



## Intel® Commercial Software & Cloud Services Standard Terms and Conditions

Thank you for your interest in Intel commercial Software and Cloud Services!

These Intel® Commercial Software and Cloud Services Standard Terms and Conditions (the “**Commercial Terms**”) provide the terms and conditions for Your access to and use of Intel’s commercial Software and Cloud Services (collectively, “**Commercial Solution(s)**”). These Commercial Terms may differ from the terms under which Intel makes other software and services available and are not intended to replace and do not replace such other terms. Instead, the terms and conditions applicable to any given Intel software or service are provided in the license or licensing framework accompanying that software or service. “**You**” and “**Yours**” refers to you, your employer, and any other entity for whose benefit you access and use a Commercial Solution. You and Intel are each a “**party**” (or, collectively, the “**parties**”) to these Commercial Terms.

**Please DO NOT ACCESS OR USE a Commercial Solution unless and until You have read, understood and accepted these Commercial Terms. If You, or the entity for whose benefit You access or use a Commercial Solution, do not agree to be bound by, or You do not have the legal authority to bind the entity You represent, or You are not yet the required age to be legally bound by these Commercial Terms, do not access or use the associated Commercial Solution.**

With Your access or use of a Commercial Solution, You freely acknowledge, accept, and agree to enter into and be bound by these Commercial Terms. These Commercial Terms take effect on the earlier of when You select the “I Accept” (or similar) prompt associated with a Commercial Solution, the effective date reflected in a valid Order Form, or otherwise upon Your first access to or use of a Commercial Solution (the “**Effective Date**”).

1. **The Agreement Structure.** Your access to or use of a Commercial Solution is governed by these Commercial Terms as modified by one or more of the following Intel documents (collectively, the “**Agreement**” for a Commercial Solution). Notwithstanding anything to the contrary therein, no terms or conditions stated in Your purchase order or other documentation (including Partner documentation) through which You indicate Your intent to access or use a Commercial Solution will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void.
  - 1.1. **Order Form:** an Intel quote or order form accepted by Intel that identifies the applicable Commercial Solution(s) and or Professional Services being made available to You. Any conflict between an Order Form and any of one or more of a Service Agreement, Software License Agreement, Professional Services Exhibit or these Commercial Terms will be resolved in favor of the Order Form.
  - 1.2. **Service Agreement:** provides the terms and conditions specific to the licensed access and use of an associated Cloud Service. Any conflict between these Commercial Terms and a Service Agreement will be resolved in favor of the Service Agreement.
  - 1.3. **Software License Agreement:** provides the terms and conditions specific to the licensed access, download, and use of the associated Intel Software. Any conflict between a Software License Agreement and these Commercial Terms will be resolved in favor of the Software License Agreement.
  - 1.4. **Professional Services Exhibit:** provides the terms and conditions specific to any Professional Services to be performed by Intel pursuant to a statement of work. Any conflict between a Professional Services Exhibit and these Commercial Terms will be resolved in favor of the Professional Services Exhibit.
  - 1.5. **Compliance & Regulatory Disclosures:** provides Intel’s regulatory disclosures associated with Intel’s Commercial Solutions.

2. **Definitions.** In addition to certain terms defined in the body of the Commercial Terms:

- 2.1. **"Account Information"** is a type of Personal Data and means contact and other information about You that You provide to Intel.
- 2.2. **"Cloud Service"** means a multi-tenant, cloud-hosted solution specified in an Order Form and associated Service Agreement. A Cloud Service may be generically referenced as an "XaaS", where "X" may represent different service types such as "S" for Software-as-a-Service ("SaaS"), "P" for a compute Platform-as-a-Service ("PaaS"), "AI" for Artificial Intelligence-as-a-Service ("AlaaS") and the like.
- 2.3. **"Commercial Solution"** means Software or a Cloud Service, in each case as specified in an Order Form. A Commercial Solution may be provided to You as a Trial Solution, whether or not marked as such in an Order Form.
- 2.4. **"Content"** means any software, application, video, image, information (excluding Account Information), data, or other collateral that You upload to, or develop or have developed on, the User Area of the Platform. For clarity, Content does not include a Commercial Solution, Materials, Usage Data, or any information related to or Derivative Works thereof.
- 2.5. **"Derivative Work"**, whether or not capitalized, has the meaning set forth in 17 U.S.C. § 101.
- 2.6. **"Documentation"** means documentation delivered to You by Intel describing, as applicable, the features, functionality, and use of the Commercial Solution(s) specified in Your Order Form(s).
- 2.7. **"Intel"** means Intel Corporation, its subsidiaries, affiliates, and assigns, as specified in an Order Form.
- 2.8. **"License"** means an expressly stated right to download, install, access, or use a Commercial Solution. For certain Commercial Solutions, a License may be available on a fixed term or a subscription basis (**"Subscription License"**). Unless otherwise specified in a Services Agreement, Licenses for Cloud Services are Subscription Licenses.
- 2.9. **"Materials"** means the Intel documentation, specification(s), software identifying information, product serial number, or other collateral, including updates and upgrades, associated with a Commercial Solution. Materials do not include Third-Party Software.
- 2.10. **"Mandatory Updates"** means Updates that Intel communicates to You as mandatory.
- 2.11. **"Open Source Software" or "OSS"** means software that is subject to an open source license, including, for example, any open source license listed on the Open Source Initiative website <http://www.opensource.org>.
- 2.12. **"Partner"** means a company Intel has authorized to resell and/or distribute Commercial Solutions to You.
- 2.13. **"Personal Data"** means information related to an identified or identifiable natural person where an identifiable natural person is one who can be identified, directly or indirectly, with reference to an identification number or one or more factors specific to their physical, physiological, mental, economic, cultural, or social traits.
- 2.14. **"Platform"** means the compute resources, storage area, network system, and other software and hardware infrastructure, provided by Intel or by a third-party on behalf of Intel, through which You may access or download licensed Software, or access and use a licensed Cloud Service.
- 2.15. **"Professional Services"** means services specified in an Order Form and described in a statement of work attendant to a Professional Services Exhibit.
- 2.16. **"Software"** means a generally available version of a computer application specified in an Order Form and either (i) an associated Software License Agreement for software, or (ii) a Service Agreement for a Cloud Service. Software excludes Third-Party Software and OSS.
- 2.17. **"Source Code"** means software code in human readable form.
- 2.18. **"Standard"** means a technology specification created by an industry-sponsored group, government-sponsored group, or any group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, HTML, and HDCP. Examples of groups that create Standards include IEEE, ITU, 3GPP, and ETSI.
- 2.19. **"Support"** has the meaning set forth in a Software License Agreement or a Service Agreement associated with a Commercial Solution(s).
- 2.20. **"Term"** means the time period specified in an Order Form during which You are authorized to access a Commercial Solution under the Agreement.

- 2.21. **"Third-Party Software"** means the software program files (if any) owned by parties other than Intel that Intel may use or make available in or with a Commercial Solution. Third-Party Software is subject to its own license terms and conditions.
- 2.22. **"Trial Solution"** means Software, Cloud Services, or Materials made available to You on a trial, pre-release, beta, or free of charge basis.
- 2.23. **"Update"** means changes to a Commercial Solution to fix a bug or correct an error in an existing release of Software. Intel may designate, issue, and apply Updates in its sole discretion and pursuant to its support model.
- 2.24. **"Upgrade"** means a major release and/or point release of a Commercial Solution. Intel may designate, issue, and offer Upgrades in its sole discretion and pursuant to its support model.
- 2.25. **"Usage Data"** means information that Intel measures, senses, and otherwise collects regarding Your use of a Commercial Solution and/or Materials including, but not limited to, information regarding what resources are accessed, how they are used, how they perform, the issues that may arise as a result of Your use of the Commercial Solution and/or Materials, and any other telemetry data that Intel may measure or otherwise collect in connection with Your access to or use of the Platform. Usage Data does not include Content.
- 2.26. **"User Area"** means a virtual user space on the Platform that Intel may provide to You in connection with Your access to and use of a Commercial Solution during the Term.

### 3. Considerations for Your Access to Intel Commercial Solutions.

- 3.1. **Ownership.** As between You and Intel, all right, title, and interest in and to the Commercial Solution, Materials, Usage Data and associated information that Intel may provide You under this Agreement, including all intellectual property rights therein, are and will remain the exclusive property of Intel and its licensors or suppliers.
- 3.2. **Work Product.** Intel is the sole and exclusive owner of any and all right, title, and interest in and to the work product, materials, discoveries, inventions, designs, and any other information, including the intellectual property rights therein, made by Intel that result from or arise under any services or support that Intel may provide You during the Term.
- 3.3. **Limited License to the Commercial Solution.**
  - 3.3.1. **License Grant.** Any License to access and use the Commercial Solution is only provided through and as a result of a valid Order Form which becomes a part of and is subject to this Agreement, including any associated Service Agreement and/or Software License Agreement. You agree to access and use the Commercial Solution(s) solely on the Platform and pursuant to any specifications or documentation Intel provides You.
  - 3.3.2. **Duration of License.** Subscription Licenses are temporary and expire in accordance with the terms of the applicable Order Form, unless renewed. Except as otherwise noted in the applicable Order Form or Software License Agreement, all other Licenses do not vest as perpetual unless and until all payments for that License have been received by Intel.
- 3.4. **Intel License Restrictions.**
  - 3.4.1. **License Limitations.** Unless expressly permitted under a Software License Agreement or a Service Agreement, You will not, and You will not allow any third-party to, directly or indirectly: (i) copy, distribute, modify, incorporate or use in any other works, translate, transfer, sell, sublicense, reverse engineer (except to the limited extent applicable statutory law expressly prohibits reverse engineering restrictions), decompile, disassemble revise or enhance the Commercial Solution or attempt to discover or derive the Commercial Solution Source Code, or create Derivative Works based on the Commercial Solution, the Materials or any other information provided by Intel; (ii) disclose, distribute, sell, sublicense, rent, lease or use the Commercial Solution or the Materials (or any portion thereof) for time sharing, hosting, service provider or other computer services to third parties or otherwise make the functionality of the Commercial Solution, Materials, or other information Intel provides available to third parties absent an express agreement from Intel to do so; (iii) use or access the Commercial Solution, Materials, or other information Intel provides to perform benchmarking or any other kind of performance analysis, or publish or provide

any benchmark or comparison test results concerning the Commercial Solution, the Platform, or any elements thereof without Intel's prior written consent; (iv) develop any competitive concept, material, or product from the concepts and ideas provided in or through the Commercial Solution, the Materials, or other information Intel provides; (v) work around any technical limitations or security controls in the Commercial Solution or the Materials; or (vi) remove or modify any proprietary or confidentiality notices, labels or marks on or in the Commercial Solution or the Materials.

- 3.4.2. **No Unlawful or Prohibited Use.** You agree to not use the Commercial Solution to upload any Content for any purpose that is unlawful or prohibited by these terms. You may not upload or post to the Commercial Solution, including Your User Area, any Content that: (i) is unlawful, harmful, threatening, abusive, harassing, torturous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (ii) You do not have a right to make available under any law or contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements); (iii) infringes any patent, trademark, trade secret, copyright, or other proprietary rights of any other party; (iv) enables any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; (v) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications, reports and recommendations; or (vi) is directly related to military, defense, aerospace, nuclear, biological or chemical weapon end uses or in support of law enforcement, national security, military, or foreign policy objectives.
- 3.4.3. **Additional Limitations.** You may not use the Commercial Solution to: (i) "stalk" or otherwise harass or harm another; (ii) impersonate any person or entity, including, but not limited to, an Intel official, forum leader, guide or host, or falsely state or otherwise misrepresent Your affiliation with a person or entity or collect or store personal data about other users in connection with the prohibited conduct and activities; (iii) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Commercial Solution; (iv) use the Commercial Solution in any manner that could damage, disable, overburden, or impair the Platform (e.g., cryptomining), disobey any requirements, procedures, policies or regulations of networks connected to the Commercial Solution, or interfere with any other party's use and enjoyment of the Commercial Solution; (v) attempt to gain unauthorized access to the Commercial Solution, other accounts, or other computer systems or networks connected to the Platform through hacking, password mining or any other means or obtain or attempt to obtain any materials or information through any means not intentionally made available by Intel; (vi) violate any applicable local, state, national or international law, including, but not limited to, laws and regulations of the United States and other countries governing the export, import, transfer, distribution, use, or access of the Platform or any Commercial Solution; and/or (vii) provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act.
- 3.5. **Trial Solution Indemnification, Disclaimer, Limitation of Liability.** A Trial Solution, including one or more of its constituent elements, may include Intel pre-release or beta hardware, software, systems, documentation, or services. System configurations, uptimes/availability, and performance of the Commercial Solution is subject to the associated Software License Agreement and/or Service Agreement and, unless stated otherwise, may vary without advance notice.
- 3.5.1. **Indemnification.** Trial Solutions are excluded from any indemnification obligations Intel may have to You.
- 3.5.2. **Disclaimer.** INTEL MAKES NO REPRESENTATIONS OR WARRANTIES FOR ZERO-COST TRIALS, PRE-RELEASE, OR OTHERWISE NON-COMMERCIAL SOLUTIONS (collectively, NON-COMMERCIAL SOLUTIONS), INCLUDING ANY WARRANTY THAT NON-COMMERCIAL SOLUTIONS WILL BE GENERALLY AVAILABLE, UNINTERRUPTED OR ERROR-FREE, OR THAT CONTENT WILL BE SECURE OR NOT LOST OR DAMAGED. YOUR USE OF ANY NON-COMMERCIAL SOLUTION IS AT YOUR OWN RISK. NON-COMMERCIAL SOLUTIONS ARE

PROVIDED "AS IS" WITHOUT ANY EXPRESS, IMPLIED OR STATUTORY WARRANTY OF ANY KIND. EXCEPT TO THE EXTENT PROHIBITED BY LAW, INTEL AND ITS SUPPLIERS EXPRESSLY DISCLAIMS ALL WARRANTIES FOR NON-COMMERCIAL SOLUTIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

- 3.5.3. **Limitation of Liability.** Except for a breach of the confidentiality obligations, Intel will not be liable for any indirect, incidental, special or consequential damages (including lost profits or savings) arising from Your access or use of a Non-Commercial Solution, even if advised of their possibility. This is true regardless of whether those damages are sought based on breach of contract, negligence, or any other legal theory. You acknowledge that as partial consideration for Intel's provision of Non-Commercial Solutions, Intel's aggregate liability for any and all damages arising from Your access to or use of a Non-Commercial Solution, regardless of the claim or legal theory, shall not exceed \$5,000.00.
- 3.6. **Usage Data.** As an element of consideration to Intel for the limited license to access and use the Commercial Solution or the Materials, You acknowledge and agree that, as between You and Intel, Intel will own the Usage Data that it may collect. Intel will sense, detect, collect, store, use, and otherwise dispose of Usage Data in whatever manner it may choose without the need to provide further notice or remuneration to You, so long as it does not do so in a way that exposes to a third-party that Usage Data is specifically and solely associated with You.
- 3.7. **Feedback.** Intel is free to reproduce, use, distribute, or otherwise freely exploit and dispose of any Feedback You provide to Intel, whether intentional or not, written or verbal, in any way Intel may choose, in its sole discretion, without any further obligation to You including any duty of notice or further remuneration. "Feedback" means information, comments, modifications, improvements, corrections, suggestions, enhancement, or other input regarding a Commercial Solution, Material, Platform, or any information related thereto.
- 3.8. **Open Source Software.** A Commercial Solution or software on the Platform may include OSS licensed pursuant to OSS license agreement(s) identified with or within the applicable Source Code file(s) and/or file header(s) provided with the Commercial Solution or software. You shall not subject any proprietary portion of the Commercial Solution or software to any OSS license obligations including, without limitation, combining or distributing the Commercial Solution or software with OSS in a manner that subjects Intel, the Commercial Solution, the software, or any portion thereof to any OSS license obligation. Nothing in this Agreement limits any rights under, or grants any rights superseding, the terms of any OSS license applicable to the Commercial Solution or software.
- 3.9. **Third-Party Software.** Use of certain third-party software provided on the Platform or with(in) the Commercial Solution may require that You: (a) secure a license directly from the software owner, (b) combine the software with components purchased from such third-party, or (c) adhere to further license limitations by the software owner. A listing of any such third-party limitations is in one or more text files accompanying the Commercial Solutions. You acknowledge Intel is not providing You with a license to such third-party software and further that it is Your responsibility to obtain necessary licenses from such third-party(ies) directly.
- 3.10. **Trademarks.** Nothing in this Agreement provides You with any license, express or implied, to use Intel's trademarks. You may not use Intel's name or logo in any publications, advertisements, or other announcements without Intel's prior written consent.
- 3.11. **No other Licenses, Express, Implied, or Statutorily Recognized.** The consideration provided by You to Intel is made solely in exchange for the license and/or permission expressly granted to You by Intel under this Agreement. Any other rights not expressly granted herein including, but not limited to, patent rights, are expressly excluded from the scope of the limited license grant and will require an additional license and additional consideration, each defined and offered in Intel's sole discretion. Nothing in this Agreement requires or will be treated to require Intel to grant any additional license. You acknowledge that an essential basis of the bargain in this Agreement is that Intel grants You no licenses or rights including, but not limited to, patent, copyright, trade secret, trademark, trade name, service mark or other intellectual property licenses or rights with





respect to the Commercial Solution, Materials, or associated information provided to You by Intel by implication, estoppel or otherwise, except for the licenses expressly granted. You acknowledge there are significant uses of the Commercial Solution, Materials, and associated information in their original, unmodified, and uncombined form. The consideration for the licenses or permissions 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, the Commercial Solution, Materials, or associated information that You, Your affiliates, or third-parties may make that infringe any Intel patent claim.

#### 4. Degradation of Service.

- 4.1. **Degradation.** Intel may suspend, throttle (reduce), or otherwise negatively impact Your access to, or use of, all or a portion of a Commercial Solution (hereafter cumulatively referred to as, "**Degradation**"), without liability, if Intel, in its sole discretion, reasonably believes that:
  - 4.1.1. the Commercial Solution is being used (or has been or will be used) by You in violation of this Agreement, including payment terms, or any applicable law, court order, rule, or regulation in any jurisdiction;
  - 4.1.2. the Commercial Solution is being used in any manner that Intel, in its sole discretion, believes violates [Intel's Global Human Rights Principles](#);
  - 4.1.3. You do not cooperate with Intel's investigation of any suspected violation of this Agreement or any applicable law, court order, rule, or regulation in any jurisdiction;
  - 4.1.4. the Commercial Solution offered to You has been accessed or manipulated by a third-party using Your credentials with or without Your consent or in violation of this Agreement;
  - 4.1.5. Degradation of the Commercial Solution is appropriate to protect the Platform or other users; or
  - 4.1.6. Your access to or use of the Commercial Solution may subject Intel, its affiliates, or any third-party to liability.
- 4.2. **Notice.** Intel will give You reasonable advance notice of a Degradation under this Section and a chance to cure the grounds on which the Degradation is based, unless Intel determines, in Intel's sole judgment, that a Degradation on shorter or contemporaneous notice is reasonable to protect Intel or its other customers from operational, security, or other risks, or the Degradation is ordered by a court or other judicial body.
- 4.3. **Effect of Degradation.** If Intel degrades Your right to access or use all or any portion of the Commercial Solution:
  - 4.3.1. You will not be entitled to any remedy under this Agreement for any period of Degradation;
  - 4.3.2. at Intel's sole discretion, Intel may terminate Your access to the Commercial Solution (incl. any Content stored in the User Area) during a Degradation, and Intel will not be liable to You for any damages or losses You may incur as a result of or in association with such termination; and
  - 4.3.3. Intel reserves its right, but has no obligation, to pursue any additional rights and remedies available under the Agreement or arising under law.

#### 5. Your Content: Ownership, Licenses and Responsibilities.

- 5.1. **Content Ownership.** As between You and Intel, all right, title, and interest in and to Content, including all intellectual property rights therein, are and will remain the exclusive property of You and Your licensors or suppliers.
- 5.2. **Limited License.** You grant Intel the right to internally store and use Content solely to perform Intel's obligations under the Agreement. Intel acknowledges and agrees that this license grant is not intended to and does not provide Intel with the ability to externally disclose or otherwise use Content in a way that identifies You, and may be subject to Intel's Privacy Policy and/or a Data Processing Addendum of an associated Software License Agreement or Service Agreement. In addition, You on behalf of Yourself and the organization on whose behalf You access and/or use a Commercial Solution, grant to Intel a license to access, use, reproduce, create derivatives, and transmit the Personal Data of any Data Subjects that access and use a Commercial Solution solely for the purpose of providing such Commercial Solution(s), in



accordance with Intel's Data Privacy Policy and a Data Processing Agreement associated with such Commercial Solution(s), if any.

- 5.3. **Your Representation & Warranty of Content.** You represent and warrant that You are solely responsible for: (i) all Content and activity in Your account associated with the Commercial Solution; and, as relevant, (ii) ensuring You have the right to use, transmit, and store Content on the Platform or in association with the Commercial Solution. You acknowledge and agree You will indemnify, hold harmless, and, in Intel's sole discretion defend, Intel and its suppliers from and against any claims or lawsuits, including attorney's fees, arising out of or otherwise resulting from the access, use, or storage of Content with(in) the Platform, User Area, or the Commercial Solution.

## 6. Orders, Fees, Payment and Taxes.

- 6.1.1. **Orders.** Subsections 6.1.2 and 6.1.3 only apply to orders placed directly with Intel. If You purchase entitlements to a Commercial Solution or Professional Services through a Partner, terms regarding fees, payment and taxes will be as agreed between You and such Partner. If you make a purchase through a Partner, Your order details will be as stated in the order placed with Intel by the Partner on your behalf. Partners are not authorized to modify the Agreement or make any promises or commitments on our behalf, and Intel is not bound by any obligations to You other than as set forth in the Agreement. The amount paid or payable by the Partner to Intel for Your use of the applicable Commercial Solution or Professional Services will be deemed the amount paid or payable to Intel under the Agreement for purposes of calculating the liability cap in Section 10.2.
- 6.1.2. **Fees and Payment.** You will pay the fees to the payees in the amounts and at the times set forth in the Order Form. Sales on credit are subject to the prior approval of Intel's credit department. Any payments made under this Agreement must be made in the Intel-approved currency reflected in the Order Form (typically, USD). You acknowledge and agree to remit payment of the fees pursuant to the terms of the Order Form, but in any case within 30 days of the date of Intel's invoice. Payments will be conveyed in accordance with the terms of the Order Form which, in the case of an invoice, is by means of wire-transfer to a bank account, the details of which will be provided on the invoice. You must reimburse Intel on demand for all expenses incurred by Intel (including, reasonable attorneys' fees and costs) with respect to any delinquent payment. Overdue amounts bear interest at the rate of the lesser of 1.5% per month or the highest lawful monthly rate, accrued and compounded from the date due until the date paid. The parties acknowledge and agree that Intel may sell or otherwise delegate its rights under this Section to third-party collection agencies to collect any unpaid fees.
- 6.1.3. **Taxes.** Intel's fees are exclusive of all Transaction Taxes, which You must pay. If Intel is required by law to collect Transaction Taxes from You, You must pay the Transaction Taxes to Intel, as well as all other payments required under the Agreement. Each party is responsible for its own respective income taxes or taxes based on gross revenues or gross receipts. "**Transaction Taxes**" means all taxes applicable to the sale or the purchase of the Commercial Solutions under the Agreement, including sales and use taxes, value added taxes and other charges such as duties, customs, tariffs, imposts, and government-imposed surcharges but excluding income taxes or taxes based on gross revenues or gross receipts.

7. **Confidentiality.** In the absence of a Corporate Non-Disclosure Agreement ("**CNDA**") between You and Intel, the parties acknowledge and agree to hold the confidential information of the other in strict confidence and not disclose it to any other party. Each party agrees to treat the confidential information of the other with at least the same degree of care as it treats its own confidential information, but in no event with less than reasonable care. Otherwise, the terms of the CNDA will apply.

- 7.1. **Confidential Information.** The Order Form, negotiated terms, user interface, or any other associated tools, materials, displays, prompts, reports, and other information associated with the Commercial Solution and the Materials are considered Intel confidential information and are to be treated accordingly. Your log-in or other access credentials, the security access measures associated with You with(in) the Platform, or to access the Commercial Solution are considered Intel Confidential Information.



- 7.2. **Contractors.** If You would like to have a contractor act on or otherwise access the Commercial Solution in any form, You must obtain a written confidentiality agreement from Your contractor that contains terms and conditions no less restrictive than those set forth in this Agreement. You will remain fully liable to Intel for the actions and inactions of Your contractors.
- 7.3. **Injunctive Relief.** You acknowledge and agree that, due to the unique and commercially sensitive nature of Intel's Confidential Information, there will be no adequate remedy at law for any breach of Your confidentiality obligations under this Agreement. Any such breach will result in irreparable harm to Intel and, upon any such breach or any threat thereof, Intel will be entitled to seek, in any venue of competent jurisdiction, appropriate equitable relief including, but not limited to, an injunction in addition to whatever remedies Intel may have under law.

## 8. Limited Warranties, Service Level Commitment, and Support Obligations.

- 8.1. **Software and Cloud Services.** Intel warrants to You that the Commercial Solution, as provided by Intel to You, will perform in material respect in accordance with the Documentation. You acknowledge and agree to install any Mandatory Updates that Intel may provide to you within 60 days of receipt. Failure to install Mandatory Updates will void any Intel warranty or indemnity obligation. Unless otherwise expressed in the Agreement, Your use of the Commercial Solution is at Your own risk and provided "AS IS" without any express or implied warranty of any kind from Intel or from any other person or entity, including warranties of merchantability, noninfringement, or fitness for a particular purpose. Intel does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links, or other items with(in) the Commercial Solution or any information related thereto. You will be solely responsible for any damage to Your computer system or other device, or the loss of data that may result from Your use of the Commercial Solution however caused, and whether such loss was or should have been foreseeable.
- 8.2. **Service Level and Errors.** Unless otherwise specified in an Order Form, Service Agreement, or Software License Agreement the Commercial Solution may be interrupted or contain errors and is provided to You by Intel on a commercially reasonable efforts basis.
  - 8.2.1. Notwithstanding anything to the contrary in the Agreement, Intel's obligations under any service level commitment, however or wherever made, will not exceed the service level commitment made by or for the underlying Platform on which the Commercial Solution is deployed, whether such Platform is provided by directly by Intel or provided on behalf of Intel by a third-party.
  - 8.2.2. Your sole remedy should Intel fall short of its service level commitment is a service credit, as described in the Software License Agreement or Service Agreement.
- 8.3. **Intel Security Responsibilities.** Intel will implement and maintain commercially reasonable technical and organizational measures related to the physical security of the Commercial Solution, the Platform, and the confidentiality of Content, and remains responsible for the (in)actions of its employees and contractors. Notwithstanding the foregoing, Intel does not give or enter into any condition, warranty, or other term with respect to: (i) any malfunctions or other errors in its Commercial Solution or Platform caused by virus, infection, worm or similar malicious code not developed or introduced by Intel; or (ii) the effect that any Commercial Solution or Platform will protect against all possible security threats, including intentional misconduct by third parties. Intel disclaims all responsibility for and will not assume any liability that may arise as a result of any security breach caused by any such persons, entities, or technologies. As between You and Intel, You are ultimately solely responsible for the data maintenance, integrity, retention, security, and backup of Content, and any liability arising therefrom. You remain responsible for the (in)actions of your employees and contractors. You acknowledge and agree that no vendor can assure complete security and nothing herein or elsewhere shall be deemed to imply a security guarantee or assurance, and Intel disclaims liability regarding your web browser's requirements or any third-party device or appliance used to access or use the Commercial Solution.

## 9. Indemnification.



- 9.1. **Your Indemnification to Intel.** Subject only to the exclusions below, You will indemnify and, at Intel's sole discretion defend, and hold harmless Intel from and against any third-party claim asserted against Intel arising out of or otherwise associated with Your (or Your Customers', as authorized under the Agreement) access to or use of a Commercial Solution, Platform, and/or Materials that is not covered by the scope of Intel's indemnification to You. You agree to pay all of Intel's losses, liabilities, and costs (including reasonable attorney's fees) arising from or as a result of any such claims provided that: (i) Intel provides You with prompt written notice of the claim, (ii) Intel provides its full and timely cooperation in the defense of the claim, and (iii) Intel does not commit to a settlement of the claim without Your prior written consent, not to be unreasonably withheld.
- 9.1.1. **Exclusions to Your Indemnification.** Notwithstanding the foregoing, You will not have any obligation to indemnify or defend Intel from and against claims directly asserted against a Commercial Solution alone, a combination of Commercial Solutions, or a Commercial Solution solely in combination with an Intel hardware product in each case as delivered to You by Intel and not in combination with anything else.
- 9.2. **Intel's Indemnification to You.** Subject to Your continued compliance with the terms and conditions of the Agreement, Intel will indemnify, and in its sole discretion defend, and hold You harmless against a third-party claim that specifically alleges the Commercial Solution that Intel provides to You, alone and not in combination with anything else, directly infringes or misappropriates such third party's intellectual property rights; provided that You: (i) provide Intel with prompt written notice of the claim, (ii) tender to Intel of the right to solely control and conduct the defense and any settlement of the claim, and (iii) Your full and timely cooperation with Intel providing Intel with all reasonably requested authority, information, and assistance. Intel will not be responsible for any costs, expenses, or compromise incurred or made by You without Intel's prior written consent.
- 9.2.1. **Exclusions to Intel's Indemnification.** Notwithstanding anything else in the Agreement, Intel has no obligation to indemnify or defend the following claims:
- 9.2.1.1. those asserted against a Commercial Solution in combination with anything else;
  - 9.2.1.2. those asserted against OSS elements included within or that may interoperate with the Commercial Solution, regardless of whether Intel contributed to such OSS element, or whether Intel specified or recommended the use of such OSS with(in) the Commercial Solution;
  - 9.2.1.3. those asserted against Intel Software in combination with anything other than, or in addition to, an associated Cloud Service;
  - 9.2.1.4. those based on an allegation that the Commercial Solution implements or complies with, in whole or in part, a Standard;
  - 9.2.1.5. any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by You alleging patent infringement;
  - 9.2.1.6. those including an allegation that the Commercial Solution complies, in whole or in part, with any media decoding, encoding, or transcoding technology specification (such as, for example, through use of an audio or video codec);
  - 9.2.1.7. those that arise from or as a result of Your use of the Commercial Solution in a manner that is not compliant with the terms and conditions of this Agreement;
  - 9.2.1.8. those that first arise while You are asserting a claim against Intel; and
  - 9.2.1.9. those asserting Your willful infringement.
- 9.2.2. **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 You the right to continue using the Commercial Solution; (ii) replace the Commercial with a non-infringing alternative; (iii) modify the Commercial Solution so that it becomes non-infringing; or (iv) credit You the fees received from You solely associated with the subject Commercial Solution, in each case (i-iv) subject to Intel's Limitation of Liability under the Agreement.

- 9.3. **Personal Indemnity.** The foregoing indemnities are personal to the party to whom indemnification is owed under the Agreement (the “Indemnitee”). Unless otherwise provided in this Agreement, the Indemnitee may not assign, transfer, or pass-through this indemnity to its customers, successors, or assigns, whether through contract, arising under operation of law, or under any other theory.
- 9.4. **Exclusive Remedy.** The foregoing states a party’s entire obligation and the exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, under the Agreement.

## 10. Limitation of Liability.

- 10.1. **Disclaimer.** Except as otherwise provided in the Agreement, in no event will either party be liable for any of the following losses or damages, even if the losses or damages were foreseen, foreseeable, known, direct or indirect, or otherwise, arising out of or in relation to this Agreement, including the temporary or permanent inability to use the Commercial Solution (or any features thereof): (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, damage to, or corruption of, data (including Content); (vii) loss of opportunity; (viii) loss of reputation, or goodwill; or (ix) any indirect, incidental, special, punitive, or consequential loss, damage, or expense in each case however caused including loss or damage of the type specified above.
- 10.2. **Total Liability.** Except as otherwise provided in the Agreement, each party’s total, cumulative liability to the other for all claims arising under the Agreement, without regard to whether the liability arises due to breach of contract, negligence, or for any other reason, will not exceed the fees paid or payable by You during the last 12 months immediately preceding the date of the first claim solely for the Commercial Solution or Professional Services that are subject of such claim(s), regardless of whether Intel has been advised of the possibility of those damages or whether any remedy fails of its essential purpose. The existence of multiple claims does not increase the limit articulated above.
- 10.3. **Exclusions.** Notwithstanding anything to the contrary, the limits or exceptions set forth in this section will not apply to (i) either party’s liability for death or personal injury caused by its negligence or willful misconduct; (ii) either party’s breach of any confidentiality obligation under the Agreement; (iii) any violation of Sections 3.3., 3.4 or 5.3 by You; (iv) Your indemnity obligations under this Agreement; and/or (v) any liability which cannot be excluded by applicable law.
- 10.4. **Essential and Binding on Your Customers.** You acknowledge and agree that the Limitations of Liability provided in the Agreement are an essential element of the bargain. To the extent that Intel has authorized You, in writing, to extend a Commercial Solution to Your customers, You agree that (i) the Limitations on Liability provided in the Agreement with respect to Intel will be conveyed to and made binding on any customer of Yours, and (ii) any such extension does not alter Intel’s indemnity obligations, or the exceptions thereto stated above.
- 10.5. **Disclaimer of Liability for Certain Uses.** Unless Intel otherwise expressly agrees in writing, the Commercial Solution is not designed or intended for any application where the failure of which could result in personal injury or death. You will indemnify, and at Intel’s sole discretion 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 a claim of product liability, personal injury, or death that is associated with an unintended use of a Commercial Solution, despite any claim that Intel or its suppliers or subcontractors were negligent regarding the design, manufacture or deployment of the Commercial Solution.

**11. Term, Termination and Survival.** The Agreement begins on the Effective Date and remains in effect through the Term unless terminated earlier as described below. Subject to your compliance with the terms and conditions of the Agreement, each License continues in effect through the Term, at which time such License automatically expires and Your access is immediately terminated. You must remove any Content from any allocated User Area, the Platform, and/or the Commercial Solution prior to Agreement termination. Intel may terminate this Agreement for any reason, or no reason at all, at any time with prior written notice. With the limited exceptions of Sections 1, 2, 3.1, 3.2, 3.3.2, 3.6, 3.7, 5.1, 6, 7, 9.1, 10, 11, 12, 13, and 14, no other rights or obligations survive termination of the Agreement.

11.1. **Effect of Termination.** Once the license is terminated, however terminated, You will no longer have access to the User Area. Within a commercially reasonable period after the license terminates, Intel will sanitize and wipe clean the User Area of Your Content, where the data on that system is completely wiped using NVMe encryption technology and a fresh operating system is installed. Where the system firmware or management service is modifiable by customers, those firmware and management service(s) are reinstalled before the next customer has access to that system. Intel represents and warrants that the User Area and any persistent memory that contains Your Content will be sanitized prior to reallocation to or use by another party.

12. **Audit.** You will maintain complete and accurate records regarding Your compliance with Your obligations under this Agreement for a period of three years after the performance of such obligations. You will implement an internal control and audit mechanism to ensure Your employees are complying with Your obligations under the Agreement and will certify in writing such compliance to Intel upon request, no more frequently than once every 12 months. With reasonable advance notice, Intel may inspect, or have an independent auditor inspect, Your records during normal business hours no more frequently than once every 12 months to verify Your compliance with this Agreement. Notwithstanding anything to the contrary, if Intel has a reasonable belief that You have failed to adhere to Your obligations under this Agreement, Intel may exercise its audit rights described herein without being limited by the number of audits previously conducted, or any time-bound limitation on the number of audits Intel may conduct. If any audit discloses that You are not in material compliance with Your obligations under this Agreement, Intel is entitled to recover the cost of the audit and any underpayments in addition to all rights and remedies provided under this Agreement or by law.

13. **Governing Law; Jurisdiction; Injunctive Relief.** The Agreement and any dispute arising out of or relating to it will be governed by the laws of the U.S.A. and the state of Delaware, without regard to conflict of laws principles. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (1980). The state and federal courts sitting in Wilmington, Delaware, U.S.A. will have exclusive jurisdiction over any dispute arising out of or relating to this Agreement. The parties consent to personal jurisdiction and venue in those courts. A party that obtains a judgment against the other party in the courts identified in this section may enforce that judgment in any court having jurisdiction over the parties. Any breach by You of this Agreement or violation of Intel's intellectual property rights could cause irreparable injury or harm to Intel. You acknowledge and agree that Intel may seek an order of injunctive relief to stop any breach or avoid any future breach.

#### 14. Additional Terms and Conditions

14.1. **Assignment.** You may not delegate, assign or transfer this Agreement, the license(s) granted or any of Your rights or duties hereunder, expressly, by implication, by operation of law, or otherwise and any attempt to do so, without Intel's express prior written consent, will be null and void. Intel may assign, delegate, or transfer this Agreement, and its rights and obligations hereunder, in its sole discretion.

14.2. **Entire Agreement.** The 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. Intel reserves the right to amend and modify the Commercial Terms from time to time, in its sole discretion, and without notice to You. If You received a copy of the Agreement translated into another language, the English language version of the Agreement will prevail in the event of any conflict between versions.

14.3. **Severability.** The parties intend that if a court holds that any provision or part of the Agreement is invalid or unenforceable under applicable law, the court will modify the provision or part 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 the Agreement. Any change to or deletion of a provision or part of the Agreement pursuant to this Section will not affect the validity or enforceability of the remainder of the Agreement, which will continue in full force and effect.

- 14.4. **Waiver.** The failure of a party to require performance by the other party of any provision hereof will not affect the full right to require such performance at any time thereafter; nor will waiver by a party of a breach of any provision hereof constitute a waiver of the provision itself.
- 14.5. **Force Majeure.** Neither party is liable for any event beyond a party's reasonable control that, by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of a party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, denial of service attacks, sabotage, epidemics, pandemics or other contagion including COVID-19, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, material power outages and/or IT failures, fire, flood, storm or default of suppliers or subcontractors.
- 14.6. **Trade Compliance.** You acknowledge that the Commercial Solution and all related technical information made available to You may be subject to export controls. You agree to comply with all applicable laws and regulations of the United States and other applicable governments governing export, re-export, import, transfer, distribution, use and servicing ("Export") of the Commercial Solution, the Materials, and all related information provided by Intel. You agree that neither You nor Your subsidiaries or Affiliates will export/re-export the Materials, in any form, directly or indirectly, to any country for which the U.S. Department of Commerce or any other agency or department of the U.S. Government or the foreign government from where it is shipping requires an export license, or other governmental approval, without first obtaining any such required license or approval. In the event the Materials, in any form, are exported from the U.S.A. or re-exported from a foreign destination by You, Your subsidiaries, or Your Affiliates, You will ensure that the distribution and export/re-export or import of the Commercial Solution or Materials, in any form, complies with all laws, regulations, orders, or other restrictions of the U.S. Export Administration Regulations and the appropriate foreign government. You agree to indemnify Intel against any loss arising out of Your failure to conform to these requirements. For more details on Your export obligations, please visit <http://www.intel.com/content/www/us/en/legal/export-compliance.html?wapkw=export>.
- 14.7. **Data Subject Privacy Notice.** Personal Data that Data Subjects (as such term or its equivalent is defined under applicable data-protection and privacy laws or regulations) directly and voluntarily submit to Intel through forms on or associated with a Commercial Solution is governed by Intel's [Privacy Notice](#), which describes how Intel collects, processes, and discloses Data Subjects' Personal Data. By accessing a Commercial Solution, You, if you are such a Data Subject, acknowledge that You have read, understand, and accept the terms of Intel's Privacy Notice.
- 14.8. **Data Processing Agreement with Data Controller.** If You are a Data Controller (as such term or its equivalent is defined under applicable data-protection and privacy laws or regulations) who will submit to Intel for processing the Personal Data of Data Subjects, Intel's processing of such Personal Data is governed by the Data Processing Agreement associated with the relevant Commercial Solution. By accessing and using the Commercial Solution you acknowledge and agree to be bound by the terms and conditions of the Data Processing Agreement between You and Intel. In accordance with the Data Processing Agreement associated with the Commercial Solution, Intel may utilize third-party data processors in the implementation of its Commercial Solution. You acknowledge and agree to Intel's use of such third-party processors for this purpose. Any such Data Processing Agreement is incorporated by reference and deemed an essential element of the Agreement for purposes of Your continued use of the Commercial Solution.
- 14.9. **U.S. Government Restricted Rights.** To the extent relevant, the Commercial Solution or the Materials and related information are each a "Commercial Item" (as defined in 48 C.F.R. 2.101) consisting of "commercial computer software" and "commercial computer software documentation" (as those terms are used in 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 herein.
- 14.10. **Further Jurisdictional Considerations.** The Commercial Solution and the Materials that Intel may make available may be provided from and in accordance with the laws of the United States of America. Intel makes no representation or warranty that the Commercial Solution or the Materials are appropriate or available for use in other locations, or that Your access to them from the territory in which You reside is or will be lawful or in



compliance with applicable local laws. Those who choose to access the Commercial Solution or the Materials from other locations do so on their own initiative and are solely responsible for compliance with applicable local laws. The Commercial Solution and the Material are subject to US export control laws and may also be subject to the laws of the country from which You access the Commercial Solution and the Materials. Intel reserves the right to suspend or terminate Your access to ensure compliance with applicable local laws.