

# Intel® True Scale Fabric Suite Software Maintenance Agreement

## 1. Sole Agreement

These terms and conditions constitute the entire agreement ("Agreement") between Intel Corporation ("Intel") and users of Intel software ("End-Customers") with respect to technical support and maintenance ("Software Maintenance") of the Intel software ("Software") as described herein. Intel Software does not include firmware included with Intel hardware products. These Terms and Conditions are the sole and exclusive terms governing all Software Maintenance provided by Intel (or its agents or subcontractors) for the Software. Intel shall not be bound by any terms or conditions not set forth in this Agreement. These Terms and Conditions may be modified only by written amendment executed by Intel.

## 2. Period of Performance

This Agreement and performance thereof will commence and expire on the dates indicated in the Intel Registration Center (IRC) system for each purchased item. The beginning date for software maintenance shall be set on the date the End-Customer registers and downloads the software.

## 3. Renewal

This Agreement may renew for additional Terms upon receipt of a Software Maintenance purchase order from a Direct-Customer on behalf of End-Customer. Any such renewal will be subject to the price(s) then offered to End-Customer by one or more Direct-Customers at the time of the renewal request. Acceptance of the purchase order will be contingent upon adherence to the published "Rules for sale of service".

## 4. Software Maintenance

To initiate Software Maintenance, End-Customer will contact [Intel HPC Fabric Support Center](#) to report problems covered by this agreement. Software Maintenance **shall not** include: any technical support or software fixes as a result of (a) accident, neglect, misuse; (b) causes external to the Software or as a result of any causes other than ordinary use of the Software; (c) unauthorized removal/reinstallation of the Software; (d) alterations, modifications, repairs of the Software made by persons other than Intel or a Intel authorized Software Maintenance provider; (d) training other than the specific operation of the installed Software; and (f) installation of new or upgraded features except as authorized by Intel.

## 5. Intel Responsibilities

During the term of this Agreement, Intel shall use reasonable commercial efforts to: (a) assure the Software operates substantially in accordance with the Software specifications in effect at the time of End-Customer's purchase of the Software or subsequent upgrades or enhancements procured by the End-Customer under conditions of normal use; (b) Provide all mandatory patches or upgrades which Intel determines are required to ensure proper Software operation; and (c) provide such other Software Maintenance as described in this Agreement.

## 6. End-Customer Responsibilities

A. Obtain and provide to Intel sufficient information to establish entitlement, severity and priority for identified problems.  
B. Use reasonable commercial efforts to isolate problems and reproduce any identified errors or malfunctions.  
C. Provide, upon Intel's request, diagnostic output and such additional data in machine-readable or interpreted form deemed necessary or desirable by Intel to reproduce the environment in which the errors or malfunctions occurred and to aid understanding the errors or malfunctions.  
D. Provide End-Customer and/or End-Customer's vendor contact information as needed.

## 7. Subcontracting

Intel may authorize and utilize one or more third parties to provide the Software Maintenance under this Agreement. Subcontractor(s) shall comply with the terms of this Agreement

## 8. Pricing

Price quotes are obtained from authorized Intel distributors and other parties with whom Intel has a direct sales relationship. Pricing

shall remain fixed for the term of this Agreement. Prices are in US dollars Prices specified herein exclude taxes. Direct-Customer and End-Customer will pay any tax, however designated (and any related interest or penalty), imposed.

## 9. Payment

Upon acceptance of a purchase order from a Direct-Customer Intel shall invoice Direct-Customer for the Term of Software Maintenance. Payment is due within thirty (30) days of receipt of invoice. All payments will be made in United States dollars without setoff or deduction.

## 10. Warranty

Intel warrants that all Software Maintenance will be performed in accordance with workmanship standards prevailing in the industry. All

Software Maintenance is warranted for a period of thirty (30) days. End-Customer's sole remedy for breach of this remedy is re-performance of the Software Maintenance by Intel. End-Customer

acknowledges that any deviations or exceptions to the foregoing warranty shall be valid only if in writing executed by a Intel authorized representative and no employee, dealer, distributor or third

party is authorized to modify the foregoing warranty. Any Software provided by Intel under this Agreement is not warranted to be error free although Intel will endeavor to provide Software that is

reasonably free of errors in programming. Intel will conduct reasonable tests for viruses but does not warrant or guarantee that any Software will be virus free. **THE FOREGOING IS THE SOLE WARRANTY BY INTEL UNDER THIS AGREEMENT AND ALL**

**OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, CUSTOM, AND FITNESS FOR PURPOSE ARE HEREBY DISCLAIMED.**

## 11. Limitation of Liability

**UNDER NO CIRCUMSTANCES SHALL INTEL BE LIABLE TO END-CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA OR LOST GOODWILL HOWEVER CAUSED. INTEL'S MAXIMUM LIABILITY IN ANY CLAIM ARISING OUT OF THIS AGREEMENT WILL NOT EXCEED THE AMOUNT WHICH DIRECT-CUSTOMER HAS PAID TO INTEL FOR SOFTWARE MAINTENANCE ON BEHALF OF END-CUSTOMER UNDER THIS AGREEMENT.**

## 12. Intellectual Property Rights

Intel owns the entire right, title and interest in and to all intellectual property rights in and relating to the design of the Software, or other

technology developed in the performance of this Agreement. The software furnished by Intel is subject to strict compliance by Direct-Customer and/or End-Customer with each and all of the terms of the applicable software license agreement. In the absence of any separate software license agreement, Intel grants to you a non-exclusive, personal, non-sublicensable, limited right and license under Intel's copyrights to load data into or display, view or extract output results from, or otherwise operate any portion of the software together with the hardware, or to distribute the software together with the hardware.

## 13. Force Majeure

Neither party will be liable for any failure to perform acts, other than

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payment obligations, due to unforeseen circumstances or causes beyond the parties' reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, electronic viruses, worms or corrupting microcode, shortage of supply or delay in delivery by Intel's vendors, fire, flood, earthquake, accident, strikes, radiation, inability to secure transportation, failure of communications or electrical lines, facilities, fuel, energy, labor or materials.

## 14 Cancellation

## 16. Assignment

These Terms and Conditions shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns. End-Customer shall not assign this Agreement to any third party without the prior consent of Intel and any attempted assignment in violation of this provision will be void. Nothing in this Provision will be interpreted to prevent or impede Intel from subcontracting its efforts under this Agreement.

## 17. Rights and Remedies

All rights and remedies, whether conferred hereunder or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. Failure by either party to enforce any term will not be deemed a waiver of future enforcement of that or any other term. The terms and conditions stated herein are declared to be severable. Should any term(s) or condition(s) of this Agreement be held to be invalid or unenforceable the validity, construction and enforceability of the remaining terms and conditions of this Agreement shall not be affected.

## 18. Applicable Law

The terms herein will be governed by the laws of the State of Delaware U.S.A. notwithstanding its conflicts of laws provisions, and the parties have agreed that the United Nations Convention for International Sale of Goods shall not govern this Agreement.

## 19. Disputes

The parties shall attempt in good faith to promptly resolve any controversy or claim arising out of or relating to Software Maintenance delivery by negotiations between representatives of the parties. Neither party will file or otherwise initiate litigation against the other without providing the other party at least thirty (30) days prior written notice. The prevailing party in any litigation against the other party under this Agreement will be entitled to recover attorney fees.

## 20. Survival

Provisions entitled "Intellectual Property Rights," "Rights and Remedies," "Applicable Law," and "General" shall survive termination or expiration of this Agreement.

## 21. General

A. This Agreement is the complete and entire understanding between Intel and End-Customer and supersedes all prior agreements, proposals, representations, statements, or understandings whether written or oral on this subject between them.

B. The headings of the sections in this Agreement are included for convenience only and are not to be used in construing or interpreting the provisions hereof.

C. All notices required to be given pursuant to the provisions hereof shall be in writing and shall be deemed given and delivered upon the earlier of actual receipt by the party whom it is addressed or sent by email (ibsupport@intel.com) or after deposited in the mail (certified mail, return receipt requested, with postage pre-paid and addressed as set forth):

Cancellations are not accepted after software is registered in IRC.

## 15. Termination

Intel may terminate this Agreement immediately and incur no future support obligation if Direct-Customer fails to pay for Software Maintenance when due and such failure is not cured within ten (10) working days after receipt of written notice.

## Intel Corporation

780 Fifth Ave, Suite 140  
King of Prussia, PA 19406 USA  
Attention: Software Maintenance

## Direct Customer

Address as listed on the purchase order

## End Customer

Information provided upon contact with Intel. End-Customer acknowledges that Software Maintenance activities may create a risk of loss of data, programs or disruption of End-Customer's information. End-Customer agrees to be solely responsible to back up all existing computer files prior to initiation of any Software Maintenance activities.

E. Intel reserves the right to charge for performance of Software Maintenance, support or other activities requested by End-Customer that are outside the scope of this Agreement.

## 22. Coverage Details

The following describes the available Software Maintenance provided by Intel under this Agreement. Specific details of the available plans may be found at <http://intel.com/InfiniBand>. Please reference your purchase order to identify the specific Software Maintenance purchased.

### Software Maintenance Description Table

#### 7X24

Product Coverage	Intel True Scale Fabric Suite Software
HPC Fabric Support Center Hours of operation	7X24X365
HPC Fabric Support Center Response time	Web: 4 hours E-mail: 8 hours Phone: 30 minutes
On-Site Support	No on-site support
Software Updates	All releases during the active maintenance period.

**22.1 Duration** – All Software Maintenance is for the period set forth in Section 2 above.

**22.2 HPC Fabric Support Center** – Provides assistance with product performance-related questions, helps to identify, verify and resolve causes of suspected errors or malfunctions for covered Intel Software.

**22.2.1 Call Management** – Based on information provided by the End-Customer, the Call Center representative will determine the nature of the reported issue and attempt to resolve the problem. If the issue cannot be resolved in a timely manner, the call will be escalated to the appropriate support group. If needed, the appropriate support group will contact End-Customer's personnel. Intel will monitor the call for response and resolution and track the call through resolution.

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### **22.2.2 HPC Fabric Support Center Hours of operation** Service

calls will be taken 24 hours a day including weekends and holidays.

### **22.2.3 HPC Fabric Support Center Access**

Intel HPC fabric support contact information may be found by visiting <http://Intel.com/InfiniBand>

**22.2.4 HPC Fabric Support Center Response Commitment** Intel will respond acknowledging receipt of End-Customer's request and commence resolution efforts as follows:

Web: 4 hours

E-mail: 8 hours

Phone: 30 minutes

Onsite support is not provided.

**22.4 Software Updates** – Intel will provide access to patches and Software releases/updates for End-Customers with an active Agreement.