

This **SUBSCRIPTION AGREEMENT** (“**Agreement**”) is a contract between You and Intel Corporation and its affiliates (“**Intel**”). It governs Your use of the **Materials**. If You are accepting this Agreement on behalf of or in conjunction with Your work for Your employer, You represent and warrant that You have the authority to bind your employer to this Agreement. By downloading, installing, or using the **Materials**, You agree to these terms. If You do not agree, do not use the **Materials** and destroy all copies.

## 1. DEFINITIONS.

**1.1 “Including”** means including but not limited to, whether or not capitalized.

**1.2 “Intel Components”** means a hardware component or product designed, developed, sold, or distributed by Intel or its affiliates.

**1.3 “Materials”** means software or other collateral Intel delivers to You under this Agreement.

**1.4 “You” or “Your”** means you or you and your employer and its affiliates, whether or not capitalized.

**1.5 “Your Products”** means products developed or to be developed by or for You that include an Intel Component executing the **Materials**.

## 2. LICENSES.

**2.1 License.** Subject to the terms of this Agreement, Intel grants to You, for the Term, a limited, nonexclusive, nontransferable, revocable, worldwide, fully paid-up license under Intel’s intellectual property rights in the **Materials**, without the right to sublicense, to use the **Materials** in the development of Your Products, including modifying **Materials** delivered as source code, and distributing the **Materials**, including Your modifications, in object form, embedded in or for execution on Your Product and under terms and conditions consistent with Your rights and obligations under this Agreement. You may disclose the **Materials** to Your subcontractor for its work on Your Products under an agreement preventing the subcontractor from disclosing the **Materials** to others.

**2.2 Restrictions.** Except as authorized above, You will not: (a) use or modify the **Materials** in any other way; (b) reverse engineer, decompile, or disassemble the **Materials** provided in object form (except and only as specifically required under Section 2.5), or (c) use the **Materials** to violate or aid in the violation of any international human right. You will be liable for your subcontractor’s acts or omissions including breach of confidentiality.

**2.3 No Implied License.** Except for the express license in Section 2.1, Intel does not grant any express or implied licenses to you under any legal theory. Intel does not license You to make, have made, use, sell, or import any Intel technology or third-party products, or perform any patented process, even if referenced in the **Materials**. Any other licenses from Intel require additional consideration. Nothing in this Agreement requires Intel to grant any additional license.

**2.4 Feedback.** If you give Intel comments or suggestions related to the **Materials**, Intel confidential information provided in connection with this Agreement, or Intel

Components, Intel can use them in any way and disclose them to anyone, without payment or other obligations to you.

**2.5 Open Source Licenses.** The **Materials** may include software subject to an open source license, including licenses recognized by the Open Source Initiative (<http://www.opensource.org>). Nothing in this Agreement limits any rights under, or grants rights that supersede, the terms of any applicable open source software license.

**2.6 Third-Party Software.** Your use of any third-party software is subject to Your compliance with the license You obtain directly from that third-party. A listing of any such third-party software may be in a text file accompanying the **Materials**.

**3. CONFIDENTIALITY.** This Agreement and the **Materials** are Intel confidential information and subject to Your valid corporate non-disclosure agreement with Intel (CNDA) attached to this Agreement as Exhibit A and agreed to and accepted by You by your acceptance of this Agreement. Except as authorized in Section 2.1, you must not disclose this information to anyone, including the U.S. government. Notwithstanding the foregoing, the parties agree that information relating to Services, which may include each party’s confidential information, may be disclosed to International Business Machines Corporation (“**IBM**”) solely in connection with IBM’s support obligations for the **Materials** and Services offered through the RedHat Marketplace. This Agreement will not become effective, or will automatically terminate, in the absence of a CNDA.

**4. OWNERSHIP.** Ownership of the **Materials** and related intellectual property rights is unchanged. You must maintain all copyright or other proprietary notices in the **Materials**.

**5. SERVICES.** Intel will provide You with support and related services (“**Services**”) as specified in Exhibit B. Except as expressly set forth in Exhibit B, Intel shall not have any obligation to provide any support to You under this Agreement.

**6. TRIAL PERIOD; SUBSCRIPTION.** The **Materials** and the Services provided to You under this Agreement are available under the following models: (i) monthly subscription or (ii) 90 days trial period, after which period You become automatically enrolled in a monthly subscription.

**7. NO WARRANTY.** The **Materials** are provided “as is,” without any express or implied warranty of any kind including warranties of merchantability, non-infringement, title, or fitness for a particular purpose. The **Materials** may include pre-release software or algorithms and may not be fully functional. Other than as specifically provided in this

**Agreement, Intel is not required to maintain, update, or support the Materials.**

**8. LIMIT ON LIABILITY.** Intel will not be liable to You under any legal theory for any losses or damages in connection with the Materials, including consequential damages, even if the possibility of damages was foreseeable or known. If any liability is found, Intel's total, cumulative liability to You will not exceed \$100.00 U.S. for all claims arising from or related to this Agreement. These liability limitations are a fundamental basis of our bargain and Intel would not have entered into this Agreement without them.

**9. INDEMNITY.** You will indemnify, defend, and hold Intel harmless from any allegation against Intel arising in connection with Your use of the Materials and You will pay all of Intel's losses, liabilities, and costs (including attorneys' fees) arising from the allegation.

## **10. PRIVACY; DATA COLLECTION**

**10.1 Privacy.** Intel respects Your privacy. For information about why and how Intel may collect and use information from Your use of the Materials, see <http://www.intel.com/privacy>.

**10.2 Data Collection.** Some downloaded software included in the Materials may generate and collect information about the software and usage and transmit it to Intel to help improve Intel's products and services. This collected information may include product name, product version, time of event collection, license type, support type, installation status, hardware and software performance, and use.

## **11. GENERAL.**

**11.1 Assignment.** You may not assign Your rights or obligations under this Agreement without Intel's prior written consent. No third party will have any rights under this Agreement.

**11.2 Dispute Resolution.** If we have a dispute regarding this Agreement (other than a dispute over misappropriation of trade secrets or breaches of confidentiality obligations), neither of us can file a lawsuit or other regulatory proceeding unless the complaining party provides the other party a detailed notice of the dispute and our senior managers attempt to resolve the dispute. If we can't resolve the dispute in 30 days, either of us may demand mediation and will then try to resolve the dispute with an impartial mediator. If we don't resolve the dispute within 60 days after the mediation demand, either of us may begin litigation.

**11.3 Governing Law; Jurisdiction.** This Agreement is governed by USA and Delaware law without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Except for claims for misappropriation of trade secrets or breach of confidentiality obligations, all disputes and actions

arising out of or related to this Agreement are subject to the exclusive jurisdiction of the state and federal courts in Wilmington, Delaware and you consent to personal jurisdiction in those courts.

**11.4 Compliance with Laws.** The Materials are subject to export controls under applicable government laws and regulations, including in the U.S. You must comply with applicable laws and regulations, including U.S. and worldwide export regulations. You must not export, import, or transfer the Materials to any prohibited or sanctioned country, person, or entity. You must not use the Materials for the development, design, manufacture, or production of nuclear, missile, chemical, or biological weapons.

**11.5 Severability.** If a court holds a provision of this Agreement unenforceable, the court will modify that part to the minimum extent necessary to make that part enforceable or, if necessary, to sever that part. The rest of the provision remains fully enforceable.

**11.6 Waiver.** No waiver of any provision of this Agreement will be valid unless in a writing signed by an authorized representative of the waiving party that specifies the waived provision. That signed waiver will not constitute a waiver of any other provision. A party's failure or delay in enforcing any provision will not operate as a waiver.

**11.7 Entire Agreement.** Except for any non-disclosure agreement between you and Intel, this Agreement constitutes the entire agreement, and supersedes all prior agreements, between Intel and You concerning its subject matter.

## **12. TERM; TERMINATION; SURVIVAL.**

**12.1 Term.** This Agreement begins upon Your acceptance of its terms and continues until terminated under Sections 3 or 122.

**12.2 Termination.** Either party may terminate this Agreement, with 30 days written notice, at any time for any reason. This Agreement will automatically terminate upon (a) Your breach of the Agreement, (b) an allegation that you do not have authority to bind your employer to these terms, or (c) Your assertion that an Intel Component, the Materials, or any product based on any Intel Components or the Materials infringes Your patents.

**12.3 Effect of Termination.** Upon termination of the Agreement, the licenses to You will immediately terminate and You must cease using the Materials and destroy all copies in your possession and direct Your subcontractors to do the same. Termination of this Agreement will not terminate the CNDA.

**12.4 Survival.** All sections except Sections 2.1, 5 and 6 survive termination of this Agreement.

## EXHIBIT A

### CORPORATE NON-DISCLOSURE AGREEMENT

This Corporate Non-Disclosure Agreement ("Agreement") is effective as of the date indicated above, between Intel Corporation and its Affiliates ("Intel"), and You and Your Affiliates (the "Participant").

#### 1. THE PARTIES AGREE AS FOLLOWS:

##### 1. Definitions.

- 1.1 "Affiliate" means any entity that Controls, is Controlled by, or is under common Control with Intel Corporation or the Participant identified below. "Control" means direct or indirect ownership, through one or more intermediaries, of more than 50% of an entity's voting capital or other voting rights.
- 1.2 "Confidential Information" means the confidential, proprietary, and trade secret information of the disclosing party to be disclosed by the disclosing party under this Agreement, and comprises:
  - (A) information in tangible form that (1) bears a Confidentiality Legend, or (2) does not bear any Confidentiality Legend, if the receiving party knew, or reasonably should have known under the circumstances, that the information was confidential and had been communicated to it in confidence, and
  - (B) discussions about that information that may occur before, at the same time, or after disclosure of the information.
- 1.3 "Confidentiality Legend" means a "confidential," "proprietary," "secret," or similar legend.
- 1.4 "Covered Persons" means employees, contingent workers, and professional advisers of a party and that party's Affiliates.

2. Obligations of Disclosing Party. The disclosing party will make reasonable efforts to mark its Confidential Information in tangible form with a Confidentiality Legend before disclosure.

3. Obligations of Receiving Party. The receiving party must:

- 3.1 maintain the confidentiality of the Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances;
- 3.2 disclose any Confidential Information only to the receiving party's Affiliates and Covered Persons who have a need to know and who have agreed in writing to abide by nondisclosure terms at least as comprehensive as those in this Agreement. Each party will be liable for breaches of this Agreement by its Affiliates and Covered Persons;
- 3.3 not disclose any Confidential Information to any other third party; and
- 3.4 not make any copies of the Confidential Information except copies that are necessary for the receiving party's disclosures under Section 3.2. The receiving party will identify any copies as originating from the disclosing party and retain any existing Confidentiality Legends on the copies.

4. Duration of the Obligation of Confidentiality. Subject to the exceptions in Section 5, the confidentiality obligations in this Agreement will bind the receiving party for each disclosure for five years from the receipt of Confidential Information.

5. Exceptions to the Obligation of Confidentiality. The receiving party will not be liable for the disclosure of any Confidential Information that is:

- 5.1 generally made available publicly or to third parties by the disclosing party without restriction on disclosure;
- 5.2 received without any obligation of confidentiality from a third party who rightfully had possession of the information;
- 5.3 rightfully known to the receiving party without any limitation on disclosure, before its receipt from the disclosing party;
- 5.4 the same as information that is independently developed by Covered Persons of the receiving party; or
- 5.5 required to be disclosed under applicable laws, regulations, or court, judicial, or government agency orders. The receiving party must give the disclosing party reasonable notice before this disclosure, and seek a protective order, confidential treatment, or other remedy, if available, to limit the scope of the required disclosure.

6. Title. Title or the right to possess Confidential Information as between the parties will remain in the disclosing party.

7. No Obligation of Disclosure; Termination. Neither party has any obligation to disclose Confidential Information to the other under this Agreement. Either party may terminate this Agreement at any time without cause by giving written notice to the other party. Each party's obligations concerning Confidential Information disclosed during the term of this Agreement will survive any termination as provided in Section 4. Either party may, at any time, request in writing the return or destruction of all or part of its Confidential Information previously disclosed, and all copies of it. The receiving party must promptly comply with this request, and certify in writing its compliance.

8. General.

8.1 Independent Parties; No Obligation to Buy or Sell. This Agreement does not create a joint venture, partnership, or other form of business association between the parties, or any obligation to buy or sell products using or incorporating the Confidential Information.

8.2 No License. In this Agreement, neither party grants to the other party any license under any patents, copyrights, trademarks, or mask works, either expressly, by implication, inducement, estoppel, or otherwise. Any license under these intellectual property rights must be express and in a separate signed writing.

8.3 No Waiver. If either party fails to enforce any provision in this Agreement, that party reserves and does not waive the right to enforce the same provision or any other provision of this Agreement at a later time.

8.4 Governing Law; Non-Exclusive Jurisdiction. All disputes arising out of or related to this Agreement, including without limitation all matters connected with its performance, will be governed by, and construed and interpreted under, the laws of [Click here to enter text.](#), without reference to conflict of laws principles. Any disputes arising out of or related to this Agreement, including without limitation all matters connected with its performance, may be brought in the courts of [Click here to enter text.](#) Each Party hereby irrevocably submits to the non-exclusive personal jurisdiction of those courts and irrevocably waives all objections to that jurisdiction and venue for those disputes.

8.5 Entire Agreement. This Agreement contains the complete and exclusive agreement and understanding between the parties concerning the subject matter of this Agreement. It supersedes all prior and contemporaneous oral or unsigned, written agreements, understandings, or communications between the parties relating to the same subject matter, but will not supersede any other signed, written agreements between the parties, including without limitation non-disclosure agreements. This Agreement may not be modified except in a writing signed by the parties.

8.6 DISCLAIMER OF WARRANTIES: The disclosing party disclaims all warranties for all Confidential Information disclosed under this Agreement, including without limitation all warranties about the accuracy or utility of the Confidential Information.

8.7 If this Agreement, or any amendment to this Agreement, is executed electronically in lieu of traditional means of contract execution, the parties agree that an electronic signature will be legally binding. Neither party will contest the enforceability of this Agreement on the basis that it was executed electronically.

**EXHIBIT B**  
**Services Addendum (“SA”)**

This Services Addendum is attached to and forms a part of the Agreement signed between the parties.

**Technical Support**

You will be entitled to technical support (“Support”) from Intel during the term of the Agreement on the use of the Materials, subject to the terms and conditions set forth in this SA.

**Support Services**

Intel will provide the following Support services:

- Support will be provided in conformance with f the Red Hat Marketplace support flow with case submission at <https://marketplace.redhat.com/en-us/support>.
- Cases will be managed according to the Support Levels and Response Time Objectives table set out below.
- Intel will strive to provide work-around solutions, bug-fixes or security patches to reported Materials problems using reasonable commercial efforts.
- Updates to Materials will be provided as they are made available.
- Support will be provided in English.
- Intel will provide proactive services to assist with design and deployment of the Materials and to help proactively address issues with the Materials.

**Support Assumptions & Conditions**

You agree with and will comply with all of the below assumptions and conditions as pre-requisites to receiving Support:

<b>Assumptions and Conditions</b>	
<b>A1</b>	This SA does not and is not intended to describe or commit to enabling Your model, tuning the performance of or running Your specific use cases for the Materials.
<b>A2</b>	This SA also does not commit Intel to developing any new feature or functionality that is over-and-above what has already been delivered by Intel and it does not commit Intel to deliver any software or bug fixes.
<b>A3</b>	You will ensure that Your internal support team has attempted to resolve the issue on their own by reproducing the problem and recommending workarounds if possible and if the issue cannot be resolved independently, Your internal support team has scanned Intel support database to see if similar issue has been reported in the past and what possible resolution may be and has established that the issue lies with the Materials.
<b>A4</b>	Each case shall contain only one issue and the description of the issue will include all necessary information and steps to reproduce the defect. Cases submitted without a reproduction scenario may be rejected by Intel.
<b>A5</b>	You are responsible for providing Your latest target system to Intel, including Your latest software and tool. The primary purpose for delivering Your designated target systems to Intel is to have the same reproduction environment as You when identifying the root cause. Intel is not required to perform any software validation of Your target system.
<b>A6</b>	All hardware or software provided by You or a third party, shall operate according to its intended use, without any critical issues or other issues that may impact the work effort.
<b>A7</b>	You shall ensure that You have all necessary license rights to provide any third-party software that is provided to Intel for Support purposes.

<b>A8</b>	Intel shall not be responsible for any existing bugs in Your hardware or software that is delivered by You or any third party, to Intel, and such hardware or software will not be fixed under the scope of this SA.
<b>A9</b>	Materials is developed and validated only on Intel's setup on use cases known to Intel. Therefore, the Materials may not exhibit certain features, peripherals, architectures, or configurations that are representative of Your environment. You will be solely responsible for any adaptation of Materials that is provided by Intel to You.
<b>A10</b>	Materials is optimized for specific stability, power and performance criteria, and according to the methods defined solely by Intel. These optimizations may or may not be applicable or comparable when the Materials is applied to Your environment. You will be solely responsible for any additional software optimizations, including optimizations specific to Your setup.
<b>A11</b>	When Intel makes any changes to Materials, then Intel recommends that You also make the same changes to Your product implementation. Intel is not responsible for design implementation misalignments between Materials and Your product implementation and Intel will not provide fixes targeted to Your unique configuration.
<b>A12</b>	Support does not cover Your applications and data, or backing up and restoring them.
<b>A13</b>	Support does not cover (i) service necessary due to operator error, improper use of the Materials, (ii) use of the Materials outside of the scope of the applicable license agreement or documentation, (iii) service that would violate Intel's obligations to its third-party licensors and suppliers with respect to such third parties' intellectual property or (iv) unnecessary support in Intel's assessment.

Intel shall be excused from performing any of its obligations hereunder to the extent that any such non-performance is attributable to your failure to perform your responsibilities under this section.

#### **Service Levels and Response Time Objectives**

All cases submitted will be assigned one of the following severity levels. Intel will confirm accuracy of the severity level assignment and will assign a different severity level if the initial assignment was incorrect in Intel's assessment. Intel will use commercially reasonable efforts to resolve support cases, but Intel does not guarantee a work-around, resolution or resolution time. Support is available during the hours and days specified in the table below using US Pacific Time excluding US public holidays. Support response time objectives will apply only after you have enrolled in subscription service.

<b>Severity Level</b>	<b>Severity Definition</b>	<b>Response Time</b>	<b>Coverage</b>
Level 1-	<b>Critical business impact:</b> Business critical functionality is inoperable or critical interface has failed. This usually applies to a Production environment and indicates an inability to access services resulting in a critical impact on operations. This condition requires an immediate solution. Customer must log a Severity 1 case within 24 hours of first becoming aware that there is a critical business impact and the service is not available.	Within 1 hour	24 hrs/day 7 days/week

Level 2-	<b>Significant business impact:</b> A service, business feature, or function of the service is severely restricted in its use, or Customer is in jeopardy of missing business deadlines.	Within 2 hours	24 hrs/day 7 days/week
Level 3-	<b>Minor business impact:</b> The service or functionality is usable, and the issue does not represent a critical impact on operations.	Within 4 business hours	Monday-Friday 8AM-6PM
Level 4-	<b>Minimal business impact:</b> An inquiry or non-technical request.	Within 1 business day	Monday-Friday 8AM-6PM

### **Information, Access and Designated Personnel**

You agree to provide information, and/or access to resources as Intel may reasonably require in order to deliver Support, including, without limitation, access via the Internet, direct connection or VPN connection to relevant servers, access to your facilities and the Intel-based Solution access to, and assistance of, your personnel who possess information required by Intel for purposes of performing its obligations hereunder.

### **Your Materials and Data**

You are responsible for the security and backup of your software and data at all times. You understand that it will be your responsibility to remove, as you deem appropriate, software and data prior to receiving Support. YOU ACKNOWLEDGE THAT AFTER RECEIVING SUPPORT, THE INTEL-BASED SOLUTION MAY NOT BE CAPABLE OF BEING RESTORED TO ITS PRIOR CONDITION AND THAT SOFTWARE MAY BE AFFECTED. FURTHER, YOU UNDERSTAND THAT DATA THAT YOU CREATE OR CHANGE WHILE RECEIVING SUPPORT MAY BE INCAPABLE OF BEING RESTORED OR RECOVERED. INTEL SHALL NOT BE RESPONSIBLE FOR ANY COSTS, EXPENSES OR OTHER LIABILITIES YOU MAY INCUR AS A RESULT OF YOUR ELECTIONS TO LEAVE OR REMOVE SOFTWARE AND DATA FROM THE INTEL-BASED SOLUTION.

### **Personal Information**

In order to obtain Support, You or Your end user customer will need to register and create an account with Intel and become a registered user with Intel. When creating an account, the registrant will be required to provide certain information and establish a username and a password. Intel reserves the right to suspend or terminate an account if any information provided is inaccurate, false or misleading. Each registrant is responsible for safeguarding the password created for the account and for any activities or actions under such account, whether or not authorized by the registrant. Intel will not be liable for any loss or damage arising from any registrant's failure to comply with the above requirements. For more information on how Intel handles data from its customers, please visit Intel's Privacy Notice at <https://www.intel.com/content/www/us/en/privacy/intel-privacy-notice.html>.