

AMD SERVICE LEVEL AGREEMENT

IMPORTANT—READ CAREFULLY: This is a legal agreement (“Agreement”) between you (either an individual or an entity) (“You” or “DEVELOPER”) and Advanced Micro Devices, Inc. (“AMD”).

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE, ASSOCIATED DOCUMENTATION OR ANY PORTION THEREOF AND DO NOT REQUEST OR ACCEPT SUPPORT SERVICES FROM AMD.

WARRANTIES, SUPPORT, LICENSES, AND DAMAGES ARE DISCLAIMED AND/OR LIMITED BELOW, PLEASE READ ENTIRELY AND CAREFULLY.

- 1. Technical Support:** AMD will provide limited technical support to DEVELOPER related to the x86 Open64 compiler (the “Software”) as outlined in the AMD x86 Open64 Technical Support Service documentation. This technical support as described in the AMD x86 Open64 Technical Support Service documentation shall be referred to herein as the “Services.” Should AMD determine that it is unable to perform the Services or any portion thereof, AMD will notify DEVELOPER and such Services may be immediately terminated.
- 2. Rights in Work Product**
 - a. DEVELOPER agrees that all of the work product produced by or for AMD specifically to provide technical support under this Agreement, including without limitation all deliverables provided under this Agreement by AMD or its employees, agents, or subcontractors (collectively, the “Work Product”), and all patent, copyright, trade secret, or other proprietary or intellectual property rights with respect to the Work Product, is solely and exclusively the property of AMD. AMD grants to DEVELOPER, solely for the purposes intended by this Agreement, a non-exclusive, non-transferable, worldwide, royalty-free license to use, execute, perform, and copy the Work Product for internal use only, and to distribute copies of the Work Product only in a product made by or for DEVELOPER that supports processors made by or for AMD. The Parties expressly agree that no Work Product will be a “work made for hire” as defined in the U.S. Copyright Laws (U.S.C. Title 17, Copyrights). DEVELOPER acknowledges that the foregoing licenses shall not extend to any AMD proprietary information made available to DEVELOPER under a separate Non-Disclosure Agreement or other agreement not directly related to the Work Product developed by AMD hereunder, which is executed between AMD and DEVELOPER.
 - b. DEVELOPER grants to AMD an exclusive, transferable, worldwide, royalty-free license to use, execute, perform, copy and distribute copies of DEVELOPER’s modifications or derivatives of the Work Product.
 - c. Feedback. DEVELOPER may provide AMD feedback, suggestions, modifications or opinions (collectively, “Feedback”) as to the Software, its features, and desired

enhancements or changes. DEVELOPER hereby agrees to grant, and does grant, AMD all rights needed for AMD to incorporate, modify, distribute, use and commercialize such Feedback at no charge or encumbrance to AMD. DEVELOPER agrees that AMD may disclose such Feedback to any third party in any manner, and DEVELOPER agrees that AMD has the ability to sublicense any of the foregoing rights in any Feedback in any form to any third party without restriction.

3. Disclaimer of Warranties, Limitation of Liability, Indemnification

- a. Disclaimer of Warranties. **THE SERVICES, WORK PRODUCT, AND ANY OTHER DOCUMENTATION, MATERIALS OR INFORMATION PROVIDED BY AMD TO DEVELOPER PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. AMD DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR CUSTOM OF TRADE WITH RESPECT TO THE SERVICES, WORK PRODUCT, DOCUMENTATION, MATERIALS OR INFORMATION. THE ENTIRE RISK ARISING OUT OF RELIANCE UPON THE SERVICES, WORK PRODUCT AND ANY OTHER DOCUMENTATION, MATERIALS OR INFORMATION PROVIDED PURSUANT TO THIS AGREEMENT REMAINS WITH DEVELOPER, AND AMD DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS AS TO THE CORRECTNESS, ACCURACY, OR RELIABILITY THEREOF. DEVELOPER IS RESPONSIBLE FOR DETERMINING THE APPROPRIATENESS OF USING THE SERVICES, WORK PRODUCT, DOCUMENTATION, MATERIALS OR INFORMATION AND ASSUMES ALL RISKS ASSOCIATED WITH THE USE THEREOF, INCLUDING BUT NOT LIMITED TO THE RISKS OF DAMAGE TO OR LOSS OF DATA, PROGRAMS, OR EQUIPMENT, AND UNAVAILABILITY OR INTERRUPTION OF OPERATIONS.**
- b. Limitation of Liability. **AMD'S ENTIRE LIABILITY AND DEVELOPER'S EXCLUSIVE REMEDIES ARE SET FORTH IN THIS SECTION 3. AMD'S LIABILITY TO DEVELOPER FOR DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE) SHALL NOT EXCEED THE LESSER OF \$100 (ONE HUNDRED U.S. DOLLARS).**

AMD SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO DEVELOPER OR OTHER THIRD PARTIES FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, DATA OR PROFITS, ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF DEVELOPER HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. AMD DOES NOT

ASSUME ANY RESPONSIBILITY FOR ANY ERRORS THAT MAY APPEAR IN THE SERVICES, WORK PRODUCT, AND ANY OTHER DOCUMENTATION, MATERIALS OR INFORMATION OR ANY RESPONSIBILITY TO PROVIDE SUPPORT OR UPDATES THERETO. THIS LIMITATION OF LIABILITY REFLECTS AN ALLOCATION OF RISK BETWEEN THE PARTIES IN VIEW OF THE NATURE OF THIS TRANSACTION AND THE FACT THAT AMD IS PROVIDING THE SERVICES FREE OF CHARGE. BECAUSE SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO DEVELOPER.

4. **Unforeseen Circumstances:** AMD shall not be in default of its obligations to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, delays by DEVELOPER or by vendors, and strikes or other labor disturbances.
5. **Import/Export/Re-Export/Use/Release/Transfer Restrictions And Compliance With Laws:** DEVELOPER is hereby provided notice, and agrees and acknowledges, that the Services, Work Product, Software, its source code, any accompanying media, material or information, and any product of the foregoing, may be subject to restrictions on use, release, transfer, importation, exportation and/or re-exportation under the laws and regulations of the United States or other countries ("Applicable Laws"), which include but are not limited to U.S. export control laws such as the Export Administration Regulations and national security controls as defined thereunder, as well as State Department controls under the U.S. Munitions List. DEVELOPER further agrees that the Services, Work Product, Software, its source code, any accompanying media, material or information, and any product of the foregoing, will not be used, released, transferred, imported, exported and/or re-exported in any manner prohibited under Applicable Laws, including U.S. export control laws regarding specifically designated persons, countries and nationals of countries subject to national security controls as provided in License Exception TSR of the Export Administration Regulations and any successor regulations.
6. **Hiring:** DEVELOPER agrees that during the term of this Agreement and for one (1) year thereafter it will not, without the prior written consent of AMD, employ or offer employment to any employee of AMD who has provided Services hereunder.
7. **Term and Termination:** This Agreement may be terminated effective immediately by one party upon giving written notice to the other party in the event of a material breach of this Agreement, which is not remedied within thirty (30) days after written notice (clearly stating the breach) has been given. Either party may terminate this Agreement for convenience at any time by giving ten (10) days advance written notice to the other party. Further, this Agreement shall terminate immediately upon the end of the product life of the Software.
8. **General**

- a. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether oral or written, between the parties directly related to the Services by AMD hereunder.
- b. Governing Law, Venue and Jurisdiction. This Agreement shall be governed by, subject to, and construed in accordance with the internal laws of the State of California, excluding the conflict of law rules thereof. To the extent allowed by applicable law, any claims or causes of action arising out of, relating to, or in connection with this Agreement may only be brought in the state or federal courts located in Santa Clara County, California, and the parties agree to submit to the exclusive personal jurisdiction of such courts.
- c. Survival. The rights and obligations of paragraphs 2, 3, and 5-8 shall survive the completion or termination of this Agreement.
- d. Severability. Each term of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, in the event that any of the terms of this Agreement becomes or is declared illegal by any court or tribunal of competent jurisdiction, or becomes otherwise unenforceable, such term shall be deemed deleted from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.
- e. Nonwaiver of Rights. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other party that is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.
- f. Modification. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage, or custom shall be deemed to amend or modify this Agreement.
- g. Delegation, Subcontracting, and Assignments. AMD may assign its rights, delegate its duties, or subcontract any work performed under the terms of this Agreement without prior written authorization from DEVELOPER.
- h. Neither party may bring an action against the other party, regardless of form arising out of this Agreement, more than two (2) years after the cause of action arises.