

Evaluation License Agreement

This evaluation license agreement, including the exhibit attached ("Agreement") is a legal agreement between you and NVIDIA Mellanox Corporation ("NVIDIA Mellanox") and governs your use of the NVIDIA Mellanox BlueField Data Processing Unit ("DPU") software and materials ("SOFTWARE").

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the legal authority to bind the entity to this Agreement, in which case "you" will mean the entity you represent. If you don't have the required authority to accept this Agreement, or if you don't accept all the terms and conditions of this Agreement, do not access or use the SOFTWARE.

You agree to use the SOFTWARE only for purposes that are permitted by (a) this Agreement and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions.

1. License Grant. Subject to the terms of this Agreement, NVIDIA Mellanox hereby grants you a non-exclusive, non-transferable license, without the right to sublicense, to access and use the SOFTWARE for the purposes of the Program.

2. Pre-Release. The SOFTWARE is alpha, beta, preview, early access or otherwise pre-release software and may not be fully functional, may contain errors or design flaws, and may have reduced or different security, privacy, availability, and reliability standards relative to commercial versions of NVIDIA Mellanox software and materials. Use of a pre-release SOFTWARE may result in unexpected results, loss of data, project delays or other unpredictable damage or loss.

2.1 You may use a pre-release SOFTWARE at your own risk, understanding that these versions are not intended for use in production or business-critical systems. As with any software in pre-release, it is highly recommended that you maintain full data backups for all your software and data.

NVIDIA Mellanox may choose not to make available a commercial version of any pre-release SOFTWARE. NVIDIA may also choose to abandon development and terminate the availability at any time without liability.

3. Authorized Users. You may allow employees and contractors of your entity or of your subsidiary(ies) to access and use the SOFTWARE from your secure network to perform work on your behalf. If you are an academic institution you may allow users enrolled or employed by the academic institution to access and use the SOFTWARE from your secure network. You are responsible for the compliance with the terms of this Agreement by your authorized users. Any act or omission that if committed by you would constitute a breach of this Agreement shall be deemed to constitute a breach of this Agreement if committed by your authorized users.

4. Limitations.

Your license to use the SOFTWARE is restricted as follows:

- a. The SOFTWARE is licensed only for use with the NVIDIA DPU.
- b. You may not reverse engineer, decompile or disassemble, or remove copyright or other proprietary notices from any portion of the SOFTWARE or copies of the SOFTWARE.
- c. You may not modify or create derivative works of any portion of the SOFTWARE.
- d. You may not copy (except as expressly authorized in this Agreement), sell, rent, sublicense, transfer, or distribute the SOFTWARE.
- e. You may not disclose results of benchmarking or other competitive analysis or regression or performance data relating to the SOFTWARE.
- f. You may not bypass, disable, or circumvent any measures that control access, encryption, security, digital rights management, or authentication mechanism in the SOFTWARE.
- g. You may not use the SOFTWARE in any manner that would cause it to become subject to an open source software license. As examples, licenses that require as a condition of use, modification, and/or distribution that the SOFTWARE be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.
- h. Unless you have an agreement with NVIDIA Mellanox for this purpose, you may not use the SOFTWARE with any system or application where the use or failure of the system or application can reasonably be expected to

threaten or result in personal injury, death, or catastrophic loss. Examples include use in nuclear, avionics, navigation, military, medical, life support or other life critical applications. NVIDIA Mellanox does not design, test or manufacture the SOFTWARE for these critical uses and NVIDIA Mellanox shall not be liable to you or any third party, in whole or in part, for any claims or damages arising from such uses.

i. You agree to defend, indemnify and hold harmless NVIDIA Mellanox and its affiliates, and their respective employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, fines, restitutions and expenses (including but not limited to attorney's fees and costs incident to establishing the right of indemnification) arising out of or related to your use of the SOFTWARE outside of the scope of this Agreement or not in compliance with its terms.

5. Ownership.

5.1 The SOFTWARE and its respective intellectual property rights are owned by NVIDIA Mellanox or its licensors and are licensed to you as described in this Agreement. NVIDIA Mellanox's licensors are intended third party beneficiaries with the rights to enforce this Agreement with respect to their intellectual property rights.

5.2 You may, but don't have to, provide to NVIDIA Mellanox suggestions, feature requests or other feedback regarding the SOFTWARE, including possible enhancements or modifications to the SOFTWARE. For any feedback that you voluntarily provide, you hereby grant NVIDIA Mellanox and its affiliates a perpetual, non-exclusive, worldwide, irrevocable license to use, reproduce, modify, license, sublicense (through multiple tiers of sublicensees), and distribute (through multiple tiers of distributors) it without the payment of any royalties or fees to you. NVIDIA Mellanox will decide if and how to respond to feedback and if to incorporate feedback into the SOFTWARE.

6. No Warranties.

THE SOFTWARE IS PROVIDED BY NVIDIA Mellanox "AS IS" AND "WITH ALL FAULTS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, NVIDIA Mellanox AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. NVIDIA Mellanox does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links, or other items contained within the SOFTWARE.

7. Limitations of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NVIDIA MELLANOX AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL, OR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER CAUSE OF ACTION OR THEORY OF LIABILITY EVEN IF NVIDIA MELLANOX HAS PREVIOUSLY BEEN ADVISED OF, OR COULD REASONABLY HAVE FORESEEN, THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NVIDIA MELLANOX AND ITS AFFILIATES TOTAL CUMULATIVE LIABILITY UNDER OR ARISING OUT OF THIS LICENSE EXCEED US\$10.00. THE NATURE OF THE LIABILITY OR THE NUMBER OF CLAIMS OR SUITS SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

These exclusions and limitations of liability shall apply regardless if NVIDIA Mellanox or its affiliates have been advised of the possibility of such damages, and regardless of whether a remedy fails its essential purpose. These exclusions and limitations of liability form an essential basis of the bargain between the parties, and, absent any of these exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

8. Termination.

8.1 The SOFTWARE license ends at the earlier of the expiration or termination of the license or this Agreement.

8.2 NVIDIA Mellanox may terminate this Agreement upon notice if: (i) you fail to comply with any term of this Agreement and the non-compliance is not fixed within thirty (30) days following notice from NVIDIA (or immediately if you violate NVIDIA Mellanox's intellectual property rights); (ii) you commence or participate in any legal

proceeding against NVIDIA Mellanox with respect to the SOFTWARE; or (iii) you become the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, if that petition or proceeding is not dismissed with prejudice within sixty (60) days after filing, or if you cease to do business.

8.3 Upon any expiration or termination of this Agreement you agree to promptly discontinue use of the SOFTWARE and destroy all copies in your possession or control. Upon written request, you will certify in writing that you have complied with your commitments under this section. Upon any termination of this Agreement all provisions survive except for the licenses granted to you.

9. General.

9.1 If you wish to assign this Agreement or your rights and obligations, including by merger, consolidation, dissolution, or operation of law, contact NVIDIA Mellanox to ask for permission. Any attempted assignment not approved by NVIDIA Mellanox in writing shall be void and of no effect. NVIDIA Mellanox may assign, delegate or transfer this Agreement and its rights and obligations, and if to a non-affiliate you will be notified.

9.2 Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) to the extent due to causes beyond its reasonable control for so long as such force majeure event continues in effect.

9.3 This Agreement will be governed in all respects by the laws of the United States and of the State of Delaware as those laws are applied to contracts entered into and performed entirely within Delaware by Delaware residents, without regard to the conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. You agree to all terms of this Agreement in the English language.

9.4 The state or federal courts residing in Santa Clara County, California shall have exclusive jurisdiction over any dispute or claim arising out of this Agreement. Notwithstanding this, you agree that NVIDIA shall still be allowed to apply for injunctive remedies or an equivalent type of urgent legal relief in any jurisdiction.

9.5 If it turns out that any provision of this Agreement is not unenforceable, such provision will be construed as limited to the extent necessary to be consistent with and fully enforceable under the law and the remaining provisions will remain in full force and effect. Unless otherwise specified, remedies are cumulative.

9.6 The SOFTWARE has been developed entirely at private expense and is "commercial items" consisting of "commercial computer software" and "commercial computer software documentation" provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government or a U.S. Government subcontractor is subject to the restrictions in this Agreement pursuant to DFARS 227.7202-3(a) or as set forth in subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19, as applicable. Contractor/manufacturer is NVIDIA, 2788 San Tomas Expressway, Santa Clara, CA 95051.

9.7 The SOFTWARE is subject to United States export laws and regulations. You agree that you will not ship, transfer or export the SOFTWARE into any country, or use the SOFTWARE in any manner, prohibited by the United States Bureau of Industry and Security or economic sanctions regulations administered by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC), or any applicable export laws, restrictions or regulations. These laws include restrictions on destinations, end users and end use. By accepting this Agreement, you confirm that you are not a resident or citizen of any country currently embargoed by the U.S. and that you are not otherwise prohibited from receiving the SOFTWARE.

9.8 Any notice delivered by NVIDIA Mellanox to you under this Agreement will be delivered via mail, email, or fax. You agree that any notices that NVIDIA Mellanox sends you electronically will satisfy any legal communication requirements. Please direct your legal notices or other correspondence to NVIDIA Corporation, 2788 San Tomas Expressway, Santa Clara, California 95051, United States of America, Attention: Legal Department and to NBU-Legal_Notices@exchange.nvidia.com.

9.9 This Agreement and any exhibits incorporated into this Agreement constitute the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all prior negotiations or documentation between the parties relating to this subject matter. Any additional and/or conflicting terms on purchase order(s) or any other documents issued by you are null, void, and invalid. Any amendment or waiver under this Agreement shall be in writing and signed by representatives of both parties.