

INTERNAL USE SOFTWARE LICENSE AGREEMENT

IMPORTANT NOTICE PLEASE READ AND AGREE BEFORE ACCESSING OR USING

This INTERNAL USE SOFTWARE LICENSE AGREEMENT (the “Agreement”) is effective upon Your access and use of the Software (“Effective Date”) and is between Intel Corporation, a Delaware corporation, and its subsidiaries, having its principal place of business at 2200 Mission College Boulevard, Santa Clara, California 95054, USA (collectively “Intel”) and you or the company or other legal entity that you represent and warrant you have the legal authority to bind, (each, “You” or “Your”). By accessing or using the Software, You agree to be bound by the terms of this Agreement. If You do not agree to the terms of this Agreement, or do not have legal authority or required age to agree to them, do not access or use the Software. Intel and You are each sometimes referred to in this Agreement as a “Party” or, together, the “Parties”.

IF YOU DO NOT AGREE TO THE TERMS SET FORTH IN THIS AGREEMENT, DO NOT ACCESS OR USE THE SOFTWARE AND/OR DOCUMENTATION.

By accessing or using the Software and/or Documentation on Intel’s DevCloud (“DevCloud”), You agree, or You agree on behalf of Your employer or entity that in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, and intending to be legally bound, the Parties agree as follows:

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

1.1 . “DevCloud” means the Intel development platform and storage area system.

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 “Executable Code” means computer programming code in binary form suitable for machine execution by a processor without the intervening steps of interpretation or compilation.

1.4 “Force Majeure Event” means 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 its own workforce or a third party’s)], acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, electronic viruses, worms, or corrupting microcode, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.

1.5 “Licensed Patent Claims” means the claims of Intel’s patents that are necessarily and directly infringed by the reproduction of the Software that is authorized in Section 2.1(A), when that Software is in its unmodified form as delivered by Intel to You and not modified

or combined with anything else. Licensed Patent Claims are only those claims that Intel can license without paying, or getting the consent of, a third party.

1.6 “Open Source Software” or “OSS” means any software that is subject to an open source license, including but not limited to, any open source license listed on the Open Source Initiative website <https://opensource.org/>

1.7 “Software” means the computer program, in Executable Code and Source Code, identified in Attachment A, as accessed or used by You on DevCloud, and any updated or improved version(s) of the program(s) that You access or use on DevCloud 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.

1.8 “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.

2. LICENSE GRANT

2.1 Grant. Subject to the limitations set forth in Section 2.2 and Attachment A, Intel hereby grants You, during the term of this Agreement, a non-transferable, non-exclusive, personal, non-sublicensable, limited right and license:

(A) under Intel’s copyrights, to perform Software and read Documentation for Your internal use and to load data into or display, view or extract output results from or otherwise operate any portion of the Software for the purpose specified in Attachment A; provided, however, that this license may be exercised only by Your employees and only within Your authorized Intel development cloud environment;
and

(B) under Intel’s Licensed Patent Claims to use the Software internally only.:

2.2 Limitations.

(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:

- (1) use or copy the Software or Documentation;
- (2) modify, adapt, enhance, disassemble, decompile, reverse engineer, change or create derivative works from the Software;
- (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, 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.

- (C) You will not allow the Software or Documentation to be accessed or used by third parties or anyone other than the Your employees whose duties require access or use.

2.3 Open Source Software.

- (A) Certain Software, provided and licensed by Intel subject to the terms of this Agreement, may include or be a derivative of Open Source Software, and its license requires attribution, such as display of copyright notices or license text (or both). Those attributions may be found in one or more of: (1) text files accompanying such Software; (2) the Source Code of the Software; or (3) the Source Code of the Open Source Software that is provided with the Software.
- (B) The deliverables provided by or on behalf of Intel may include Open Source Software licensed pursuant to one or more OSS license agreements identified in the comments or the license terms found in one or more of: (1) text files accompanying the Software; (2) the Source Code of the Software; or (3) the Source Code of the Open Source Software that is provided with the Software.
- (C) Nothing in this Agreement limits any rights under, or grants rights that supersede, the terms of any applicable OSS license.
- (D) You will not subject the Software or Documentation, in whole or in part, to any license obligations associated with Open Source Software, including combining the Software or Documentation with Open Source Software, in a manner that subjects Intel, or any portion of the Software, to any license obligations of the Open Source Software.

3. FEES

- 3.1 Fee. The license is granted under this Agreement for no fee.

4. TERM; TERMINATION

- 4.1 Term.** The term of this Agreement will commence upon Your acceptance of the terms and conditions of this Agreement and will continue unless terminated earlier, pursuant to this Section 4. Upon expiration or termination of this Agreement, all access rights granted to You will terminate immediately.

- 4.2 Termination.** Either Party may terminate this agreement without cause upon thirty (30) days' written notice to the other Party.

- 4.2.1 Intel may terminate this Agreement:

- if You materially breach any other provision of this Agreement and You fail to correct the breach within thirty (30) days of Your receipt of written notice of that breach or, if the breach is incapable of cure within thirty (30) days, You fail to take substantial steps toward a cure within that period;
- immediately, if You breach any provision of Sections 2 or

- immediately, if You become insolvent or makes 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.

4.2.2 If a Force Majeure Event prevents or materially impairs Your or Intel's ability to substantially perform a material obligation, under this Agreement for any period of ninety (90) consecutive days or more, then the party not experiencing the Force Majeure Event may give the other party notice terminating this Agreement effective immediately on the notice date (or a later date, if any, specified in the notice), unless the Force Majeure Event ceases and all unperformed obligations are performed within that period.

4.3 Effect of Termination.

(A) Expiration or termination of this Agreement will immediately terminate Your access and license rights granted to You under this Agreement.

(B) Sections 1, 2.2, 3, 4.3, 5, 6, 7, and 8 will survive expiration or termination of this Agreement.

5. FEEDBACK

To the extent You provide Intel with Feedback, and Intel incorporates that Feedback in its products, 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 utilize Feedback as provided by You to Intel. "Feedback" means Your requirements, inputs, comments, responses, opinions, feedback and errata concerning the Software and Documentation, and Your technical system requirements for Intel to include in the Software definition, design or validation.

6. WARRANTY. DISCLAIMER OF WARRANTY. NO SUPPORT.

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

6.2 No Support; Priority Support. Intel may make changes to the Materials, or to items referenced therein, at any time without notice, but is not obligated to support, update or provide training for the Materials under the terms of this Agreement. Intel offers free community and paid priority support options. More information on these support options can be found at: <https://software.intel.com/content/www/us/en/develop/support/priority-support.html>.

6.3 **YOUR WARRANTY.** If you are entering into this Agreement on behalf of an

entity, you represent and warrant that you have authority to enter into this Agreement on behalf of the entity.

7. LIMITATION OF LIABILITY

7.1 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 \$100, since 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.

7.2 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 9 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.

8. GENERAL PROVISIONS

8.1 Notices.

(A) All notices and consents required or permitted to be given under this Agreement must be in writing and notices will be considered delivered (A) when received if delivered by hand, (B) the next business day after being sent by pre-paid, nationally-recognized, overnight air courier with tracking capabilities, (C) five (5) business days after being sent by registered or certified airmail, return receipt required, postage prepaid, and (D) when sent, if sent during the recipient's normal business hours (or on the recipient's next business day, if not sent during normal business hours) by electronic mail or confirmed facsimile to the electronic mail address or facsimile number (if any) set forth below (provided that a copy of the notice is concurrently sent pursuant to any of the methods specified in subsections (A), (B), or (C) of this Section). All notices must be addressed as follows:

If to You at Your email address.

If to Intel:

Intel Corporation
2200 Mission College Blvd
Santa Clara, CA 95052
Attention: General Counsel Mailstop RNB4-151(Intel Labs Group Counsel- DSS)

With a copy to:

2111 N.E. 25th Avenue
MailStop JF2-96
Hillsboro, OR 97124-5961

Attn: Rich Uhlig, VP, Intel Labs (DSS)

- (B) A party may give written notice of a change of address and, after notice of the change has been delivered, any notices will thereafter be given to the party at the changed address. For purposes of this Section, a “business day” is any day other than a Saturday, a Sunday, or a national public holiday in the country of the sender or the recipient.

8.2 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. You will execute and deliver to Intel “Letters of Assurance” as may be required under applicable export regulations.

8.3 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, or any part of the Software or Documentation, or any right in this Agreement, to any third party temporarily (such as loaning, rental, licensing or timeshare) or permanently, 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 without consent will be void. Subject to the other provisions of this Section 10.4, this Agreement will bind and inure to the benefit of the Parties and their permitted successors and assigns.
- (B) You represent and warrant that You are not located in any country subject to U.S. sanctions and are not an entity listed on a denial order published by the United States government or any other relevant government.

8.4 U.S. Government Contract Provisions.

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.

8.5 Waiver and Severability.

- (A) A Party’s failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the Party agreeing to the waiver.

(B) If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement will continue in full force and effect.

8.6 Governing Law; Jurisdiction.

(A) The procedural and substantive laws of the State of Delaware, 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. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from and will not apply to this Agreement.

(B) All disputes arising out of or related to this Agreement, whether based on contract, tort, or any other legal or equitable theory, will be subject to the exclusive jurisdiction of the courts of the State of Delaware or of the Federal courts sitting in that State. Each party submits to the personal jurisdiction of those courts and waives all objections to that jurisdiction and venue for those disputes.

8.7 Entire Agreement and Amendments.

(A) This Agreement, and every Attachment and Exhibit to this Agreement, and any amendments to those documents, contain the complete and exclusive agreement and understanding between the parties concerning the subject matter of this Agreement, and supersede all prior and contemporaneous proposals, agreements, understandings, negotiations, representations, warranties, conditions, and communications, oral or written, between the parties relating to the same subject matter. This Agreement, including without limitation its termination, has no effect on any signed non-disclosure agreements between the parties (including, without limitation, the Non-Disclosure Agreements referenced in this Agreement), which remain in full force and effect as separate agreements according to their terms.

(B) No modification or amendment to this Agreement, or any Attachments or Exhibits to this Agreement will be effective unless in writing and signed by authorized representatives of each party.

ATTACHMENT A

Description of Software specifically licensed under this Agreement and any Open Source Software:

Release Package Contents

1. intel-quantum-compiler.sh: (file) Compiler driver script for the SDK
2. intel-quantum-sdk.json: (file) User input for SDK (simulator parameters)
3. LLVM-10.0.0-Linux: (directory/folder) Directory of LLVM/Clang compiler binaries
4. include: (directory/folder) Include files for runtime and simulator
5. lib: (directory/folder) Runtime and simulator libraries
6. quantum-examples: (directory/folder) Set of sample programs
7. new_algo_start_here.cpp: (file) Template for writing new application programs
8. configurations: (directory/folder) Platform configuration files; currently has only one file
9. calibrations: (directory/folder) Platform calibration files; currently has only one file
10. LICENSE: SDK license file (*may be optional for DevCloud since it resides somewhere else)
11. licenses : (directory/folder) third-party licenses
12. README: (file) Instructions for using the SDK
13. commit_SHA.txt: (file) A text file with the commit ID (which helps us associate the release build with check-in in git)

Examples:

Quantum programs with example output illustrating how to work with the Bay Tree prototype quantum computer.

Purpose: The Software provided by Intel will be limited to Your internal use within Your authorized Intel development cloud environment and discussions held between Intel and You, if any.

Software identified above has been assigned ECCN = EAR99

End of Attachment A

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