE's consent shall be null and void. InfiniCORE may assign its rights and obligation under this Agreement to a third party without consent from Customer.

10.3. Entire Agreement. The provisions of this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior agreements or representations, oral or written, regarding such subject matter. Except as provided for herein, this Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party, and, furthermore, Customer acknowledges and agrees that InfiniCORE is not bound by any purported amendment or new agreement signed by a representative of InfiniCORE other than InfiniCORE's General Counsel. For clarity, only InfiniCORE's General Counsel is authorized to alter, amend, or modify this Agreement in any way or enter a new agreement on behalf of InfiniCORE or its affiliates, and any amendment or new agreement that is not signed by InfiniCORE's General Counsel, regardless of whether including an InfiniCORE, or InfiniCORE affiliate, company seal or chop, is null and void and of no force and effect.

10.4. Confidential Information. Customer may be exposed to certain information concerning the Products and Services including, without limitation, Maintenance Releases (regularly scheduled and released updates and upgrades to Software), Feature Releases (enhancements released through InfiniCORE's Product planning practices or through customer requests) and other Product, Service or business information, which is InfiniCORE's confidential or proprietary information (herein "Confidential Information"). The Customer agrees that during and after the term of this Agreement, the Customer will not use or disclose to any third party any Confidential Information without the prior written consent of InfiniCORE, and Customer will use reasonable efforts to protect the confidentiality of such Confidential Information. The Customer may disclose the Confidential Information only to its employees as is reasonably necessary to perform under this Agreement; provided that each such employee is under a written obligation of nondisclosure which protects the Confidential Information under terms substantially similar to those herein. This section shall not apply to Confidential Information made public by InfiniCORE.

10.4. Compliance with Laws. Customer is advised that the Products may be subject to the United States Export Administration Regulations and other import and export laws; diversion contrary to United States law and regulation is prohibited. Customer agrees to comply with all applicable international and national laws that apply to the Products as well as end-user, end-use, and destination restrictions issued by the U.S. and other governments. For additional information on U.S. export controls see www.bis.doc.gov. InfiniCORE assumes no responsibility or liability for Customer's failure to obtain any necessary import



and export approvals. Customer represents that neither the United States Bureau of Industry and Security nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's export privileges. Customer agrees not to use or transfer the Products for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the United States Government by regulation or specific written license. Additionally, Customer agrees not to directly or indirectly export, import or transmit the Products contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use. Furthermore, Customer represents that Customer understands, and Customer hereby agrees to comply with, all requirements of the U.S. Foreign Corrupt Practices Act and all other applicable laws.

10.6. Governing Law, Venue, and Settlement of Controversies. This Agreement shall be governed by the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents, without regard to the principles of conflict of laws or the United Nations Convention on Contracts for the International Sale of Goods. Any controversies or claims arising from or relating to this Agreement, or the breach thereof, which cannot be amicably settled by and between the parties, shall be referred to and finally settled by arbitration. The place of arbitration shall be Santa Clara, California, pursuant to the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services (JAMS), or its successor, before a sole, mutually agreed-upon arbitrator and shall be conducted in English. Award for such dispute will be rendered by a single, neutral, mutually agreeable arbitrator.

10.7. No Waiver and Severability. Failure by InfiniCORE to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. The exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court of competent jurisdiction or an agreed-upon arbitrator finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

10.8. English Language and Interpretation. This Agreement is in the English language only, which language shall be controlling in all respects. Any versions of this Agreement in any other language will be for accommodation only and will not be binding upon either party. In construing or interpreting this Agreement, the word "or" shall not be construed as exclusive, and the word "including" shall not be limiting. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

10.9. Force Majeure. InfiniCORE shall be excused from performance to the extent performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers or any other reason where failure to perform is beyond InfiniCORE's reasonable control.