

Intel® Solutions for Lustre*¹ Software License and Subscription Services Reseller Agreement

IMPORTANT-READ CAREFULLY BEFORE COPYING, INSTALLING, OPERATING OR USING

This Intel® Solutions for Lustre Software License and Subscription Services Reseller Agreement (the "Agreement") sets forth the terms and conditions under which Intel Corporation ("Intel") offers Intel® Solutions for Lustre* Software (defined below) and Services (defined below) to Reseller ("you" or "Company" or "Reseller"). Do not use or load any software and any associated documentation until you have carefully read the following terms and conditions. By selecting "Agree" below, or by loading or using any of the software, you agree to the terms of this Agreement. If you do not wish to agree, click "Do Not Agree" and do not install or use the software. If you are an employee or agent of a legal entity, you represent and warrant that you have the authority to bind such legal entity to this Agreement.*

INTRODUCTION

Intel offers licenses for the proprietary Intel Software (as defined below) and provides access to Intel® Solutions for Lustre* Software. Intel also offers support and maintenance services and resources, as well as professional services and training to Resellers who sell products that include Intel Solutions for Lustre* Software. Capitalized terms used herein but not defined shall have the meaning given to them in Section 1 below.

This Agreement specifies the details of the Intel Software license and the Services (as defined below) that Intel offers to Reseller.

TERMS AND CONDITIONS

1. DEFINITIONS

"Affiliates" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Cloud Service Provider" means a service provider offering software services via a private or public cloud network, which is authorized by Intel to license Intel Software, provide access to Intel Cloud Edition for Lustre* Software and resell Services.

"End Users" means customers to whom Reseller provides Services on End User Lustre file systems that use Intel Solutions for Lustre* Software.

"Feedback" means any suggestions, comments, corrections, modifications, improvements or enhancements of Intel Software or Intel Solutions for Lustre* Software.

"Intel Cloud Edition for Lustre* Software" means an open source Lustre file system distribution which Intel has packaged for usage through a Cloud Service Provider.

¹ **Other names and brands may be claimed as the property of others.*

“Intel Online Issue-Tracking Database” means the Intel database hosted on an Intel-managed website used for tracking issues with Intel Solutions for Lustre* Software.

“Intel Reseller Portal” means the Intel web portal for Resellers hosted on an Intel-managed website which contains links to product information, professional services and training, as well as a link to download Intel Solutions for Lustre* Software and Intel Software.

“Intel Software” means Intel proprietary software (i) which is used to monitor and/or manage a Lustre System or its successor product, (ii) which is a proprietary command line tool that creates a Lustre System (e.g. loci and ce-client), and/or (iii) which Intel may list as “Intel Proprietary Software” in its header, release notes or accompanying documentation.

“Intel Solutions for Lustre* Software” refers to the Intel-designated software distribution which Intel has made available to Resellers (including through a Cloud Service Provider), and may include but is not limited to Intel Software, Open Source Software, any version of the Lustre file system that Intel, in its sole discretion, chooses to support, and any subsequent updated versions which Intel has made available.

“Licensed Patent Claims” means the claims of Intel’s patents that are necessarily and directly infringed by the reproduction and distribution of Intel Software authorized in Section 2.1, when that Intel Software is in its unmodified form as delivered by Intel to Reseller and not modified, or combined with anything else. Licensed Patent Claims are only those claims which Intel can license without paying and without the consent of a third party.

“Licensed Servers” means Object Storage Servers (“OSS”), Metadata Servers (“MDS”), and/or any other type of server that Intel may designate from time to time. Object Storage Servers means computer servers used to store Lustre file information, and components of the Intel Software, and to communicate with storage products used to store the Lustre file system data. Metadata Servers means computer servers that store Lustre metadata for the file system.

“Lustre System” means hardware storage products and hardware server products sold or resold or supported by Reseller which use an open source Lustre file system for high performance computing on Linux.

“Object Code” means computer programming code in binary form suitable for machine execution by a processor without the intervening steps of interpretation or compilation.

“Open Source Software” means

(a) any software that requires as a condition of use, modification or distribution of the software that software or other software incorporated into, derived from or distributed with that software:

- be disclosed or distributed in source code;

- be licensed by the user to third parties for the purpose of making or distributing derivative works; or
- be redistributable at no charge.

(b) Open Source Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models substantially similar to any of the following:

- GNU's General Public License (GPL) or Lesser/Library GPL (LGPL);
- the Artistic License (e.g., PERL);
- the Mozilla Public License;
- the Netscape Public License;
- the Sun Community Source License (SCSL);
- the Sun Industry Source License (SISL); and
- the Common Public License (CPL).

"Order Form" means a purchase order form or other similar document(s) issued by Reseller offering to license software or purchase services from Intel. For Order Forms to be valid, Order Forms must include the following: Reseller name; End User name; the total number of Licensed Servers to be supported under the Order Form site (not required for Order Forms where Reseller is acting as a SaaS provider); a description of the Lustre System(s), including the identification and address of the site (site information is not required for Order Forms where Reseller is acting as a SaaS provider); term of Services to be provided including start date; applicable fees payable to Intel; applicable Intel part number; and applicable Service level.

"Problem," "Issue" or "Bug" means a demonstrable instance of adverse and incorrect operation of Intel Solutions for Lustre* Software that causes an impact to the End User's ability to utilize the Lustre file system and/or Intel Solutions for Lustre* Software.

"Reseller Program Participation Guidelines" or "Guidelines" refers to the document that sets forth the requirements with which Resellers must comply in order to qualify for participation in the Reseller Program. The Guidelines are available to Reseller at <http://www.intel.com/content/www/us/en/software/lustre-reseller-program-participation-guidelines.html> or any other website as Intel may direct Reseller from time to time, and are incorporated herein by reference and made a part of this Agreement. Intel reserves the right to modify the Guidelines at any time, for any reason, by providing reasonable notice to Reseller.

"Services" means the support and maintenance services provided by Intel which are identified on **Attachment 1** that Reseller purchases under an Order Form, and can include, without limitation, services for Intel Solutions for Lustre* Software, and any other services, including professional services and training that Intel may provide from time to time under this Agreement, or as may be described in statements of work which may be incorporated into this Agreement by reference.

"Software as a Service" or "SaaS" means an offering by Reseller to its End Users for access to Intel Cloud Edition for Lustre* Software through a Cloud Service Provider.

“Standard” means any generally recognized technology or technical standard promulgated, distributed, specified, or published by an entity whose activities include developing, coordinating, promulgating, amending, reissuing, or otherwise producing standardized technology specifications or protocols for adoption by product manufacturers or the public. “Standards” includes “de facto” technology or technical standards that are initially introduced by one or more entities, which then become more widely adopted by others in other products; includes features characterized as “mandatory,” “optional,” and their equivalents; and includes versions characterized as “draft.” Examples of Standards include GSM, GPRS, EDGE, CDMA, UMTS, LTE, WCDMA, Wi-Fi (also known as 802.11[x]), Bluetooth (also known as 802.15.1), and de-facto standards such as HTML or VHS (video). Examples of entities that promulgate, distribute, specify or publish Standards include the IEEE, ITU, 3GPP, ETSI, and the USB Implementers’ Forum.

“Website Resources” means the product documentation, marketing collateral, generic pricing, trainings, Reseller Program Participation Guidelines, support level definitions, any special branding guidelines, and issue resolution process, or other materials provided by Intel from time to time to Reseller through the Intel Lustre* sites, currently at <http://www.intel.com/lustre>, the Intel Reseller Portal, and for the Intel Trademark and Brand Guidelines, currently at <http://www.intel.com/content/www/us/en/trademarks/trademarks.html>.

2. SOFTWARE LICENSES.

2.1 License Grant to Intel Software. Subject to compliance with the terms and conditions of this Agreement, and subject to the limitations set forth in Section 2.2, Intel hereby grants Reseller a non-transferable, non-exclusive, limited right and license:

- (a) under Intel’s copyrights, to:
 - (1) reproduce and make a reasonable number of all or any portion of Intel Software for Reseller’s internal evaluation, development, testing, training, and support of End Users and Reseller’s distribution partners; and for the limited purpose of demonstrating Intel Software to potential End Users and Reseller’s distribution partners;
 - (2) reproduce and install Intel Software (without any right to modify Intel Software) on Lustre Systems for distribution pursuant to Section 2.1(3);
 - (3) distribute (either directly or through multiple levels of distribution) the unmodified Intel Software in Object Code or obfuscated source form for use solely on Lustre Systems and solely in conjunction with the provision of Services provided by Intel; provided that, the Reseller allows, causes and/or enables the End User to accept the end user license agreement attached in Attachment 2 or such other end user license agreement as Intel may provide or agree that Reseller may use to distribute to End Users from time to time;
 - (4) copy, distribute and use the documentation accompanying Intel Software

(“Documentation”) as is reasonably necessary for Reseller to exercise Reseller’s license rights under this Section 2.1; and

(b) under Intel’s Licensed Patent Claims to:

(1) make copies of Intel Software internally only,

(2) use Intel Software internally only; and

(3) offer to distribute, distribute or provide access to Intel Software but not sell, Intel Software under the license under Intel’s copyrights granted in Section 2.1(a)(3), but only under terms of such license under Intel’s copyrights and not as a sale.

(c) Unless specifically set forth in this Section 2.1 and Section 7.4, Intel grants Reseller no other license or right to any Intel patents, copyrights, mask works, trade secrets, or other intellectual property, expressly or by implication, estoppel, statute or otherwise. Intel reserves all rights that it does not expressly grant to Reseller in this Agreement.

(d) The consideration provided under this Agreement is only for the licenses expressly granted to Reseller in this Agreement. Any other rights, including but not limited to additional patent rights, would require an additional license and additional consideration. Nothing in this Agreement requires or will be treated to require Intel to grant any additional license.

(e) Reseller acknowledges that there are significant uses of Intel Software, or implementations of Intel Software in their original, unmodified, and uncombined form. The consideration for the license in this Agreement reflects Intel’s continuing right to assert patent claims against any modifications or derivative works (including, without limitation, error corrections and bug fixes) of, or combinations with, Intel Software or implementations of Intel Software that infringe any Intel patent claim that is not a Licensed Patent Claim.

2.2 Restrictions and other Conditions.

(a) **Ownership and Restrictions.** All rights, title and interest in and to Intel Software and Documentation are and will remain the exclusive property of Intel. Unless expressly permitted under Section 2.1(a), Reseller will not, and will not allow any third party to:

(1) use, copy or distribute Intel Software or Documentation; or

(2) modify, adapt, enhance, disassemble, decompile, de-obfuscate, reverse engineer, change or create derivative works from Intel Software.

(b) **Virus Detection.** Reseller will employ in Reseller’s reproduction and installation process standard industry tests to detect virus infection and use best

efforts to ensure that no Intel Solutions for Lustre* Software will be shipped that has been infected with a virus.

(c) **No other rights.** No right or license is granted or implied under any of Intel's copyrights, patents, trademarks, trade names, service marks or other intellectual property rights to use Intel Software or Documentation or to license or authorize others to use Intel Software or Documentation beyond the rights expressly set forth in this Agreement.

(d) **Third Party Access.** Except as expressly permitted under Section 2.1, Reseller will not allow Intel Software to be accessed or used by third parties or anyone other than Reseller's employees or the employees of Reseller's distribution partners whose duties require access or use.

2.3 Copies. In addition to the number of copies permissible under Section 2.1(a)(1), Reseller may make a reasonable number of copies of Intel Software for archival purposes or for use as a back-up when Intel Software is not operational. Reseller must copy (or retain) all copyright legends, trademarks, trade names and other legends and identification when Reseller copies Intel Software and Documentation. Reseller will maintain records of the number of copies currently in Reseller's possession or control, and the location of each copy and will provide copies of those records to Intel upon request.

2.4 Open Source Software.

(a) Intel Solutions for Lustre* Software contains Open Source Software that is distributed under the open source license(s) accompanying its distribution.

(b) Intel Software may also include Open Source Software that is licensed and distributed under the applicable Open Source Software license(s) accompanying its distribution.

(c) Nothing in this Agreement limits any rights under, or grants rights that supersede, the terms of the applicable Open Source Software license agreements.

(d) Reseller will not take any action that would subject Intel Software or Documentation, in whole or in part, to any license obligations associated with Open Source Software, including combining or linking the Intel Software or Documentation with Open Source Software in a manner that subjects Intel, or any portion of Intel Software, to any license obligations of Open Source Software.

2.5 Website Resources.

Website Resources are provided to Reseller under the terms of this Agreement and the Intel Terms of Use found at:

<https://www-ssl.intel.com/content/www/us/en/legal/terms-of-use.html>

Any inconsistency in the terms shall be resolved with the terms of this Agreement taking precedence.

3. SERVICES AND RESELLER RESPONSIBILITIES

3.1. Provision of Services. Intel will make available the Services (a) that Reseller orders and purchases pursuant to an Order Form, which Intel accepts through a confirmation of service document, and/or (b) that Reseller orders through a Cloud Service Provider under terms and conditions provided by Intel through the Cloud Service Provider.

3.2 Reseller Responsibilities

Reseller shall:

3.2.1 Actively market and promote Intel Solutions for Lustre* Software and Services; and before each quarter of a year, use commercially reasonable efforts to inform Intel about planned marketing activities and sales forecasts for the next quarter;

3.2.2 When entering into this Agreement, train personnel in order to deliver competent and sufficient services to End Users who license Intel Solutions for Lustre* Software or buy Services from Reseller;

3.2.3 Promptly inform Intel of any facts or opinions of which Reseller becomes aware likely to be relevant in relation to the commercial exploitation of Intel Solutions for Lustre* Software, and which are advantageous or disadvantageous to the interests of Intel;

3.2.4 At all times conduct its business in a manner that will reflect favourably on the good name and reputation of Intel and Intel Solutions for Lustre* Software and Services;

3.2.5 Not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of Intel, Intel Solutions for Lustre* Software or Services or other practices which may be detrimental to Intel, Intel Solutions for Lustre* Software and Services or the public interest;

3.2.6 If any dispute shall arise between Reseller and any of its End Users related to Intel Solutions for Lustre* Software or Services, promptly inform Intel and comply with all reasonable directions of Intel in relation thereto;

3.2.7 At all times employ a sufficient number of personnel (a) having sufficient training and expertise to properly display, demonstrate, sell and instruct End Users in the installation and use of Intel Solutions for Lustre* Software and Services, and (b) capable of addressing End User inquiries and needs regarding Intel Solutions for Lustre* Software and Services;

3.2.8 At all times maintain adequate demonstration facilities for Intel Solutions for Lustre* Software and Services;

3.2.9 Supply to Intel such reports, returns and other information relating to orders and projected orders for Intel Solutions for Lustre* Software and Services as Intel may from time to time reasonably require;

3.2.10 Not make any promises or representations or give any warranties or guarantees in respect of Intel Solutions for Lustre* Software or Services, except such as are consistent with those which accompany Intel Solutions for Lustre* Software or Services or as expressly authorised by Intel in writing;

3.2.11 Not alter, obscure, remove, interfere with or add to any of the trademarks, trade names, markings or notices affixed to or contained in Intel Solutions for Lustre* Software or the documentation at the time when they are delivered to End User;

3.2.12 Provide an efficient after-sales service in respect of Intel Solutions for Lustre* Software and Services; and

3.2.13 Only apply or distribute Intel Solutions for Lustre* Software originated and delivered software or services patches, fixes resolutions or other mechanisms to resolve Intel Solutions for Lustre* Software issues.

3.3 Responsibilities of a Reseller providing Software as a Service. Reseller may provide Intel Cloud Edition for Lustre* Software through a Cloud Service Provider as a Software as a Service; provided, Reseller (i) purchases Intel Cloud Edition for Lustre* Software via Reseller's existing account with Cloud Service Provider and such account remains continuously active for period of this Agreement; (ii) creates a unique file system for each new End User that purchases through Reseller; (iii) orders Services for each End User directly from Intel; (iv) charges fees, or causes fees to be charged, for each new End User as set forth in Section 4;(v) allows, causes, or enables the End User in written form or electronically to accept the most current EULA for Intel Software available via the Intel Reseller Portal; and (vi) complies with all other terms in this Agreement relating to offering Intel Cloud Edition for Lustre* Software as a Software as a Service.

4. FEES

4.1. Fees. If purchasing directly from Intel, Reseller will pay all applicable fees to Intel as set forth in the applicable invoice.

Payment obligations are non-cancelable and fees paid are non-refundable. Order Forms should be emailed to hpdd-accounting@intel.com. Pricing terms may be changed by Intel without prior notice; however Intel will honor any pre-existing quotations made to Reseller for the quotation validity period.

Whenever requested by Intel, Reseller will promptly submit its most current available financial information. If at any time the financial condition of Reseller so warrants, or if Reseller fails to make payment(s) when due, or if Reseller fails to supply requested financial documentation or defaults in any way, all payments may, in Intel's sole and absolute discretion, become immediately due and payable and Intel may alter terms of payment, suspend credit, delay, and/or pursue any and all remedies available at law or in equity or otherwise under this Agreement. In such event, Intel will be entitled to reimbursement from Reseller upon demand for all expenses incurred by Intel in respect thereof, including, without limitation, reasonable attorneys' fees and costs. Intel maintains a Money Laundering Prevention Policy which may be provided to you from time-to-time upon

Reseller's request. Intel may refuse to accept forms of payment mentioned as unacceptable in the policy.

4.2 Software as a Service. For each End User where Reseller is providing Software as a Service, Reseller will send Intel (hpdd-accounting@intel.com) an Order Form for the cost of the version of the Intel Cloud Edition for Lustre* Software and pay the applicable fee for each End User as specified in Section 5.1.

4.3 Taxes. Unless otherwise stated, Intel's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Reseller is responsible for paying all Taxes associated with Reseller's purchases hereunder. If Intel has the legal obligation to pay or collect Taxes for which Reseller is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Reseller, unless Reseller provides Intel with a valid tax exemption certificate authorized by the appropriate taxing authority. If Intel does not collect Taxes from Reseller but later remits payment of such Taxes to any taxing authority, including as a result of an audit, notice of assessment or other written communication from a taxing authority, then Reseller will promptly reimburse Intel for such Taxes including any accrued interest and penalties. For clarity, Intel is solely responsible for taxes assessable based on Intel's income, property and employees.

5. PAYMENT

5.1. Invoicing and Payment. Reseller's right to receive Services and/or use Intel Solutions for Lustre* Software under this Agreement will be effective upon Intel's acceptance of the Order Form. If purchasing directly from Intel and not through a Cloud Service Provider, Intel will invoice Reseller for the fees for all Services purchased. If purchasing directly from Intel and not through a Cloud Service Provider, Service charges will be paid fully in advance for multi-year service periods and annually in advance for twelve (12) months of service. Invoiced charges are due net thirty (30) days from the invoice date. Reseller is responsible for providing complete and accurate billing and contact information to Intel and for notifying Intel of any changes to such information. For usage of Intel Cloud Edition for Lustre* Software, Reseller will pay to Intel all usage fees along with presenting the usage report to Intel as set forth in Section 6.2 no later than seven (7) business days after the last day of the preceding reporting month. Fees for each of Reseller's End Users when Reseller is acting as a SaaS provider will be as quoted to Reseller by Intel upon request.

5.2. Overdue Charges. If any charges for Services and/or Intel Solutions for Lustre* Software are not received from Reseller by the due date, then at Intel's sole and absolute discretion and without Reseller's consent, Intel may, in its sole and absolute discretion, (i) either alter terms of payment (for example, by conditioning future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.1); (ii) alter the terms upon which Intel extends credit to Reseller; (iii) suspend Services as provided for in Section 5.3; (iv) do any combination of the foregoing, and/or (v) pursue any and all remedies available at law or equity or otherwise under this Agreement. In such event, Intel will be entitled to reimbursement from Reseller upon demand for all expenses Intel incurs in pursuing the foregoing remedies, including, without limitation, reasonable attorneys' fees

and costs. Intel may charge, and Reseller agrees to pay upon demand the lesser of 1½% per month or the highest lawful monthly rate on overdue invoices.

5.3. Suspension of Service and Acceleration. If any amount owing by Reseller under this or any other agreement for Intel's Services and/or Intel Solutions for Lustre* Software is thirty (30) or more days overdue, Intel may, without limiting Intel's other rights and remedies, accelerate Reseller's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Intel's Services to Reseller until such amounts are paid in full. Intel will give Reseller at least seven (7) days' prior notice that Reseller's account is overdue before suspending Services to Reseller.

Intel may also suspend all of its Services to Reseller if Reseller misuses the Services by supporting an End User Lustre file system without payment to Intel of the appropriate fees for Services.

6. REPORTING AND INSPECTION

6.1. Reporting. For all products except for Intel Cloud Edition for Lustre* Software, Reseller will promptly notify Intel if the number of supported Lustre Systems and/or the number of Licensed Servers within the Lustre Systems sold by Reseller exceeds the number of Lustre Systems and/or Licensed Servers for which Reseller has paid Intel the applicable fee as set forth in Section 4. In Reseller's notice, Reseller will include both the number of additional Lustre Systems and/or Licensed Servers and the date(s) on which such Lustre Systems and/or Licensed Servers were put into use. Intel will invoice Reseller for the applicable Services for such Lustre Systems and/or Licensed Servers on a pro-rata basis (where applicable) and Reseller will pay for such Services in accordance with this Agreement.

6.2 Reporting for Intel Cloud Edition for Lustre* Software. Reseller will provide monthly reports of the usage of Intel Cloud Edition for Lustre* Software along with its payments to Intel. When Reseller is offering Intel Cloud Edition for Lustre* Software as a SaaS provider, individual End User usage reporting may be required for each of Reseller's End Users.

6.3 Inspection. During the term of this Agreement and for one (1) year thereafter, Intel or its designated agent may inspect and review Reseller's facilities and records in order to verify Reseller's compliance with this Agreement. Any such inspection and review will take place only during Reseller's normal business hours and upon no less than ten (10) days prior written notice from Intel. Intel will give Reseller written notice of any non-compliance, including the number of underreported Lustre Systems and/or Licensed Servers, and Reseller will have fifteen (15) days from the date of such notice to make payment to Intel for the applicable Services provided to the underreported Lustre Systems and/or Licensed Servers. If Reseller had under-reported the number of Lustre Systems or the number of Licensed Servers by more than five percent (5%), Reseller will also pay Intel for the cost of such inspection.

7. PROPRIETARY RIGHTS

7.1. Reservation of Rights in Services and Intel Software. Subject to any limited rights expressly granted hereunder, Intel reserves all rights, title and interest in and to the

Services and Intel Software, including all related intellectual property rights. No rights are granted to Reseller hereunder other than as expressly set forth herein.

7.2. Restrictions. Reseller will not (i) permit any third party to access the Services or use Intel Software except as permitted herein or in an Order Form or mutually executed amendment hereto, (ii) create derivative works of any materials provided to Reseller in conjunction with the Services except as expressly authorized herein, (iii) access the Services or use Intel Software in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services and/or Intel Software, (iv) apply or distribute software or services patches, fixes, resolutions or other mechanisms originated and delivered to resolve Intel Solutions for Lustre* Software issues to End Users or End Users' systems running Lustre software that are not covered under a Reseller Intel Lustre* support agreement and where the Reseller has not paid Intel, or the Cloud Service Provider if applicable, for such Services for the End User.

7.3. Suggestions. Reseller may periodically provide Feedback to Intel relating to Services and/or Intel Solutions for Lustre* Software. Although Reseller may decide how much Feedback to give Intel and how it provides that Feedback, Reseller grants to Intel a non-exclusive, irrevocable, worldwide, sublicensable, transferable and royalty-free license to (a) use, display, perform, copy, create derivatives of, and distribute Feedback (without reference to its source), and (b) to make, have made, use, sell, offer to sell, import, export and otherwise dispose of the Feedback, in software products or services designed, developed, or made by or for Intel.

7.4 Trademark/Logo License Grant.

7.4.1. Subject to the terms and conditions of this Agreement, Reseller grants to Intel a revocable, non-transferable, non-exclusive, and limited license (without the right to sublicense), during the term of this Agreement, to use Reseller's trademark, trade dress, service marks, and logos ("Reseller Marks") solely in connection with Intel's sales and marketing materials, for publicity, promotion or otherwise, for the Software and Services offered and provided to Reseller under this Agreement, including using any Reseller Marks as directed by Reseller. Intel shall comply with all trademark policies of the Reseller provided to Intel, and any use of the Reseller Marks will inure to the benefit of the trademark owner. If the use of the Reseller Marks does not meet Reseller's standards and policies, Reseller, at its option, may terminate Intel's use of the Reseller Marks. Intel acknowledges Reseller's ownership, exclusive right, title and interest in the Reseller Marks and agrees that Intel will not acquire any right, title or interest in or to the Reseller Marks by virtue of the limited license described herein or through Intel's permitted use of the Reseller Marks other than the right to use such Reseller Marks to the extent expressly provided under this Agreement.

7.4.2. Intel grants to Reseller a revocable, non-transferrable, non-sublicensable, non-exclusive and limited license to use, during the Term of this Agreement, materials provided by Intel to Reseller ("Intel Materials") and the Intel trademarks and logos set provided to Reseller, incorporated in the Intel Materials (collectively, the "Intel Marks") solely in connection with Reseller's sale and promotion of the Software and Services under this Agreement. The Intel Materials and Intel Marks are referred to collectively as the "Intel Property." Reseller will use the Intel Marks in strict compliance with the terms and

conditions of this Agreement and the trademark usage guidelines provided by Intel to Reseller, and for no other purpose whatsoever. If the use of the Intel Property does not meet Intel's trademark usage guidelines and this Agreement, Intel, at its option, may terminate Reseller's use of the Intel Marks.

7.4.3. Reseller acknowledges Intel's ownership, exclusive right, title and interest in the Intel Property and agrees that Reseller will not acquire any right, title or interest in or to the Intel Property by virtue of the limited license described herein or through Reseller's permitted use of the Intel Property other than the right to use such Intel Property to the extent expressly provided under this Agreement. Reseller agrees that it will not, during the term of this Agreement or thereafter, (a) assert any claim to the Intel Property, (b) contest in any way Intel's ownership of or title or right to use such Intel Property, or (c) take any action or any position inconsistent with Intel's right and/or ownership in the Intel Property. Reseller further acknowledges that its use of the Intel Property under this Agreement, and all goodwill associated with such use, will inure solely to the benefit of and be solely on behalf of Intel.

7.4.4. Reseller acknowledges that Intel has valuable goodwill and reputation in the Intel Marks. Reseller agrees that it will not at any time do, or cause to be done, directly or indirectly any act that may impair or tarnish any part of Intel's goodwill and reputation in the Intel Marks, and agrees to ensure that that its employees, agents and contractors adheres accordingly. Without limiting the foregoing, Reseller agrees not to use the Intel Marks in any advertising materials or conduct any activities in a manner that may modify, alter, detract from or impair the integrity, character, or dignity of the Intel Marks or reflect unfavorably upon Intel.

7.4.5 Reseller will always use the Intel Marks so that they create a separate and distinct impression from any other trademark that Reseller may use in connection with this Agreement. Whenever customary and feasible, a trademark notice must appear in close proximity to the Intel Marks: e.g., "Intel and the Intel logo are trademarks of Intel Corporation in the U.S. and/or other countries." Prior to distributing any materials or otherwise using the Intel Marks, Reseller agrees to submit a sample of such use to Intel for review and approval. If Intel disapproves of Reseller's use of the Intel Marks, Intel will notify Reseller in writing detailing Intel's concerns and Reseller agrees not to use the Intel Marks as presented in the sample. Reseller will provide an edited specimen of its use of the Intel Marks that addresses Intel's concerns to Intel for review within ten (10) days from the date of receipt of notice from Intel, provided that a failure to provide approval within the requisite period will not be deemed an approval.

7.4.6. Reseller agrees to abide by all state, national and local laws in connection with the marketing, advertising, manufacturing and distribution of all items bearing the Intel Marks.

7.5. Federal Government End Use Provisions. Intel provides the Services and Software, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211

(Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Intel to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement..

8. WARRANTY AND DISCLAIMER

8.1. Intel's Warranty. Intel warrants that the Services will be performed in a professional and workmanlike manner by qualified personnel. In the event of Intel's breach of this warranty, Reseller's exclusive remedy will be as provided in Section 11.3 (Termination) and Section 11.4 (Effect of Termination) below.

8.2. Third Parties. Intel does not and cannot control the performance of any data, products, or services controlled by third parties. At times, action or inaction by third parties may impair or disrupt the Services. Intel makes no representations and expressly disclaims all warranties regarding the data, products, or services of any other party, including the providers of electrical or telecommunication products or services. Additionally, the Services may contain products of independent third parties, such as open source code, patches and fixes. Intel makes no warranty as to the accuracy of any such third party information.

8.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, THE SERVICES AND INTEL SOFTWARE ARE PROVIDED "AS IS" AND WITHOUT ADDITIONAL WARRANTIES OR CONDITIONS OF ANY KIND (EXPRESS OR IMPLIED), INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ALL OTHER CONDITIONS, TERMS, UNDERTAKINGS AND REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY INTEL, INTEL AFFILIATES, DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. INTEL DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. INTEL BEARS NO RESPONSIBILITY OR LIABILITY TO RESELLER, RESELLER'S END USERS, OR OTHER THIRD PARTIES FOR ANY ISSUES RESELLER, RESELLER'S END USERS OR OTHER THIRD PARTIES ENCOUNTER THAT COULD HAVE BEEN AVOIDED BY INSTALLATION OF SOFTWARE RELEASES PROVIDED BY INTEL FROM TIME TO TIME THAT INCORPORATE UPGRADES OR BUG FIXES.

9. PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION

(a) Indemnity. Intel will indemnify, and, at its election, defend, Reseller against claims asserted against Reseller in any suit or proceeding for direct patent or copyright infringement, or for Intel's trade secret misappropriation, asserted against Intel Software, alone and not in combination with anything.

(b) Exclusions. Notwithstanding anything else in this Agreement, Intel has no obligation to indemnify or defend the following claims:

- (i) those asserted against elements or features in, or operation of, Intel Software attributable in whole or in part to Intel's inclusion of technology given by Reseller to Intel, or compliance with Reseller's designs, specifications or instructions, including inclusion of software supplied by Reseller or included at Reseller's request;
- (ii) those asserted against Intel Software attributable in whole or in part to the modification of Intel Software by anyone other than Intel, or against the use of Intel Software, where that use is contrary to its specification or instructions for use;
- (iii) those asserted against the combination of Intel Software with anything else;
- (iv) those based on an allegation that Intel Software implements or complies with, in whole or in part, as shipped or when used, a Standard;
- (v) those including any allegation that Intel Software indirectly infringes, including by inducing or contributing to another's infringement;
- (vi) any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by Reseller alleging patent infringement;
- (vii) those including an allegation that Intel Software complies, in whole or in part, as shipped or when used, with any media decoding, encoding, or transcoding technology (such as, for example, through use of an audio or video codec); and
- (viii) those asserting that Reseller willfully infringed.

(c) Conditions. Intel's obligations under this Section 9 are conditioned on Reseller's prompt written notice to Intel of a claim and on Reseller's tender to Intel of the right to solely control and conduct the defense and any settlement of the claim. Reseller must fully and timely cooperate with Intel and provide Intel with all reasonably requested authority, information and assistance. Intel will not be responsible for any costs, expenses or compromise incurred or made by Reseller without Intel's prior written consent.

(d) Defense, Settlement and Remedies. At its option, Intel will solely control and conduct the defense and any settlement of indemnified claims. Intel may, in its sole discretion and at its own expense: (i) procure for Reseller the right to continue using Intel Software; (ii) replace Intel Software with a non-infringing version of Intel Software; (iii) modify Intel Software so that it becomes non-infringing; or (iv) upon Reseller's return of Intel Software to Intel, credit Reseller its purchase price for Intel Software, less appropriate depreciation.

(e) Personal Indemnity. The foregoing indemnity is personal to Reseller and Reseller may not assign, transfer or pass through this indemnity to Reseller's customers (including End Users).

(f) Exclusive Remedy. The foregoing states Intel's entire obligation and Reseller's exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by Intel Software.

10. LIMITATIONS OF LIABILITY

10.1. Exclusion of Consequential and Related Damages. INTEL WILL NOT BE LIABLE FOR ANY OF THE FOLLOWING LOSSES OR DAMAGES (WHETHER SUCH LOSSES OR DAMAGES WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE): (i) LOSS OF

REVENUE; (ii) LOSS OF ACTUAL OR ANTICIPATED PROFITS (WHETHER DIRECT OR INDIRECT); (iii) LOSS OF THE USE OF MONEY; (iv) LOSS OF ANTICIPATED SAVINGS; (v) LOSS OF BUSINESS; (vi) LOSS OF OPPORTUNITY; (vii) LOSS OF GOODWILL; (viii) LOSS OF USE OF INTEL SOFTWARE; (ix) LOSS OF REPUTATION; (x) LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA; OR (xi) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE HOWEVER CAUSED (INCLUDING LOSS OR DAMAGE OF THE TYPE SPECIFIED IN THIS SECTION 10.1).

10.2. Limitation of Liability. INTEL'S TOTAL CUMULATIVE LIABILITY TO RESELLER, INCLUDING FOR DIRECT DAMAGES AND ANY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT (AND WHETHER THE BREACH ARISES BECAUSE OF BREACH OF CONTRACT, NEGLIGENCE, OR FOR ANY OTHER REASON), WILL NOT EXCEED THE SUM PAID OR PAYABLE TO INTEL BY RESELLER UNDER THIS AGREEMENT FOR INTEL SOFTWARE THAT IS THE SUBJECT OF AND DIRECTLY AFFECTED BY SUCH CLAIM.

10.3. Sole Remedies; Materiality. RESELLER ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY PROVIDED IN THIS SECTION 10 ARE AN ESSENTIAL PART OF THIS AGREEMENT. RESELLER AGREES THAT THE LIMITATIONS OF LIABILITY PROVIDED IN THIS AGREEMENT WITH RESPECT TO INTEL WILL BE CONVEYED TO AND MADE BINDING UPON ANY CUSTOMER (INCLUDING END USER) OF RESELLER THAT ACQUIRES INTEL SOFTWARE, ALONE OR IN COMBINATION WITH OTHER ITEMS FROM RESELLER.

10.4 Indemnity for Certain Uses of Intel Software. Unless otherwise expressly agreed in writing by Intel, Intel Software conveyed to Reseller under this Agreement is not designed or intended for any application in which the failure of Intel Software could result in personal injury or death. Reseller will indemnify, defend, and hold harmless Intel, its directors, officers, employees, suppliers, and subcontractors, against all claims, costs, damages, and expenses (including reasonable attorneys' fees and costs) arising, directly or indirectly, out of any claim of product liability, personal injury or death when associated with such unintended use of Intel Software, notwithstanding any claim that Intel, its suppliers or subcontractors were negligent regarding the design or manufacture of Intel Software or any part of Intel Software.

10.5 Damages Calculations for Certain Indemnity Claims. For indemnity claims under Section 9, and subject to the conditions under that Section, Intel will not be liable for paying those portions of amounts assessed or awarded based on: (i) the value of services or an assembly of products, devices or components that include Intel Software, subject to a claim under Section 9, where that claim includes a demand for damages associated with the entire assembly (for example, damages based upon the "entire market value" rule); or (ii) the value or sales price of any products, devices, components, or services other than Intel Software itself, when an assessment or award includes an allegation that those other items would have been sold together with, or as spare parts sold for, Intel Software subject to a claim under Section 9 (for example, "convoyed sales" or "derivative sales").

10.6 Time Limit for Claims. Except for a claim to recover amounts owed, any claim or action arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) must be started within one year after the cause of action accrues. If a given event or circumstance or series of connected events or

circumstances gives rise to more than one claim, all such claims arising out of the same events or circumstances will be treated as a single claim, which will be treated as having arisen on the date on which the first of the connected claims arose.

11. TERM AND TERMINATION

11.1. Term of Agreement. This Agreement commences on the Effective Date and runs for an initial term of (1) year. Thereafter, the term automatically renews for one (1) year period(s) unless one party gives at least sixty (60) days prior written notice to the other party of its intention to terminate this Agreement. Notwithstanding the foregoing, if there is an Order Form(s) accepted by Intel under this Agreement, the term of this Agreement will continue until all Services and/or Intel Software licenses to be provided under such accepted Order Form(s) in accordance with this Agreement have been completed or been terminated. Reseller's failure to comply with one or more program requirements outlined in the Reseller Program Participation Guidelines may, in Intel's sole discretion and option result in (i) written notice from Intel of termination in accordance with this Section 11, (ii) Reseller being removed from or demoted to a lower level of program membership and/or removal of Reseller's name in any references in all Intel public facing materials, and (iii) Reseller's immediately removing the Intel Lustre* Reseller text treatment with use of Intel brand from all Reseller printed and online material.

11.2. Term of Services.

(a) For all products except for Intel Cloud Edition for Lustre* Software, Reseller's subscription for Services purchased from Intel will commence on the start date specified in the applicable Order Form and will continue for the term specified therein. Unless Intel gives Reseller notice of non-renewal at least sixty (60) days prior to expiration of the subscription term, Reseller will be able to renew its subscription for a term equal to the expiring subscription term or one year (whichever is longer). If Reseller does not pay the fees for the new subscription period according to the payment terms on the invoice, Reseller's Services will be automatically terminated.

(b) Since fees for Services for Intel Cloud Edition for Lustre* Software are paid in arrears, the term of Services continues until this Agreement is terminated or in accordance with Reseller's agreement with that Cloud Service Provider (whichever is earlier).

11.3. Termination

- A. For Convenience.** Either party may terminate this Agreement at any time for any reason by providing at least sixty (60) days' prior written notice to the other party.
- B. For Cause.** A party may terminate this Agreement for cause: (i) with thirty (30) days prior written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4. Effect of Termination.

- A.** For all products except for Intel Cloud Edition for Lustre* Software for which the subscription fees have been paid to Intel, upon any termination for cause by Reseller, Intel will refund to Reseller any prepaid fees covering the remainder of the term of any Order Forms. For use of Intel Cloud Edition for Lustre* Software or Service where the Cloud Service Provider is not billing Reseller directly, Reseller will make payment for any Cloud Services used by an End User to Intel up to the date of termination.
- B.** Upon any termination for cause by Intel, no further Services will be provided, and Reseller will pay any unpaid fees covering the remainder of the term of any subscriptions of Service for any products other than Intel Cloud Edition for Lustre* Software. Any pre-paid fees for the remainder of the term will be non-refundable. For use of Intel Cloud Edition for Lustre* Software or Service where the Cloud Service Provider is not billing Reseller directly, Reseller will make payment for any Cloud Services used by an End User to Intel up to the date of termination. In no event will any termination relieve Reseller of the obligation to pay any fees payable to Intel for the period prior to the effective date of termination.
- C.** If Intel terminates this Agreement for convenience, Intel will continue to support all accepted Order Forms, through their applicable respective support periods, which were accepted by Intel prior to the date of expiration or termination.
- D.** If Reseller terminates this Agreement for convenience, Reseller agrees to pay Intel for any Services and/or Intel Software used up to the effective date of termination, as well as for any reasonable costs or expenses incurred by Intel on Reseller's behalf pursuant to an Order Form.

11.5. Surviving Provisions. Section 1 (Definitions), Section 4.3 (Taxes), Section 6.2 (Cloud Services Products Reporting), Section 6.3 (Inspection), Section 7 (Proprietary Rights), Section 8.3 (Disclaimer), Section 10 (Limitations of Liability), Section 11.4 (Effect of Termination), Section 11.5 (Surviving Provisions), Section 12 (Notices), Section 13 (Governing Law and Jurisdiction), Section 14 (Confidentiality Terms), and Section 15 (General Provisions) will survive any termination or expiration of this Agreement.

12. NOTICES

All notices required or permitted to be given hereunder will be in writing, will make reference to this Agreement, and may be delivered (i) by hand, (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, or (iv) by electronic mail of Reseller as may be specified below or in writing by Reseller to Intel:

Notices to Intel:
Intel Corporation
1921 Corporate Circle Suite 3B
Longmont, CO 80501
Attn: HPDD General Manager

With copy to:
Intel Corporation
Attn: DCG Group Counsel
2200 Mission College Blvd,
RNB 4-151

Fax: 630-627-1969
Re: DCG High Performance Data
Division

Santa Clara, CA 95054

Notices to Reseller:
To the address noted on the Order
Form

Such notices will be deemed served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Either Reseller or Intel may give written notice of a change of address and, after notice of such change has been received, any notice or request will thereafter be given at such changed address.

The parties agree that Intel may provide notice to Reseller to an email address provided by Reseller. These email notices will be addressed to the person(s) indicated by the Reseller as the current key contact(s) of record for Intel's Reseller program. The parties may amend or terminate this Agreement or enter into a new agreement through a click-wrap arrangement whereby Reseller may opt-in to or opt-out of its continued participation in the program as it may be amended from time to time by Intel.

Billing-related notices to Reseller will be addressed to the relevant billing contact designated by Reseller.

13. GOVERNING LAW AND JURISDICTION

All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will in all respects be governed by, and construed and interpreted under, the laws of the United States of America and the State of Delaware, without reference to conflict of law principles. Each party submits to the personal jurisdiction of those courts and waives all objections to that jurisdiction and venue for those disputes. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods ("CISG") do not apply to this Agreement.

14. CONFIDENTIALITY TERMS

14.1 Non-Disclosure Agreement. If the Parties have entered into a corporate non-disclosure agreement ("NDA") with Intel, that NDA will govern the exchange of all confidential information disclosed by each party in the course of performance under this Agreement. The terms of the applicable NDA will govern in all conflicts between this Agreement and the NDA. In no event will disclosure of confidential information in accordance with the licenses granted in Section 2 of this Agreement be considered a breach of the NDA. The existence of this Agreement and its contents are considered the confidential information of both parties. If there is no NDA existing prior to this Agreement, the terms below in this Section 14 will apply:

- A. Confidential Information. The confidential, proprietary and trade secret information of the disclosing party ("Confidential Information") to be disclosed hereunder is (i) information in tangible form that bears a "confidential,"

“proprietary,” “secret,” or similar legend, and (ii) discussions relating to that information whether those discussions occur prior to, concurrent with, or following disclosure of the information. The disclosing party shall make reasonable efforts to mark its confidential information in tangible form with any of the aforementioned legends prior to disclosure. However, the disclosing party’s information in tangible form that does not bear any of these legends, and discussions relating to that information, shall nevertheless be protected hereunder as Confidential Information, if the receiving party knew, or should have reasonably known under the circumstances, that the information was confidential and had been communicated to it in confidence.

B. Obligations of Receiving Party. The receiving party will maintain the confidentiality of the Confidential Information of the disclosing party 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. The receiving party will not disclose any of the disclosing party’s Confidential Information to any employees or to any third parties except to the receiving party’s employees, parent company and majority-owned subsidiaries who have a need to know and who agree to abide by nondisclosure terms at least as comprehensive as those set forth herein; provided that the receiving party will be liable for breach by any such entity. For the purposes of this Agreement, the term “employees” shall include independent contractors of each party. The receiving party will not make any copies of the Confidential Information received from the disclosing party except as necessary for its employees, parent company and majority-owned subsidiaries with a need to know. Any copies which are made will be identified as belonging to the disclosing party and marked “confidential”, “proprietary” or with a similar legend.

C. Termination of Obligation of Confidentiality. The confidentiality obligations set forth in this Agreement shall bind the Parties for a period of five (5) years from the date of disclosure of Confidential Information, unless any of the exceptions set forth in Section D below occurs.

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

- (a) generally made available publicly or to third parties by the disclosing party without restriction on disclosure;
- (b) rightfully received from a third party without any obligation of confidentiality;
- (c) rightfully known to the receiving party without any limitation on disclosure prior to its receipt from the disclosing party;
- (d) independently developed by employees of the receiving party; or
- (e) required to be disclosed in accordance with applicable laws, regulations, court, judicial or other government order, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order.

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

F. No Obligation of Disclosure; Termination. Neither party has any obligation to disclose Confidential Information to the other. In the event of termination of this Agreement, each party's obligations with respect to Confidential Information disclosed during the term of this Agreement will survive any such termination. Either party may, at any time: (a) cease giving Confidential Information to the other party without any liability, and/or (b) request in writing the return or destruction of all or part of its Confidential Information previously disclosed, and all copies thereof, and the receiving party will promptly comply with such request, and certify in writing its compliance.

15. GENERAL PROVISIONS

15.1. Export Compliance. Reseller must comply with all laws and regulations of the United States and other countries governing the export, re-export, import, transfer, distribution, use, and servicing ("Export") of the Software and all related materials provided by Intel. In particular, but without limitation, Reseller must not without first obtaining all authorizations required by the United States and all applicable laws and regulations, Export Software (a) to any prohibited or restricted entity or a country subject to sanctions without first obtaining a license or authorization; and (b) for the development, design, manufacture, or production of nuclear, missile, chemical, or biological weapons, or for any other purpose prohibited by the United States government or other applicable governments. Upon request by Intel, Reseller agrees to provide export classifications for all Software and/or technical data. If Intel receives notices that Reseller is or shall become identified as a sanctioned or restricted party under applicable regulations, then Intel shall not be obligated to perform any of its obligations under this licensing agreement if such performance would result in a violation of sanctions or restrictions. No failure or delay on the part of Intel to exercise any right under this clause shall operate as a waiver hereof. Reseller represents and warrants that it is not located in any country subject to U.S. sanctions, and is not an entity listed on a denial order published by the United States government or any other relevant government.

15.2. Anti-Corruption. Reseller represents that it has not and will not violate any applicable anti-corruption law in relation to the services or activities set forth in this Agreement. Without limiting the foregoing, Reseller represents that it, and its employees, agents, and representatives have not and will not, directly or indirectly, offer, pay, give, promise, or authorize the payment of any money, gift, or anything of value to any "Government Official" (defined as any officer, employee or person acting in an official capacity for any government department, agency or instrumentality, any state-owned or -controlled company, any public international organizations, and any political party or candidate) for the purpose of (1) improperly influencing an act or decision of the Government Official, (2) improperly inducing the Government Official to do or not do any act that violates a lawful duty, or (3) securing an improper advantage for or on behalf of Intel or otherwise in connection with this Agreement. Subject to any applicable legal privilege, data protection or data privacy law, or express legal restriction, Reseller undertakes to notify the other party as soon as practicable if, in connection with this Agreement or the business resulting from it, Reseller receives or becomes aware of any request from any person for any such money, gift, anything of value, promise or other advantage. Reseller represents and warrants, in relation to this Agreement, that neither it or its Affiliates nor any of their respective employees, agents, and representatives are a Government Official or other person who could assert illegal influence on behalf of itself, its

Affiliates or their respective employees, agents, and representatives related to this Agreement. If Reseller, its Affiliates or any of their respective employees, agents, and representatives becomes a Government Official, Reseller shall promptly notify Intel. Reseller has adopted a code of conduct that includes a Reseller anti-corruption policy similar in substance to the foregoing Intel anti-corruption policy and has provided Intel with a copy.

15.3. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

15.4. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

15.5. Attorney Fees. Reseller will pay on demand all of Intel's reasonable attorney fees and other costs incurred by Intel to collect any fees or charges due Intel under this Agreement following Reseller's breach of Section 5.1 (Invoicing and Payment).

15.6. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party to an Affiliate. A party's sole remedy for any purported assignment by the other party in breach of this paragraph will be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.7. Continuing Business. Nothing in this Agreement will be understood to preclude or limit Intel from providing software, materials, or services for itself or other clients, irrespective of the possible similarity of such software, materials or services to those which might be delivered to Reseller under this Agreement.

15.8. Limited Release Services and/or Software. From time to time Intel may invite Reseller to try, at no charge, software, products or services that are not generally available to Intel's customers ("**Limited Release Offerings**"). Reseller may accept or decline any such trial in Reseller's sole discretion. Any Limited Release Offerings will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a similar description. Limited Release Offerings are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. LIMITED RELEASE OFFERINGS ARE NOT CONSIDERED "SERVICES" OR "INTEL SOFTWARE" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. Intel may discontinue Limited Release Offerings at any time in Intel's sole discretion and may never make them generally available.

15.9. Entire Agreement. This Agreement, signed or accepted electronically by Reseller, including all attachments and appendices and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver

of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and either signed or accepted electronically by the party against whom it is asserted. Except for ordering information, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any attachment or appendix or any Order Form, the terms of such attachment appendix or Order Form will prevail and any additional or different terms and conditions are rejected and deemed null and of no effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in Reseller's purchase order or other order documentation (excluding the Intel required information described in the Definition of the Order Form above in this Agreement) will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void.

15.10 No Reliance. Reseller agrees that Reseller's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Intel regarding future functionality or features.

Attachment 1

Description of Intel Services

1. Issue Management:

A. Issue Tracking and Resolution

Intel will maintain and provide Reseller access to the Intel Online Issue-Tracking Database. Reseller, at its own discretion, may issue tickets relating to Intel Software that will be confidential between Intel and Reseller, except by mutual agreement between the parties. Intel will use the Intel Online Issue-Tracking Database to regularly document comments and progress against reported End User issues.

Reseller will maintain direct relationships with Reseller's End Users and is responsible for any End User databases. Intel will designate a named support manager who will manage the direct relationship between Reseller and Intel.

B. Issue Resolution by Intel

All issue resolutions that result in Lustre code enhancements will be regression tested by Intel and new test cases will be developed, where applicable. Final resolution may be provided to Reseller in the form of a patch against the applicable Lustre code base as determined by Intel. Intel will implement the fix in the Lustre tree and may provide a build containing the fix. Intel may also make Lustre upgrades available to Reseller via the Intel Reseller Portal or the Cloud Service Provider, as applicable.

Issue resolutions that result in Intel Software code enhancements will be regression tested by Intel and provided to customers periodically in the form of minor releases, on schedules to be determined by Intel.

C. Issue Resolution by Reseller

Reseller is encouraged to submit patches for proposed fixes to Lustre. Patches and comments should be submitted when an issue is raised by Reseller in the Intel Online Issue-Tracking Database. Test results should be added to the issue in the Intel Online Issue-Tracking Database. Intel will complete inspections of the proposed patch, and provide feedback to Reseller. If the patch meets both design and quality standards for Intel, the patch may be implemented in the Lustre tree at a time that is deemed appropriate by Intel.

D. Progress Tracking

Upon request Intel will use reasonable efforts to provide management communication to Reseller in the form of progress tracking updates on an as-needed basis dependent on the volume and severity of issues being managed. Intel will provide a general report of progress which will include:

- List of open issues and associated/affected End User site(s)

- Summary list of issues resolved since last issued report
- Summary list of new issues since last issued report
- Forward looking statement of plan for resolution

E. Providing Support

Intel will provide the applicable Services purchased by Reseller as described below on a commercially reasonable basis, except for those actions below that would by their nature only pertain to the Reseller (for example, such as providing relevant information about the End User's environment). Resellers who successfully complete the Intel® Solutions for Lustre* Software web based curriculum and testing at 80% proficiency or such other proficiency level approved by Intel in writing for CORE, BASIC, STANDARD and ELITE courses may purchase Level III Support only; however Resellers will be required to provide End Users with Level 0, I and II Support before requesting Level III Support from Intel. Those Resellers who successfully complete Intel's web based curriculum and testing at 80% proficiency for CORE and BASIC courses only, are required to purchase Level I, II and III Support; however Resellers will be required to provide End Users with Level 0 Support before requesting Level I, II and III Support from Intel. Intel may change the course curriculum and requirements for Reseller from time to time at its sole discretion. Intel may change the required proficiency level for Reseller at its sole discretion but will provide notice informing Reseller of the change. In all cases, the Reseller is required to provide Level 0 Support. Intel will use commercially reasonable efforts to resolve issues for purchased Services.

Level 0 Support includes activities performed in response to an initial notification or awareness of a suspected problem. Required actions to be taken by Reseller are:

1. Respond to phone call from End User, or to other means by which End User has contacted Reseller.
2. Determine if problem and/or bug is a valid Intel Solutions for Lustre* Software or Intel Software related issue.
3. Determine if a current paid support contract is in place between Reseller and Intel, with respect to this End User installation.
4. Create the initial 'ticket' on behalf of this End User in the Intel Online Issue-Tracking Database.
5. Generate revised Lustre packages within the acceptable ranges defined on Intel Reseller Portal if requested to do so by End User.
6. Maintain the flow of communications between Reseller and End User during resolution of the Issue.

Level I Support includes activities performed following the completion of Level 0 activities. Required actions to be taken by Reseller unless Level I Support is purchased are:

1. Provide relevant information about the End User's environment, setup and configuration.
2. Review of a symptoms/solutions database for known resolutions.

3. Research to determine whether problem already exists and is reported in the Intel Online Issue-Tracking Database or community issue tracking database.
4. Logging of validated problems into the Intel Online Issue-Tracking Database
5. Ensuring that the issue tracking entry provides a complete and well-described report of the problem including the assigned level of support working on the problem and its severity.
6. Follow-up interactions with the reporter of the problem and best efforts to achieve its resolution.
7. Maintain the flow of communications between Reseller and End User during resolution of the Issue.

Level II Support includes activities performed following the completion of Level 0 and I Support activities without successful resolution of the problem. Required actions to be taken by Reseller unless Level II Support is purchased are:

1. Make commercially reasonable efforts to reproduce and diagnose the problem.
2. Make commercially reasonable efforts to resolve or reduce severity of the problems by introducing any known work-around, patch or code correction.
3. Validate whether any fixes provided resolve the problem.
4. Communicate steps of action or resolution along with any code changes and testing results in the Intel Online Issue-Tracking Database.
5. Maintain the flow of communications between Reseller and End User during resolution of the Issue.

Level III Support includes activities following the completion of Level 0, I and II Support activities without successful resolution of the problem. Required actions to be taken by Intel are:

1. Supply successful problem resolution where problem is reproducible.
2. Validate any fixes made by conducting regression testing.
3. Develop additional test cases, where applicable, as a result of discovery of root cause.
4. Communicate steps of action or resolution along with any code changes and testing results in the Intel Online Issue-Tracking Database.
5. Submit final resolution to the Lustre tree, issue a 'hotfix' or perform updates to Intel Software code base, as appropriate.

2. Reseller Responsibilities

A. Registration of End User Sites

Reseller will supply the following data within 30 days of an End User setup along with an Order Form to register a site for Intel's Level III support:

- Reseller staffing information: including contact information for Reseller staff
- Site staffing information, including contact information for responsible technical party and any alternatives
- Site cluster/client side configuration details – at a minimum Reseller will provide configuration of network, storage, servers and client count and provide specific kernel and Lustre* versions.
- Site specific Lustre* configuration – replica of source tree and copy of RPMs where non-Stock Versions of Lustre* are being used.
- Support history – historical logs of previous support calls and resolution

B. Site Configuration & Support

Reseller will accurately report up front site configuration for the Site. Specific details requested may change from time to time, but will include all information considered relevant to the site. Reseller will update configuration information with Intel as it is changed. Regular site configuration surveys are advised to assist in issue tracking.

C. Support

Reseller will perform the required levels of support as described in the 'Providing Support' section prior to opening a support request with Intel.

D. Contribute to Knowledge Base

Reseller will promptly notify Intel of any known/found bugs and solutions that Reseller implements while performing support. Reseller will create a ticket in the Intel Online Issue-Tracking Database detailing the issue and resolution that Reseller implemented or proposed.

E. Provide assistance to Intel in performing its responsibilities

Reseller will actively participate by providing assistance to Intel when requested. Specific examples of such assistance requests include site access, data handling, and End User interactions.

F. Submission of problem

To receive support, Reseller will submit to and update the Intel Online Issue-Tracking Database. The problem description must include:

- Site and system identification
- System hardware and software configuration including precise Lustre* and Linux product version numbers and patch information
- Symptoms of the problem, including any End User impact
- Steps taken to reproduce the problem; conditions under which problem can be reproduced

- Any attempts at resolution or progress that has been made toward resolution
- Any workarounds that exist to reduce the severity of or ameliorate the problem
- Suspected root cause of the problem if known.

Problem submissions that are missing any critical elements described above will limit the ability of Intel to assist in the fix of the issue. Intel reserves the right to formally communicate in the "ticket" if information is lacking and what specific information is needed before any work will commence on the "ticket."

Reseller will have a minimum number of support engineers able to provide support directly to End Users. Intel may refuse to provide support for items that lack evidence of Reseller completing Level 0, Level I and Level II support if Reseller is required to do so before requesting Level III support from Intel.

Intel has the right to refuse providing a final fix in the event that Intel reasonably determines that the unique Lustre* version being used contributes to the difficulty of providing a fix to the point that the issue has become systemic and a reasonable bug-fix will not resolve the issue.

All issues that require support must be reported in the Intel Online Issue-Tracking Database

G. Severity Level and Response

Reseller will select a "severity level" when submitting a bug requiring Level III Support. The following definitions will apply:

Severity Levels

a. Severity 1 - Major Impact

A Severity 1 issue occurs when there is a continued file system outage that affects a large set of End Users. The file system or cluster is down and non-functional due to Lustre* and/or Intel Software problem(s) and no procedural workaround exists.

b. Severity 2 - High Impact

A Severity 2 issue is a high-impact problem that is causing sporadic or partial cluster outages or is consistently encountered by End Users with adverse impact to End User interaction with the file system.

c. Severity 3 - Medium Impact

A Severity 3 issue is a medium-to-low impact problem that includes partial non-critical loss of cluster access or which impairs some operations on the cluster but allows the End User to continue to function on the cluster with workarounds.

d. **Severity 4 – Minor Issues**

A Severity 4 issue is a minor issue with limited or no loss in functionality within the End User environment. Severity 4 issues may also be used for recommendations for future product enhancements or modifications.

Response Schedule

Severity Level	Severity 1	Severity 2	Severity 3	Severity 4
Initial Response	Maximum response time 4 hours	3 Days	5 Days	As available
Work Schedule	Continuous	Workday	Workday	As available

The Intel Online Issue Tracking Database will be monitored continuously, **24 hours X 7 days X 365 days per year**, for the occurrence of Severity 1 issues. Intel will make commercially reasonable efforts to respond in accordance with the initial response times shown in the Response Schedule table above.

3. Intel Releases

Intel produces periodic feature and bug-fix releases. Releases of Intel Software shall be backward compatible with pre-existing configurations and data formats of at least the immediate prior release of Intel Software. Intel recommends that Reseller notify their End Users and work with their End Users to install the latest Intel Solutions for Lustre* Software releases as they may incorporate fixes to software components. If you or your End User choose not to upgrade, you should be certain that you and your End User understand the risks in not doing so.

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