

## InfinStor SaaS Agreement

This Agreement governs your access to and use of the InfinStor Software-as-a-Service (SaaS) you have subscribed to from Amazon Web Services or an Approved Source. This Agreement (“Agreement”) is between you and InfinStor and consists of:

- I. the applicable purchase agreement between you and InfinStor if you purchased the SaaS directly from InfinStor.
- II. the applicable Offer Description(s) located at <https://aws.amazon.com/marketplace/seller-profile?id=a50f6fed-f497-46dd-b01b-d17649e407ec>
- III. the Order(s);
- IV. the Policies; and
- V. the following terms.

In the event of a conflict, the order of precedence is as set out above. Capitalized terms are defined in Appendix 1. BY CLICKING AN ACCEPT BUTTON, SUBMITTING AN SUBSCRIPTION ORDER FOR INFINSTOR SAAS THAT REFERENCES THIS AGREEMENT, OR USING THE SAAS, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES, IN WHICH CASE "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MAY NOT USE THE SAAS.

**1. Scope of Use:** InfinStor will provide you the SaaS as specified in the applicable Offer Description(s) and Order (s). You may use the SaaS in accordance with this Agreement only for your internal business use. You may need to install software (“Software”), an on-premise agent (“Agent”) or provide additional information to register for and/or use certain SaaS. You may use the Software to the extent reasonably required to use the SaaS and only for the duration you are entitled to use the SaaS. Such Software is licensed to you under InfinStor’s EULA. InfinStor reserves all rights to the SaaS and Software not expressly granted under this Agreement or the EULA.

**2. Evaluation: Beta:** We may invite you to try beta versions of the SaaS. You may need to agree to additional terms for the beta SaaS. Beta SaaS is provided for evaluation and feedback purposes and may not be used in a production environment. You understand that beta SaaS is not generally released and, therefore, is unsupported and may contain bugs, errors and other issues. You accept the beta SaaS “AS-IS,” without warranty of any kind, and InfinStor is not responsible for any problems or issues related to your use of the beta SaaS. The beta SaaS may never be generally available and we may discontinue beta SaaS in our sole discretion at any time and delete any Content or data on the beta SaaS without liability to you. Trial: We may give you trial access to SaaS, which also may be subject to additional terms. Any trial period will expire on the later of 60 days or as otherwise stated in writing from InfinStor. Trial SaaS also is provided “ASIS” without support or any express or implied warranty of any kind.

**3. Fees and Payment: Fees:** Fees are as described in Amazon Web Services Marketplace

**4. Your Obligations AUP:** You will comply with the InfinStor SaaS Services Acceptable Use Policy (“AUP”). We may investigate complaints or suspected violations of the AUP and, if we reasonably determine there is a violation, we may take action to remedy the violation (e.g., refusing to post or removing your or your Users’ Content or restricting, suspending or terminating access to the SaaS). In instances where we reasonably believe that such violation would expose us to civil, regulatory or criminal liability, we may take action immediately without prior notice to you. You agree to indemnify, defend and hold us harmless for any claims, liability, damages, and costs (including attorneys’ fees) arising from your or your Users’ violations of the AUP. Use of SaaS: You own your Content and are responsible for your and your Users’ Content and use of the SaaS using your account information, password, or other login credentials. You agree to use reasonable means to protect your credentials from unauthorized disclosure or use by third parties, and you will promptly notify InfinStor any unauthorized use of your account of which you become aware. Any registration information you provide to use the SaaS will be accurate and you will keep such information current and up to date. You will not sell, resell, reframe, distribute, rent or lease the SaaS, include the SaaS in an outsourced or service bureau offering, or otherwise commercialize the SaaS. You grant InfinStor a worldwide, royalty-free, sublicensable license to use, modify, reproduce and distribute the Content only as reasonably required to provide the SaaS. InfinStor is free to use and incorporate any feedback you provide regarding the SaaS without payment of royalties or other consideration.

**5. Changes:** InfinStor may enhance and/or change the features of the SaaS at our discretion as long as we do not materially reduce the core functionality of the SaaS. We also may offer additional optional features and/or functionalities in addition to the “standard” SaaS at an additional cost.

**6. Confidentiality, Privacy and Data Protection.** InfinStor will use Content and Submission Data in accordance with this Agreement and InfinStor’s Privacy Statement, including applicable Supplemental Privacy Information. We may transfer, copy, backup and store your Content and Submission Data in the United States or other countries or jurisdictions outside your country as a part of the SaaS, where permitted by law. You are responsible for obtaining consent from your Users to such processing and transfer of Content and Submission Data, including international transfers. We will obtain appropriate agreements with our Affiliates, subcontractors and agents consistent with this Agreement and our Privacy Statement. InfinStor will not monitor your Content or use of the SaaS or otherwise process Content and Submission Data other than (i) as needed to provide, support or improve the provision of the SaaS, (ii) where instructed or permitted by you, (iii) to investigate potential or suspected fraud or misuse of the SaaS, or (iv) as otherwise required by law or to exercise or protect our legal rights. You are responsible for obtaining consent from your Users to such processing and transfer of Content and Submission Data, including international transfers”. InfinStor reserves the right to charge for certain activities performed at your request or direction (such as delivering Content in a specific format).

**7. Warranty:** InfinStor warrants that the SaaS will materially comply with the applicable Offer Description(s). Your sole and exclusive remedies for breach of this warranty are (at our option) to repair or replace the SaaS or refund the fees for the period in which the SaaS did not materially comply to the entity which paid InfinStor. In order to receive either of these remedies, you must promptly notify InfinStor of such breach. Except as expressly stated in this section 7, to the extent allowed by applicable law, InfinStor: (a) expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition or other implied term as to merchantability, fitness

for a particular purpose or non-infringement; and (b) makes no warranty or representation that the SaaS will be uninterrupted, secure or error-free.

**8. Limitation of Liability:** InfinStor's maximum liability for all claims related to this Agreement shall not exceed the fees paid to InfinStor for the applicable SaaS during the 12 months before the last event that gave rise to your claim. This limit is in the aggregate and not per incident. Neither party will be liable for any (a) indirect, incidental, exemplary, special or consequential damages; (b) loss or corruption of data or interrupted or loss of business; or (c) loss of revenues, profits, goodwill or anticipated sales or savings. This limitation of liability applies whether the claims are contract, tort (including negligence), or otherwise, even if either party has been advised of the possibility of such damages. The exclusions and limitations in this section do not apply to your liability for a violation of InfinStor's intellectual property or proprietary rights. Neither party may bring a claim under this Agreement more than 18 months after the event that creates the action or claim, except for your breach of InfinStor's intellectual property or proprietary rights. Nothing in this Agreement limits or excludes any liability that cannot be limited or excluded under applicable law.

**9. Term and Termination** This Agreement starts on the date you submit your first Order. Either of us may terminate this Agreement for any reason by giving the other party 30 days' prior written notice, with any termination effective when all of your Orders expire or are terminated. Either of us may terminate this Agreement and any impacted Orders by giving written notice to the other party if the other party materially breaches this Agreement and does not cure that breach within 30 days after receiving written notice of the breach (without prejudice to InfinStor's right to immediately suspend or terminate for breach of the AUP). The term of an Order starts on the date the SaaS is available for use by you and lasts for the period stated in the Order ("Initial Term"). Unless otherwise stated or prohibited by applicable law, the Initial Term will renew automatically for the same length of the Initial Term ("Renewal Term") unless you notify InfinStor in writing that you do not want to renew the SaaS at least 30 days before the end of then current Initial Term or Renewal Term. We will notify you reasonably in advance of the Renewal if there are any fee changes. If you agree with the fee changes, you may do nothing and the new fees will apply for the upcoming Renewal Term. If this Agreement is terminated for any reason: a. InfinStor will make your stored Content available to you for a reasonable period of time (subject to the AUP); b. You will pay the fees for the SaaS provided up to the effective date of termination. The following provisions will survive the expiration or termination of this Agreement: Section 2 and any payment provisions in the Order, Sections 3-6, 9, 11, and 12. Upon any termination or expiration of this Agreement, you must cease any further use of the SaaS and destroy any copies of Software within your control.

**10. Assignment/Subcontracting.** We may assign our rights and delegate our obligations under this Agreement, in whole or in part to, an Affiliate or subcontractor without your consent. Other than the above, neither of us may assign or delegate this Agreement. InfinStor may subcontract the performance of the Services to one or more third party organizations. Any such subcontract shall not relieve InfinStor of any of its obligations under this Agreement.

**11. Applicable Law and Jurisdiction** The governing law for this Agreement is the State of California, USA.

**12. Other**

- a. Any press release or publication regarding this Agreement is subject to prior written approval of the other party.
- b. Except for payment obligations, neither party will be responsible for failure of performance due to a Force Majeure Event.
- c. The SaaS and Software may be subject to local and extraterritorial export control laws and regulations. You shall comply with such laws and regulations governing use, export, re-export, and transfer of the SaaS and Software and will obtain all required local and extraterritorial authorizations, permits or licenses. The export obligations under this clause shall survive the expiration or termination of this Agreement.
- d. As set forth in the EULA, Software and related documentation are “commercial items” as defined at Federal Acquisition Regulation (“FAR”) (48 C.F.R.) 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in FAR 12.212.
- e. You will comply with all applicable laws and regulations related to your receipt and use of the SaaS. You must ensure you have the right to use all features of the SaaS in your jurisdiction. The SaaS may not be available in all countries and it may not be available for use in any particular location. We may modify or discontinue SaaS features to comply with applicable laws and regulations. InfinStor will comply with all applicable laws in the provision of the SaaS to you.
- f. InfinStor may update the terms of this Agreement from time to time. If we do, we will post the updated terms or will otherwise notify you. If you renew the SaaS or purchase additional SaaS after the updated Agreement has been posted, you agree to the updated terms. Any other modifications to this Agreement must be by mutual written agreement.
- g. InfinStor may provide you with notice via email, regular mail and/or postings on the InfinStor.com website or any other website used as part of the relevant SaaS.
- h. Failure to enforce any right under this Agreement will not waive that right. If any term of this Agreement is not enforceable, this will not affect any other terms.
- i. This Agreement is the complete agreement between the parties concerning the subject matter of this Agreement and replaces any conflicting provisions in any acknowledgements, purchase orders, quotations or prior understandings, except as agreed between the parties. Any other modifications to this Agreement must be by mutual written agreement.