



Smlouva o poskytování podpory software Intel oneAPI

SMLUVNÍ STRANY:

Vysoká škola báňská – Technická univerzita Ostrava IT4Innovations národní superpočítačové centrum

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(dále jen „**Objednatel**“)

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(dále jen „**Poskytovatel**“)

uzavřely níže uvedeného dne, měsíce a roku tuto smlouvu v souladu s ustanovením § 1746 odst. 2 zákona č. 89/2012 Sb., občanský zákoník, ve znění pozdějších předpisů (dále jen „občanský zákoník“)

(dále jen „**Smlouva**“).

1. ÚVODNÍ USTANOVENÍ

- 1.1 Objednatel prohlašuje, že:
 - 1.1.1 je právnickou osobou, veřejnou vysokou školou univerzitního typu založenou podle zákona č. 111/1998 Sb., o vysokých školách a o změně a doplnění dalších zákonů (zákon o vysokých školách), ve znění pozdějších předpisů, a
 - 1.1.2 splňuje veškeré podmínky a požadavky v této Smlouvě stanovené a je oprávněn tuto Smlouvu uzavřít a řádně plnit závazky v ní obsažené.
- 1.2 Poskytovatel prohlašuje, že splňuje veškeré podmínky a požadavky v této Smlouvě stanovené a je oprávněn tuto Smlouvu uzavřít a řádně plnit závazky v ní obsažené.

- 1.3 V návaznosti na výsledek veřejné zakázky malého rozsahu provedené v souladu s interní směrnicí Objednatele č. TUO_SME_18_004 o veřejných zakázkách uzavírá Objednatel s Poskytovatelem tuto Smlouvu, a to za účelem realizace projektu „IT4Innovations národní superpočítačové centrum – cesta k exascale“, reg. č.: CZ.02.1.01/0.0/0.0/16_013/0001791, jehož poskytovatelem podpory je Ministerstvo školství, mládeže a tělovýchovy České republiky, a dále projektu „e-Infrastruktura CZ“, identifikační kód: LM2018140, jehož poskytovatelem podpory je Ministerstvo školství, mládeže a tělovýchovy České republiky.

2. PŘEDMĚT SMLOUVY

- 2.1 Dodavatel se zavazuje ve prospěch Objednatele zajistit poskytování podpory pro software Intel oneAPI Base & HPC Toolkit Multi Node Academic 5+5, a to na dobu ode dne 1. 1. 2022 do dne 31. 12. 2024 včetně (dále jen „Plnění“).
- 2.2 Plnění bude ze strany Poskytovatele zajištěno v rozsahu a kvalitě určené podmínkami výrobce/poskytovatele licence výše uvedeného software, které tvoří Přílohu č. 1 Smlouvy. Plnění ze strany Poskytovatele se má za řádně a včas provedené, pokud ode dne 1. 1. 2022 bude zajištěno poskytování podpory výše uvedenému software do dne 31. 12. 2024 včetně. Toto musí být ze strany Poskytovatele vhodným způsobem prokázáno; na základě prokázání zajištění poskytování podpory bude smluvními stranami (jejich oprávněnými osobami) podepsán předávací protokol potvrzující splnění Plnění.
- 2.3 Objednatel se zavazuje za poskytování Plnění zaplatit Poskytovateli cenu ve výši a za podmínek sjednaných v této Smlouvě.
- Smluvní strany se dohodly, že Plnění je oprávněn užívat nejen Objednatel, ale rovněž třetí osoby odlišné od Objednatele užívající výpočetní čas v rámci IT4Innovations národního superpočítačového centra.

3. CENA A PLATEBNÍ PODMÍNKY

- 3.1 Smluvní strany se dohodly na celkové ceně ve výši 811.800,- Kč bez DPH, sazba DPH ve výši 21 %, cena včetně DPH činí 982.278,- Kč.
- 3.2 Celková cena je nepřekročitelná vyjma případů zákonné změny sazby DPH. V celkové ceně jsou zahrnuty veškeré náklady Poskytovatele spojené se splněním jeho závazků z této Smlouvy, tj. zahrnuje veškeré případné daně, cla, poplatky spojené s platebním stykem – bezhotovostním převodem, jiné platby a další související náklady.
- 3.3 Objednatel se zavazuje zaplatit celkovou cenu uvedenou v bodě 3.1 na základě řádného daňového dokladu – faktury vystavené Poskytovatelem. Poskytovatelem vystavená faktura musí obsahovat název obou projektů („IT4Innovations národní superpočítačové centrum – cesta k exascale“ a „e-Infrastruktura CZ“), jejich reg. č.: (CZ.02.1.01/0.0/0.0/16_013/0001791 a LM2018140), identifikaci této Smlouvy a Plnění. Přílohou faktury musí být podepsaný předávací protokol potvrzující zajištění poskytování Plnění. Dále musí faktura splňovat náležitosti daňového a účetního dokladu dle zákona č. 563/1991 Sb., o účetnictví, ve znění pozdějších předpisů, a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů. V případě, že faktura takové náležitosti nebude splňovat, popř. bude chybně vyúčtována cena nebo DPH, bude Objednatelem vrácena do 20 dnů ode dne jejího doručení k opravení bez proplacení. V takovém případě běží u předmětné faktury lhůta splatnosti znovu ode dne doručení opravené či nově vyhotovené faktury Objednateli. Fakturu Poskytovatel doručí Objednateli doporučenou poštou na adresu Objednatele.

- 3.4 Cena je splatná do 30 kalendářních dnů ode dne doručení příslušné faktury Objednateli. Smluvní strany se dohodly na tom, že závazek zaplatit cenu je splněn dnem odepsání příslušné částky z účtu Objednatele ve prospěch účtu Poskytovatele uvedeného na titulní straně této Smlouvy.

4. ZÁRUČNÍ PODMÍNKY, TECHNICKÁ PODPORA, REAKČNÍ DOBY

- 4.1 Záruční podmínky, technická podpora, reakční doby podpory apod. se řídí podle podmínek, které jsou uvedeny v Příloze č. 1 této Smlouvy.

5. OPRÁVNĚNÉ OSOBY

- 5.1 Každá ze smluvních stran jmenuje oprávněnou osobu, popř. zástupce oprávněné osoby. Oprávněné osoby budou zastupovat smluvní stranu v obchodních a technických záležitostech souvisejících s plněním této Smlouvy.
- 5.2 Oprávněné osoby nejsou zmocněny k jednání, jež by mělo za přímý následek změnu této Smlouvy nebo jejího předmětu.
- 5.3 Smluvní strany se dohodly na těchto oprávněných osobách:
- a) za Objednatele:
[REDAKCE]
- b) za Dodavatele:
[REDAKCE]
- 5.4 Smluvní strany jsou oprávněny změnit oprávněné osoby, jsou však povinny na takovou změnu druhou smluvní stranu písemně upozornit.

6. SANKČNÍ UJEDNÁNÍ

- 6.1 V případě prodlení Poskytovatele s termínem provedení Plnění dle bodu 2.1 této Smlouvy se Poskytovatel zavazuje uhradit Objednateli smluvní pokutu ve výši 0,3 % z celkové ceny bez DPH, a to za každý i započatý den prodlení.
- 6.2 Pro případ prodlení Objednatele se zaplacením faktury je Poskytovatel oprávněn požadovat zaplacení zákonného úroku z prodlení.
- 6.3 Splatnost vyúčtovaných smluvních pokut a úroků z prodlení je 30 dnů od data doručení písemného vyúčtování příslušné smluvní straně a za den zaplacení bude považován den odepsání částky smluvní pokuty nebo úroku z prodlení z účtu příslušné smluvní strany ve prospěch účtu, který bude uveden ve vyúčtování smluvní pokuty nebo úroku z prodlení.
- 6.4 Smluvní pokuta dle této Smlouvy se nezapočítává na úhradu škody, která vznikla v souvislosti s porušením povinností stanovených touto Smlouvou a tyto nároky lze uplatňovat nezávisle na sobě v plné výši.
- 6.5 Smluvní pokuty je Objednatel oprávněn započíst proti pohledávce Poskytovatele na úhradu celkové ceny.

7. OSTATNÍ

- 7.1 Poskytovatel se dále za podmínek stanovených touto Smlouvou a v souladu s pokyny Objednatele a při vynaložení veškeré potřebné odborné péče, zavazuje umožnit uveřejnění této Smlouvy na profilu Objednatele, a to v souladu se zákonem č. 134/2016 Sb. o zadávání veřejných zakázek, ve znění pozdějších předpisů.

8. PLATNOST A ÚČINNOST SMLOUVY

- 8.1 Tato Smlouva nabývá platnosti dnem jejího podpisu oběma smluvními stranami a účinnosti dnem uveřejnění Smlouvy v registru smluv v souladu s příslušnými ustanovením zákona č. 340/2015 Sb., o zvláštních podmínkách účinnosti

některých smluv, uveřejňování těchto smluv a o registru smluv (zákon o registru smluv), ve znění pozdějších předpisů (dále jen „zákon o registru smluv“) v případě, že tato Smlouva vyžaduje uveřejnění v registru smluv ve smyslu tohoto zákona. Pokud ne, nabývá Smlouva účinnosti v den podpisu oběma smluvními stranami.

- 8.2 Každá smluvní strana je oprávněna odstoupit od této Smlouvy pouze z důvodů stanovených touto Smlouvou.
- 8.3 Objednatel je oprávněn odstoupit od této Smlouvy v případě
 - 8.3.1 prodlení Poskytovatele s provedením Plnění po dobu delší než 20 dnů oproti termínu plnění stanovenému v této Smlouvě,
 - 8.3.2 pokud je tak uvedeno v podmínkách v Příloze č. 1 této Smlouvy,
 - 8.3.3 pokud Poskytovatel v průběhu trvání Smlouvy ztratil způsobilost řádně plnit závazky vyplývající ze Smlouvy, tzn. pozbyl oprávnění uvedené v bodě 1.2 Smlouvy.
- 8.4 Poskytovatel je oprávněn odstoupit od této Smlouvy v případě prodlení Objednatele se zaplacením ceny dle této Smlouvy po dobu delší než 60 dnů.
- 8.5 Účinky odstoupení od Smlouvy nastávají dnem doručení písemného oznámení o odstoupení druhé smluvní straně, popř. pozdějším dnem uvedeným v písemném oznámení o odstoupení.
- 8.6 Ukončením účinnosti této Smlouvy nejsou dotčena ustanovení Smlouvy, z jejichž povahy vyplývá, že mají trvat i po zániku účinnosti této Smlouvy, např. nároky ze smluvních pokut, pokud vznikly před ukončením této Smlouvy.

9. ZÁVĚREČNÁ USTANOVENÍ

- 9.1 Práva a závazky touto Smlouvou neupravené se řídí právním řádem České republiky, zejména občanským zákoníkem, s vyloučením kolizních norem. Smluvní strany se rovněž zavazují dodržovat pravidla Operačního programu Výzkum, vývoj a vzdělávání.
- 9.2 V případě zániku Poskytovatele bez právního nástupce je Objednatel i nadále oprávněn využívat Software dle této Smlouvy.
- 9.3 Změnit nebo doplnit tuto Smlouvu mohou smluvní strany pouze formou písemných dodatků, které budou vzestupně číslovány a podepsány oprávněnými zástupci smluvních stran.
- 9.4 Smluvní strany se dohodly, že v případě rozporu mezi ustanoveními přílohy a ustanoveními této Smlouvy jsou rozhodná ustanovení přílohy této Smlouvy.
- 9.5 Pokud by se kterékoliv ustanovení této Smlouvy ukázalo být neplatným nebo nevynutitelným nebo se jím stalo po uzavření této Smlouvy, pak tato skutečnost nepůsobí neplatnost ani nevynutitelnost ostatních ustanovení této Smlouvy, nevyplyvá-li z donucujících ustanovení právních předpisů jinak. Smluvní strany se zavazují takové neplatné či nevynutitelné ustanovení nahradit platným a vynutitelným ustanovením, které je svým obsahem nejbližší účelu neplatného či nevynutitelného ustanovení.
- 9.6 Veškeré spory mezi smluvními stranami vyplývající nebo související s ustanoveními této Smlouvy budou řešeny vždy nejprve smírně vzájemnou dohodou. Nebude-li smírného řešení dosaženo v přiměřené době, bude mít kterákoliv ze smluvních stran právo předložit spornou záležitost k rozhodnutí místně příslušnému soudu. V souladu s § 89a zák. č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, se za místně příslušný soud k projednávání sporů z této Smlouvy prohlašuje obecný soud Objednatele.
- 9.7 Nedílnou součástí této Smlouvy tvoří Příloha č. 1 – podmínky poskytování Plnění.
- 9.8 Smluvní strany prohlašují, že Smlouva včetně přílohy Smlouvy neobsahuje obchodní tajemství ve smyslu § 504 občanského zákoníku a Smlouva včetně


přílohy Smlouvy tak může být v plném rozsahu uveřejněna v registru smluv ve smyslu zákona o registru smluv.

- 9.9 Tato Smlouva se uzavírá jako elektronický originál, po jehož podpisu každá smluvní strana obdrží vyhotovení Smlouvy.
- 9.10 Smluvní strany shodně prohlašují, že jsou si vědomy všech právních důsledků touto Smlouvou vyvolaných, souhlasí se všemi jejími ustanoveními, s nimiž se podrobně seznámily.

Uzavřeno dne

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na základě plné moci

Příloha č. 1: podmínky poskytování Plnění

Intel End User License Agreement for Developer Tools (Version October 2020)

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3.3 Third Party Use.

A. If you are an entity, Your contractors may use the Materials as specified in Section 3, provided: (i) their use of the Materials is solely on behalf of and in support of Your business, (ii) they agree to the terms and conditions of this Agreement, and (iii) You are solely responsible for their use of the Materials.

B. You may utilize a Cloud Provider to host the Materials for You, provided: (i) the Cloud Provider may only host the Materials for Your exclusive use and may not use the Materials for any other purpose whatsoever, including the restriction set forth in Section 4.1(xii); (ii) the Cloud Provider's use of the Materials must be solely on behalf of and in support of Your Product, and (iii) You will indemnify, hold harmless, and defend Intel and its suppliers from and against any claims or lawsuits, including attorney's fees, that arise or result from Your Cloud Provider's use, misuse or disclosure of the Materials.

4. LICENSE CONDITIONS.

4.1 Restrictions. Except as expressly provided in this Agreement, You may NOT: (i) use, copy, distribute, or publicly display the Materials; (ii) share, publish, rent or lease the Materials to any third party; (iii) assign this Agreement or transfer the Materials; (iv) modify, adapt, or translate the Materials in whole or in part; (v) reverse engineer, decompile, or disassemble the Materials, or otherwise attempt to derive the source code for the software; (vi) work around any technical limitations in the Materials or attempt to modify or tamper with the normal function of any license manager that may regulate usage of the Materials; (vii) distribute, sublicense or transfer any Source Code, of the Materials or Derivative Works to any third party; (viii) allow Redistributables to run on a platform other than a Microsoft Platform if according to the accompanying user documentation the Materials are meant to execute only on a Microsoft Platform; (ix) remove, minimize, block or modify any notices of Intel or its suppliers in the Materials; (x) include the Redistributables in malicious, deceptive, or unlawful programs or products or use the Materials in any way that is against the law; (xi) modify, create a Derivative Work, link, or distribute the Materials so that any part of it becomes Reciprocal Open Source Software; (xii) use the Materials directly or indirectly for SaaS services or service bureau purposes (i.e., a service that allows use of or access to the Materials by a third party as a service, such as the salesforce.com service business model).

4.2 Pre-Release Materials. If You receive Pre-Release Materials, You may reproduce a reasonable number of copies, and use the Pre-Release Materials for evaluation, and testing purposes only. You may not (i) modify or incorporate the Pre-Release Materials into Your Product; (ii) continue to use the Pre-Release Materials once a commercial version is released; or (iii) disclose to any third party any benchmarks, performance results, or other information relating to the Pre-Release Materials. Intel may waive these restrictions in writing at its sole discretion; however, if You decide to use the Pre-Release Materials in Your Product (even with Intel's waiver), You acknowledge and agree that You are fully responsible for any and all issues that result.

4.3 Safety, Critical, and Lifesaving Applications. The Materials may provide information relevant to safety-critical applications to allow compliance with functional safety standards or requirements ("Safety-Critical Applications"). You understand and acknowledge that safety is Your responsibility. To the extent You use the Materials to create, or as part of, products used in Safety-Critical Applications it is Your responsibility to design, manage and assure system-level safeguards to anticipate, monitor and control system failures, and You agree that You are solely responsible for all applicable regulatory standards and safety-related requirements concerning Your use of the Materials in Safety Critical Applications. Should You use the

Materials for Safety-Critical Applications or in any type of a system or application in which the failure of the Materials could create a situation where personal injury or death may occur (e.g., medical systems, life sustaining or lifesaving systems) (“Lifesaving Applications”), You agree to indemnify, defend, and hold Intel and its representatives harmless against all claims, costs, damages, and expenses, including reasonable attorney fees arising in any way out of Your use of the Materials in Safety-Critical Applications or Lifesaving Applications and claims of product liability, personal injury or death associated with those applications; even if such claims allege that Intel was negligent or strictly liable regarding the design or manufacture of the Materials or its failure to warn regarding the Materials.

4.4 Media Format Codecs and Digital Rights Management. You acknowledge and agree that Your use of the Materials or distribution of the Redistributables with Your Product as permitted by this Agreement may require You to procure license(s) from third parties that may hold intellectual property rights applicable to any media decoding, encoding or transcoding technology (e.g., the use of an audio or video codec) and/or digital rights management capabilities of the Materials, if any. Should any such additional licenses be required, You are solely responsible for obtaining any such licenses and agree to obtain any such licenses at Your own expense.

4.5 Materials Transfer. You may only permanently transfer the Materials, and all of Your rights and obligations under this Agreement, to another party (“Recipient”) solely in conjunction with a change of ownership, merger, acquisition, sale or transfer of all or substantially all of Your business or assets, either voluntarily, by operation of law or otherwise subject to the following: You must notify Intel of the transfer by sending a letter to Intel: (i) identifying the Recipient and Your legal entities, (ii) identifying the Materials (i.e., the specific Intel software and version) and the associated serial numbers to be transferred, (iii) certifying that You retain no copies of the Materials or portions, (iv) certifying that the Recipient has agreed in writing to be bound by all of the terms and conditions of this Agreement, (v) for paid User Types listed in Section 2, certifying that the Recipient has been notified that in order to receive support from Intel for the Materials they must notify Intel in writing of the transfer and provide Intel with the information specified in subsection (ii) above along with the name and email address of the individual assigned to use the Materials, and (vi) providing Your email address so that Intel may confirm receipt of Your letter. The above information can be emailed to your Intel representative or by letter to: Intel Corporation, 2111 NE 25th Avenue, Hillsboro, OR 97124, Attn: CPDP Contracts Management, JF2-28. The Materials will be permanently transferred to the Recipient once Intel confirms receipt of Your request.

5. FEES; TAXES.

5.1 Fees. Upon Your receipt of Intel’s or its reseller’s invoice, You will pay Intel or its reseller the license and support fees, if any, for the Materials in US dollars according to Your User Type

5.2 Taxes. All payments will be made free and clear without deduction for any and all present and future taxes imposed by any taxing authority. In the event that You are prohibited by law from making such payments unless You deduct or withhold taxes therefrom and remit such taxes to the local taxing jurisdiction, then You will duly withhold and remit such taxes to the appropriate taxing authority and will pay to Intel or its reseller its proportionate share of the remaining net amount after the taxes have been withheld. You will promptly furnish Intel or its reseller with a copy of an official tax receipt or other appropriate evidence of any taxes imposed on payments made under this Agreement, including taxes on any additional amounts paid. In cases other than taxes referred to above, including but not limited to sales and use taxes, stamp taxes, value added taxes, property taxes and other taxes or duties imposed by any taxing authority on or with respect to this Agreement, the costs of such taxes or duties will

be borne by You. In the event that such taxes or duties are legally imposed initially on Intel or its reseller, or Intel or its reseller is later assessed by any taxing authority, then Intel or its reseller will be promptly reimbursed by You for such taxes or duties.

6. DATA COLLECTION AND PRIVACY.

6.1 Data Collection. Certain Materials may generate and collect anonymous data and/or provisioning data about the Materials and/or the development environment and transmit the data to Intel as a one-time event during installation. Optional data may also be collected by the Materials, however, You will be provided notice of the request to collect optional data and no optional data will be collected without Your consent. All data collection by Intel is performed pursuant to relevant privacy laws, including notice and consent requirements.

6.2 Intel's Privacy Notice. Intel is committed to respecting Your privacy. To learn more about Intel's privacy practices, please visit <http://www.intel.com/privacy>.

7. OWNERSHIP. Title to the Materials and all copies remain with Intel or its suppliers. The Materials are protected by intellectual property rights, including without limitation, United States copyright laws and international treaty provisions. You will not remove any copyright or other proprietary notices from the Materials. You agree to prevent any unauthorized copying of the Materials. Except as expressly provided herein, no license or right is granted to You directly or by implication, inducement, estoppel or otherwise; specifically Intel does not grant any express or implied right to You under Intel patents, copyrights, trademarks, or trade secrets.

8. NO WARRANTY AND NO SUPPORT.

8.1 No Warranty. Disclaimer. Intel disclaims all warranties of any kind and the terms and remedies provided in this Agreement are instead of any other warranty or condition, express, implied or statutory, including those regarding merchantability, fitness for any particular purpose, non-infringement or any warranty arising out of any course of dealing, usage of trade, proposal, specification or sample. Intel does not assume (and does not authorize any person to assume on its behalf) any other liability.

8.2 No Support; Priority Support for Paid User Types. Intel may make changes to the Materials, or to items referenced therein, at any time without notice, but is not obligated to support, update or provide training for the Materials under the terms of this Agreement. Intel offers Priority Support for paid User Types.

9. LIMITATION OF LIABILITY.

9.1 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; (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 the Materials; (ix) loss of reputation; (x) loss of, damage to, or corruption of data; or (xi) any indirect, incidental special or consequential loss of damage however caused (including loss or damage of the type specified in this Section 9).

9.2 Intel's total cumulative liability to You, including for direct damages for claims relating to this Agreement (whether for breach of contract, negligence, or for any other reason), will not exceed the sum paid to Intel by You in the twelve (12) month period preceding the date such claim arose for the Materials that are the subject of and directly affected by such claim.

9.3 You acknowledge that the limitations of liability provided in this Section 9 are an essential part of this Agreement. You agree that the limitations of liability provided in this Agreement with respect to Intel will be conveyed to and made binding upon any customer of Yours that acquires the Redistributables, alone or in combination with other items from You.

10. **USER SUBMISSIONS.** This Agreement does not obligate You to provide Intel with materials, information, comments, suggestions or other communications regarding the Materials. However, You agree that any material, information, comments, suggestions or other communications You transmit or post to an Intel website (including but not limited to, submissions to the Priority Support and/or other customer support websites or online portals) or provide to Intel under this Agreement are not controlled by the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulation (EAR), and if related to the features, functions, performance or use of the Materials are deemed non-confidential and non-proprietary ("Communications"). Intel will have no obligations with respect to the Communications. You hereby grant to Intel a non-exclusive, perpetual, irrevocable, royalty-free, copyright license to copy, modify, create Derivative Works, publicly display, disclose, distribute, license and sublicense through multiple tiers of distribution and licensees, incorporate and otherwise use the Communications and all data, images, sounds, text, and other things embodied therein, including Derivative Works thereto, for any and all commercial or non-commercial purposes. You are prohibited from posting or transmitting to or from an Intel website or providing to Intel any unlawful, threatening, libelous, defamatory, obscene, pornographic, or other material that would violate any law. If You wish to provide Intel with information that You intend to be treated as confidential information, Intel requires that such confidential information be provided pursuant to a non-disclosure agreement ("NDA"); please contact Your Intel representative to ensure the proper NDA is in place.

Nothing in this Agreement will be construed as preventing Intel from reviewing Your Communications and errors or defects in Intel products discovered while reviewing Your Communications. Furthermore, nothing in this Agreement will be construed as preventing Intel from implementing independently-developed enhancements to Intel's own error diagnosis methodology to detect errors or defects in Intel products discovered while reviewing Your Communications or to implement bug fixes or enhancements in Intel products. The foregoing may include the right to include Your Communications in regression test suites.

11. **NON-DISCLOSURE.** Information provided by Intel to You may include information marked as confidential. You must treat such information as confidential under the terms of the applicable NDA between Intel and You. If You have not entered into an NDA with Intel, You must not disclose, distribute or make use of any information marked as confidential, except as expressly authorized in writing by Intel. Intel retains all rights in and to its confidential information specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other proprietary rights relating to the Materials. Any breach by You of the confidentiality obligations provided for in this Section 11 will cause irreparable injury to Intel for which money damages may be inadequate to compensate Intel for losses arising from such a breach. Intel may obtain equitable relief, including injunctive relief, if You breach or threaten to breach Your confidentiality obligations.

12. **TERM AND TERMINATION.** This Agreement becomes effective on the date You accept this Agreement and will continue until terminated as provided for in this Agreement. If You are using the Materials under a paid User Type with a limited Term, this Agreement terminates without notice on the last day of the Term. If you are using the Materials under a free User Type, the Term is perpetual. The Term for any Pre-Release Materials terminates upon release of a commercial version. Intel may terminate this Agreement if You are in breach of any of its terms and conditions and such breach is not cured within thirty (30) days of written notice from Intel. Upon termination, You will promptly destroy the Materials and all copies. In the event of termination of this Agreement, the license grant to any Redistributables distributed by You in accordance with the terms and conditions of this Agreement, prior to the effective date of such termination, will survive any such termination of this Agreement. Sections 1, 3.1.A(4)(d)(v),

3.2, 3.3 B(iii), 4.3, 5.2, 6, 7, 8, 9, 10, 11, 12 (with respect to these survival provisions in the last sentence), 13, and 14 will survive expiration or termination of this Agreement.

13. U.S. GOVERNMENT RESTRICTED RIGHTS. The technical data and computer software covered by this license is a "Commercial Item," as such term is defined by the FAR 2.101 (48 C.F.R. 2.101) and is "commercial computer software" and "commercial computer software documentation" as specified under FAR 12.212 (48 C.F.R. 12.212) or DFARS 227.7202 (48 C.F.R. 227.7202), as applicable. This commercial computer software and related documentation is provided to end users for use by and on behalf of the U.S. Government, with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

14. GENERAL PROVISIONS.

14.1 ENTIRE AGREEMENT. This Agreement contains the complete and exclusive agreement and understanding between the parties concerning the subject matter of this Agreement, and supersedes all prior and contemporaneous proposals, agreements, understanding, negotiations, representations, warranties, conditions, and communications, oral or written, between the parties relating to the same subject matter. This Agreement, including without limitation its termination, has no effect on any signed NDA between the parties, which remain in full force and effect as separate agreements to their terms. Each party acknowledges and agrees that in entering into this Agreement it has not relied on, and will not be entitled to rely on, any oral or written representations, warranties, conditions, understanding, or communications between the parties that are not expressly set forth in this Agreement. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The provisions of this Agreement will prevail notwithstanding any different, conflicting, or additional provisions that may appear on any purchase order, acknowledgement, invoice, or other writing issued by either party in connection with this Agreement. No modification or amendment to this Agreement will be effective unless in writing and signed by authorized representatives of each party, and must specifically identify this Agreement by its title and version (e.g., "Intel End User License Agreement for Developer Tools (Version October 2020)"); except that Intel may make changes to the Agreement as it distributes new versions of the Materials. When changes are made, Intel will make a new version of the Agreement available on its website. If You received a copy of this Agreement translated into another language, the English language version of this Agreement will prevail in the event of any conflict between versions.

14.2 EXPORT. You acknowledge that the Materials and all related technical information are subject to export controls and you agree to comply with all laws and regulations of the United States and other applicable governments governing export, re-export, import, transfer, distribution, and use of the Materials. In particular, but without limitation, the Materials may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to any person or entity listed on a denial order published by the U.S. government or any other applicable governments. By using the Materials, You represent and warrant that You are not located in any such country or on any such list. You also agree that You will not use the Materials for, or sell or transfer them to a third party who is known or suspected to be involved in, any purposes prohibited by the U.S. government or other applicable governments, including, without limitation, the development, design, manufacture, or production of nuclear, missile, chemical or biological weapons.

14.3 GOVERNING LAW, JURISDICTION, AND VENUE. 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 laws principles.

The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from and will not apply to this Agreement. All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will be subject to the exclusive jurisdiction of the courts of the State of Delaware or of the Federal courts sitting in that State. Each party submits to the personal jurisdiction of those courts and waives all objections to that jurisdiction and venue for those disputes.

14.4 SEVERABILITY. The parties intend that if a court holds that any provision or part of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable, or if it cannot be made valid and enforceable, the parties intend that the court will sever and delete the provision or part from this Agreement. Any change to or deletion of a provision or part of this Agreement under this Section will not affect the validity or enforceability of the remainder of this Agreement, which will continue in full force and effect.