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and
Intel® Xeon Phi™ Processor Software

(Internal Use and Object Code Distribution)

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In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which You and Intel acknowledge, and intending to be legally bound, the You and Intel agree as follows:

1. DEFINITIONS. The following definitions apply in this Agreement:

1.1   "**Derivative Work**" means a derivative work, as defined in 17 U.S.C. § 101, of the Software Source Code, that You developed.

1.2   "**Documentation**" means the user manuals and other written materials that describe the Software, its operation and matters related to its use, that Intel provides in connection with, under, or subject to, this Agreement, and any updated, improved or modified version(s) of those materials, whether provided in published written material, on magnetic media or communicated by electronic means.

1.3   "**EULA**" means the End User License Agreement in Attachment B.

1.4   "**Intel Products**" means the products listed on Attachment A and any additional products that Intel later adds to Attachment A.

1.5   "**Licensed Patent Claims**" means the claims of Intel's patents that are necessarily and directly infringed by the reproduction and distribution of the Source Code that is authorized in Section 2.1(A), when such items are in their unmodified form as delivered by Intel to You and not modified or combined with anything else except as permitted under Section 2.1(A). Licensed Patent Claims are only those claims that Intel can license without paying, or obtaining the consent of, a third party.

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

1.7   **"Open Source Software"** means

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

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

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

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

1.8   "**Software**" means the computer program, in Object Code and Source Code, identified in Attachment A, and any updated or improved version of the program that Intel provides to You under this Agreement, if any, but does not include Open Source Software or any computer programming code that is subject to an agreement, obligation or license (whether or not accompanying the computer program) intended to supersede or override this Agreement.

1.9   "**Source Code**" means a form in which a computer program's logic is easily deduced by a human being with skill in the art, such as a printed listing of the program or a form from which a printed listing can be easily recognized.

1.10   "**Support**" means any maintenance services, installation assistance, customized support, consulting, or similar assistance that Intel may consent to provide to You related to the Software or to facilitate Your productive use of the Software, as is more particularly described in Section 6.

2. LICENSE

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(3) distribute the Software or modified versions of the Software only in Object Code, only under Intel's EULA attached as Attachment B, and only for use with Intel Products; and

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(B) under Intel's Licensed Patent Claims, to:

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(4) provided, however, that You may only distribute the Software under Intel's EULA and only for use with Intel Products; and

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

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    (2) modify, adapt, enhance, disassemble, decompile, reverse engineer, change or create Derivative Works from the Software; or

    (3) use the Software to process the data of, or make the Software available online for the use of, third parties.

(B) The consideration under this Agreement is only for the licenses that Intel expressly grants to You in Section 2.1. Any other rights including, but not limited to, additional patent rights, will require an additional license and additional consideration. 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 other rights including, but not limited to, patent, copyright, trademark, trade name, service mark or other intellectual property licenses or rights with respect to the Software and Documentation, by implication, estoppel or otherwise, except for the licenses expressly granted in Section 2.1.

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3. FEES; ROYALTIES; TAXES

The license is granted under this Agreement for no fee or royalty. Each party is responsible for its own tax liability arising out of this Agreement.

4. TERM; TERMINATION

4.1 Term. The term of this Agreement will commence on the Effective Date and continue until terminated in accordance with this Section 4.

4.2 Termination. Intel may terminate this Agreement:

- if You materially breach any other provision of this Agreement, and You fail to correct the breach within 30 days of Your receipt of written notice of that breach or, if the breach is incapable of cure within 30 days, You fail to take substantial steps toward a cure within that period;

- immediately, if You breach any provision of Sections 2 or 7; or

- immediately, if You become insolvent or make an assignment for the benefit of creditors, or a trustee or receiver is appointed for You or for a substantial part of Your assets, or bankruptcy, reorganization or insolvency proceedings are instituted by or against You.

4.3 Effect of Termination.

(A) Expiration or termination of this Agreement will terminate Your license rights under this Agreement.

(B) Within 30 days after expiration or termination of this Agreement, You will furnish Intel a written certification that You have either returned to Intel or destroyed the original and all copies, including partial copies, of the Software that Intel furnished under this Agreement or that You made as permitted by this Agreement, and that no copies or portions of the Software remain in Your possession or in the possession of Your employees or agents

(C) Sections 2.1(C), 2.2, 2.3, 2.4, 3, 4.3, 5, 7, 8, 9, 10 and 11 will survive expiration or termination of this Agreement.

5. OWNERSHIP

5.1 Derivative Works. You will own all copyrights in the Derivative Works. By this Agreement, You grant to Intel a nonexclusive, worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable license to use, copy, sell, have sold, make, have made and import the Derivative Works in any manner and on any media Intel chooses; provided, however, You have no obligation to deliver the Derivative Works to Intel.

5.2 Feedback. To the extent You provide Intel with Feedback, You grant to Intel and Intel accepts, a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, transferable license, with the right to sublicense, under Your intellectual property rights to the Feedback to incorporate or otherwise use Feedback as provided by You to Intel. "Feedback" means Your requirements, inputs, comments, responses, opinions, feedback and errata, whether oral or written, concerning the Software and Documentation and Your technical system requirements for Intel to include in the Software definition, design or validation.

6. SUPPORT

6.1 Services. Intel has no obligation to maintain or support the Software or Documentation. You are directed to access Intel's webpage http://software.intel.com/en-us/ for basic FAQ's and other Intel product resources relating to the Software. Under no circumstances will Intel have any obligation to Your Customers with respect to maintenance or support of the Software.

6.2 Additional Services. Intel has no obligation to perform any maintenance or other services not specifically provided for in this Agreement. However, if Intel agrees to perform services requested by You that are not included as part of this Agreement, Intel will bill You for those services at prices and on terms to be agreed by You and Intel.

7. NO PUBLICITY

7.1 No Publicity. You may not use Intel's name, or the names of any Intel employees, in any publication, advertisement or other announcement, without Intel's prior written consent in each instance.

8. INDEMNITY

8.1 By You.
(A) You will defend, at Your own expense, any legal action brought against Intel to the extent that it is based on an Indemnified Claim, which is any of the following claims or allegations:

(1) that the Derivative Works, or any portion of the Derivative Works, in the form delivered to Intel, directly infringes on patents or copyrights or constitutes a misappropriation of trade secrets of any third party; or

(2) arising from or relating to Your breach of any provision of this Agreement including, but not limited to, a breach of Section 2.

(B) You will pay any costs and damages finally awarded against Intel that are attributable to any Indemnified Claim or that Intel incurs through settlement of an Indemnified Claim, but will not be responsible for any compromise that Intel makes or expense that Intel incurs without Your consent. The defense and payments are subject to the condition that Intel gives You prompt written notice of the Indemnified Claim, allows You to direct the defense and settlement of the Indemnified Claim, and cooperates with You as necessary for defense and settlement of the Indemnified Claim.

9. WARRANTY

Disclaimer. Intel makes no warranties to You with respect to the Software or any Support, service, advice, or assistance furnished under this Agreement, and no warranties of any kind, whether written, oral, implied or statutory, including warranties of merchantability or fitness for a particular purpose, non-infringement or arising from course of dealing or usage in trade will apply.

10. LIMITATION OF LIABILITY

(A) Intel's cumulative liability to You for all claims of any kind resulting from Intel's performance or breach of this Agreement or the Software furnished under this Agreement will not exceed the Fees actually received by Intel from You under this Agreement for the Software that is the subject of the claim or $1,000, if the Software was provided at no charge to You, regardless of whether Intel has been advised of the possibility of those damages or whether any remedy set forth in this Agreement fails of its essential purpose or otherwise. This limitation of liability is cumulative and not per incident; the existence of more than one claim will not increase the limit.

(B) Intel will not be liable for costs of procurement of substitutes, loss of profits, loss of use, interruption of business, or for any other special, consequential, punitive or incidental damages, however caused, whether for breach of warranty, contract, tort, negligence, strict liability or otherwise, irrespective of whether Intel has advance notice of the possibility of such damages. The limitation of liability set forth in this Section 10 is a fundamental basis of this Agreement; and each Party understands and agrees that the other would not have entered into this Agreement without the limitation of liability.

11. GENERAL PROVISIONS

11.1 Notices.

(A) All notices required or permitted to be given under this Agreement must be in writing, make reference to this Agreement, and be delivered by hand, or dispatched by prepaid air courier or by registered or certified airmail, postage prepaid, addressed as follows:

If to Intel:

Intel Corporation
2200 Mission College Blvd.
Santa Clara, CA 95052
Attention: General Counsel
Reference ID: Andrea R. Watson, DCG Legal

With a copy to: Post Contract Management
1900 Prairie City Rd.
Folsom, CA 95630
Attn: Cathie McCall FM3-78

(B) Notices will be considered served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Either Party may give written notice of a change of address and, after notice of such change has been received, any notice or request will be given to that Party at the changed address.

11.2 **Audit Rights.** Upon reasonable advance notice, Intel will have the right to inspect, or have an independent auditor inspect, Your facilities and records during normal business hours to verify Your compliance with the terms and conditions of this Agreement. If an inspection discloses that You are not compliant with these terms, Intel may exercise any or all rights and remedies provided under this Agreement or by law including, but not limited to, the right to recover the cost of the audit.

11.3 **Export.** The Software, Documentation and all related technical information or materials are subject to export controls and (are or may be) licensable under U.S. Government export regulations. You will not export, re-export, divert, transfer or disclose, directly or indirectly, the Software, Documentation and any related technical information or materials without complying strictly with all legal requirements including, without limitation, obtaining the prior approval of the U.S. Department of Commerce and, if necessary, other agencies or departments of the U.S. Government. Please access Intel's website, http://www.intel.com/content/www/us/en/legal/export-compliance.html, for information regarding the export classification of the Software that may be necessary to assist Your compliance with this provision. You will execute and deliver to Intel "Letters of Assurance" as may be required under applicable export regulations. You will indemnify Intel against any loss related to Your failure to conform to these requirements.

11.4 **No Sublicensing, Assignment or Transfer.**

(A) You may not delegate, assign or transfer this Agreement, or any of Your rights and obligations under this Agreement, and any attempt to do so will be void. In addition, You may not sublicense, assign or transfer any Software, Documentation,

Confidential Information or any part of the Software, Documentation or Confidential Information, or any right in this Agreement to any third party temporarily (such as loaning, rental, licensing or timeshare) or permanently, except as expressly permitted under Section 2.1 or 2.2, without the prior written consent of Intel in each instance, which consent Intel may withhold in its sole discretion. Any attempted sublicense, assignment or transfer that is not expressly permitted under Section 2 or is without consent will be void.

(B) You agree that this Agreement binds You and each of Your affiliates and the employees, agents, representatives and persons associated with any of them. Without limitation of the foregoing, if there is a sale of substantially all of Your assets, a merger, a re-organization, or a change in control of 50% or more of Your equity, no transfer or assignment (including, without limitation, an assignment by operation of law) of this Agreement may be made without the prior written consent of Intel.

11.5 **U.S. Government Contract Provisions.** This Agreement is for Your temporary license of Software. No Government procurement regulation or contract clauses or provision will be considered a part of any transaction between You and Intel under this Agreement unless its inclusion is required by statute, or mutually agreed upon in writing by You and Intel in connection with a specific transaction. The technical data and computer software covered by this license is a "Commercial Item," as that 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 under the terms and conditions in this Agreement. Use for or on behalf of the U.S. Government is permitted only if the party acquiring or using this Software is properly authorized by an appropriate U.S. Government official. This use by or for the U.S. Government clause is in lieu of, and supersedes, any other FAR, DFARS, or other provision that addresses Government rights in the computer Software or documentation covered by this license. All copyright licenses granted to the U.S. Government are coextensive with the technical data and computer Software licenses granted in this Agreement. The U.S. Government will only have the right to reproduce, distribute, perform, display, and prepare Derivative Works as needed to implement those rights.

11.6 **Force Majeure.** Except for Your obligations under Section 3, neither Party will be liable to the other Party for delay in performing its obligations, or failure to perform any obligations, under this Agreement, if the delay or failure results from circumstances beyond the control of that Party including, but not limited to, any acts of God, governmental act, fire, explosion, accident, war, armed conflict, terrorist act or civil commotion. If there is a delay, the time for performance will be extended by the amount of time lost by reason of the delay; provided, however, should an event of force majeure described in this Section delay either Party's performance in any material respect for a period of more than 90 days, then the other Party will have the option,

upon giving written notice, to terminate this Agreement or the relevant portion of this Agreement affected by the delay.

11.7 Waiver and Severability. If either Party fails to enforce at any time any of the provisions of this Agreement, or to exercise any election of options provided in this Agreement, that failure will not constitute a waiver of that provision or option, or affect the validity of this Agreement or any part of this Agreement, or the right of the waiving Party to enforce subsequently each and every provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement will continue in full force and effect.

11.8 Governing Law; Jurisdiction.

(A) The procedural and substantive laws of the State of Delaware, U.S.A., without regard to its conflicts of laws principles, will govern this Agreement. This Agreement is prepared and executed and will be interpreted in the English language only, and no translation of the Agreement into another language will have any effect. You and Intel 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.

(B) The state and federal courts located in the State of Delaware will have exclusive jurisdiction of all disputes and litigation arising out of or related to this Agreement including, without limitation, matters connected with its performance. Each Party irrevocably submits to the personal jurisdiction of those courts and irrevocably waives all objections to such venue.

11.9 Entire Agreement. This Agreement, the Attachments, Exhibits, Appendix and Non Disclosure Agreement(s) contain the complete and exclusive statement of the agreement between You and Intel and supersede all proposals, oral or written, and all other communications between You and Intel relating to the subject matter of this Agreement. Only a written instrument duly executed by authorized representatives of Intel and You may modify this Agreement.

Description of Software specifically licensed under this Agreement:
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Intel® Xeon Phi™ processor software

Intel Products: **Intel® Xeon Phi™ product family**

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End User License Agreement

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