

Intel True Scale Hardware Maintenance Agreement

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1 Sole Agreement

These terms and conditions constitute the entire agreement ("Agreement") between Intel Corporation and its subsidiaries ("Intel") and users/resellers of Intel products ("End-Customers"/"Direct-Customers") who have directly or indirectly purchased technical support and/or hardware maintenance ("Service") for certain Intel products ("Products"). These terms and conditions are the sole and exclusive terms governing all Service provided by Intel (or its agents or subcontractors) for the Products. 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 purchase order or Intel's confirmation of sale.

3 Renewal

This Agreement may renew for additional Terms upon receipt by Intel of a purchase order from a Direct-Customer (including Distributors) on behalf of an End-Customer. The renewal will be subject to the price(s) then offered to the End-Customer directly or by one or more Direct-Customers at the time of the renewal request. Acceptance of the purchase order will be contingent upon adherence to Intel's published "Rules for sale of service". Renewals received by Intel more than ninety (90) days following contract expiration may be subject to a reinstatement fee. Intel reserves the right to confirm the health condition of hardware prior to accepting service reinstatement. Hardware not meeting the minimum health requirement must be repaired at the End-Customers expense prior to service reinstatement. All hardware maintenance must be continuous with no gaps in coverage period. Reinstatement will be retroactive to the day following the last covered date.

4 Service

A. To initiate Service, End-Customer will contact the Intel HPC Fabric Support Center to report problems covered by this Agreement. Product(s) eligible for Service must be either new or in good operating condition as determined by Intel. If End-Customer's service plan requires site access, End-Customer hereby authorizes Intel or its subcontractors to enter the End-Customer's premises to perform Service under supervision of relevant site personnel. Any such site access will be subject to End-Customer's security rules and requirements and subject to the terms of End-Customer's service plan and this Agreement.

B. Service shall not include software maintenance, training, preventive maintenance, or any hardware maintenance, servicing, repair, or replacement of parts required as a result of the following:

- Accident, vandalism, negligence, abuse, or misuse, including the failure to operate and care for the Product in accordance with Intel's power, environmental and other specifications.
- Causes external to the Product including, but not limited to, failure of, or faulty electric power (such as power surges) or air conditioning, damage caused by fire originating outside of the Product, water damage, environmental contamination, or as a result of any causes other than ordinary use of the Product.
- Re-manufacturing or refurbishing the Product except as specifically authorized by Intel.
- Moving, removal/reinstallation of the Product.
- Alterations, modifications, repairs or maintenance of the Product made by persons other than Intel or a Intel authorized service provider.
- Implementation of non-mandatory engineering changes.
- Installation of new or upgraded features except as authorized by Intel.
- Service of parts, components or Products which were not manufactured and approved by Intel.
- Acts, errors or omissions committed by End-Customer or End-Customer's representatives.

5 Intel Responsibilities

During the term of this Agreement, Intel shall use reasonable commercial efforts to do the following:

- Assure that the Product operates substantially in accordance with the Product specifications in effect at the time of End-Customer's purchase of the Product or subsequent upgrades or enhancements procured by the End-Customer under conditions of normal use.
- Provide applicable parts and labor required for Services purchased.
- Install all mandatory field change orders that Intel determines are required to ensure proper Product operation.
- Provide such other Services 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 in understanding the errors or malfunctions.

D. Provide End-Customer and/or End-Customer's vendor(s) Intel HPC Fabric Support Center contact information as needed.

E. Identify to Intel on or before Agreement commencement, any End-Customer site that is a U.S. government agency or U.S. government customer, if applicable.

F. Identify to Intel on or before Agreement commencement, any special access or security requirements if on-site services are purchased.

G. Identify to Intel on or before Agreement commencement, any requirement for the use of protective equipment or other measures including, but not limited to, specific site safety training. End-customer also agrees to provide such equipment or training as needed at no charge prior to the start of on-site maintenance activities.

H. Provide Intel thirty (30) days advance notice of site location changes for covered Product.

I. For purchased on-site services, provide Intel and its subcontractors an appropriate and safe work environment, reasonable access, working space and facilities including heat, ventilation, electric current, electric outlets, and access to a working telephone.

7 Subcontracting

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

8 Pricing

Price quotes are obtained from resellers through authorized Intel distributors and other parties with whom Intel has a direct-sales relationship. 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 Service. Payment is due in full within thirty (30) days of invoice receipt. All payments will be made in US Dollars without setoff or deduction.

10 Warranty

Intel warrants that all services will be performed in accordance with workmanship standards prevailing in the industry, and all Products or parts thereof provided to End- Customer under this Agreement will be either new or refurbished to like new condition. All services are warranted for a period of thirty (30) days. End-Customer's sole remedy for breach of this remedy is re-performance of the service by Intel. End-Customer acknowledges that any deviations or exceptions to the foregoing warranty shall be valid only in writing executed by a Intel authorized representative, and no employee, dealer, distributor, or third party is authorized to modify the foregoing warranty. THE FOREGOING IS THE SOLE WARRANTY BY INTEL UNDER THIS AGREEMENT AND ALL OTHER WARRANTIES, EXPRESSED 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 SERVICES 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 Products and any software, firmware, knowledge, or other technology developed by Intel in the performance of this Agreement.

13 Force Majeure

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

Cancellations are not accepted after issuance of a service contract acknowledgement from Intel.

15 Termination

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

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 Service 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 "Limitation of Liability", "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 these terms and conditions 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 actual receipt by the party to whom it is addressed or sent by e-mail (ibsupport@intel.com). Notices deposited in the mail will be sent certified mail, return receipt requested, with postage pre-paid, and addressed as set forth:

Intel Corporation

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

Direct-Customer

Address as listed on the purchase order

End-Customer

Address as listed in the Service Acknowledgement Form

D. End-Customer acknowledges that Service 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 Service activities.

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

22 Coverage Details

The following describes maintenance coverage 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 service level purchased.

Table 1. General Service provisions*

Coverage	Intel True Scale Hardware and related firmware***
HPC Fabric Support Center Hours of operation	Service level dependent
HPC Fabric Support Center Response time	Web: 4 hours E-mail: 8 hours Phone: 30 minutes
Onsite Support	Service level dependent
Hardware Replacement	Service level dependent**
Shipping	Included
Packaging	Included
Firmware Updates	Included
VAT/Duty Charges	excluded

* Not all services are available in all countries and locations. Please visit [Intel True Scale Service Geographic availability map](#) for program information and specific location coverage details. Please contact your reseller or your Intel sales representative if your location is not listed. Intel has no service obligation for locations that are not listed.

** Expected transit times assume order is received prior to depot cut-off time. Transportation time may be affected by customs clearance and other factors beyond the control of Intel.

*** Includes Driver support for attached Intel adapters.

Coverage includes Intel hardware, firmware, and related drivers. Coverage excludes all other software, SFPs, GBICs, power cords, mounting brackets/kits, rails, and cables.

22.1 Duration – All 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 Products.

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.

22.2.2 HPC Fabric Support Center Hours of operation
Hours of operation are in accordance with the applicable service level plan. Specific details of the available plans may be found at <http://intel.com/InfiniBand>. Please reference your purchase order to identify the specific service level purchased.

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

22.2.5 On-site Commitment
Intel will attempt to resolve all issues through the INTEL HPC Fabric Support Center because this is typically the fastest path to resolution. If this is not possible, then for covered Products, upon End-Customer request and with Intel HPC Fabric Support Center concurrence, Intel or its subcontractor will provide on-site technical personnel at End-Customer's location(s) for hardware replacement as identified in the Service Descriptions.

22.3 Hardware Replacement

If, following Intel Fabric Support Center troubleshooting and problem resolution efforts, the covered hardware is deemed to be defective, Intel will deliver replacement hardware to End-Customer per the delivery times as specified in the Service Descriptions. Specified delivery times are expected transit times assuming the replacement order is received prior to the depot cut-off time. Actual transportation time may be affected by customs clearance and other factors beyond the control of Intel.

Product returned by End-Customer as part of an advanced exchange shall be a genuine Intel Product and subject to verification by Intel.

Replacement Parts, when applicable, and deemed necessary by Intel Fabric Support Center, will be provided through an advanced part exchange. The End-Customer will return the failed Product or part pursuant to a Return Material Authorization ("RMA") per instructions provided with receipt of the advance replacement Product.

RMA Returns. If End-Customer fails to return the allegedly defective Intel Product or part to Intel within thirty (30) days of receipt of such replacement, or if the returned Product is not genuine, or if the allegedly defective part is received by Intel with obvious shipping damage, Intel may charge End-Customer the then-current Manufacturer's Suggested Retail Price for the replacement, net 30 terms. In addition, all subsequent support under the agreement will be suspended without offset or credit until the return issue is resolved to Intel's satisfaction.

No product may be returned without a valid RMA, and the RMA number must appear on the outside of the shipping container. Intel may refuse delivery and return the materials to sender, at the sender's cost, if any product or component is returned without an RMA number. End-Customer will be responsible for proper packaging of the returned Product and shall be responsible for damage arising from improper packaging. End-Customer is responsible to ensure that product or part returned to Intel is complete and has no missing components. Intel reserves the right to request proof of delivery from End-Customer for all part returns.

22.4 Shipping Costs

Intel will pay shipping costs for the advanced hardware replacement and the return of defective unit(s) (DDP), subject to provisions in Section 22.3 Hardware Replacement.

22.5 Packaging

The End-Customer is responsible to put the defective Product in the packaging that accompanied the advance exchange unit(s) and apply the return shipping label(s) per instructions received with the same.

22.6 Firmware/Driver Updates

Intel will provide electronic access to patches and maintenance releases correcting driver and firmware errors, when and if available, for End-Customers with an active Agreement.