CUDA ENTERPRISE TECHNICAL SUPPORT AND MAINTENANCE AGREEMENT
Release Date: May 19, 2016

NVIDIA SOFTWARE TECHNICAL SUPPORT AND MAINTENANCE AGREEMENT

IMPORTANT – READ BEFORE RECEIVING SERVICES OR DOWNLOADING, INSTALLING, COPYING OR USING THE SERVICE DELIVERABLES

READ CAREFULLY: This Technical Support and Maintenance Agreement (“AGREEMENT”), made and entered into as of the time and date of click through action (“Effective Date”), is a legal agreement between you and NVIDIA Corporation (“NVIDIA”) and governs the Services provided for NVIDIA CUDA Supported Software (as defined in Section 1.20) installed on your premises. By receiving Services or downloading, installing, copying, or otherwise using the Service deliverables, you agree to be bound by the terms of this AGREEMENT. If you do not agree to the terms of this AGREEMENT, do not receive Services or download, install, copy or use the Service deliverables. 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 SUCH AUTHORITY, OR IF YOU DON’T ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN NVIDIA IS UNWILLING TO PROVIDE THE SERVICES TO YOU, AND YOU MAY NOT DOWNLOAD, INSTALL, COPY OR USE THE SERVICE DELIVERABLES.

1. DEFINITIONS. Certain capitalized terms, if not otherwise defined elsewhere in this AGREEMENT, shall have the meanings set forth below in this Section 1.

1.1 “Certified Systems” means Supported OS platforms, corresponding hardware platforms, third party software and configuration details appearing on a list maintained by NVIDIA and made available to you, or as otherwise approved by NVIDIA.
1.2 “Confidential Information” means the Service deliverables, and any NVIDIA business, marketing, pricing, research and development, know-how, technical, financial status, proposed new products or other information disclosed by NVIDIA to you which, at the time of disclosure, is designated in writing as confidential or proprietary (or like written designation), or orally identified as confidential or proprietary or is otherwise reasonably identifiable by parties exercising reasonable business judgment, as confidential. Confidential Information does not and will not include information that: (i) is or becomes generally known to the public through no fault of or breach of this AGREEMENT by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (iv) is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.
1.3 “Day(s)” (only capitalized) means 8:00 AM - 5:00 PM, Pacific Time, Monday through Friday, excluding U.S. public holidays. All other usage of "day" or "days" means calendar days.
1.4 “Designated User” means the individual(s) designated by you as the technical contact(s) who may file and engage with NVIDIA on Technical Support.
1.5 “Documentation” means the NVIDIA documentation made available for use with the Supported Software, including (without limitation) user manuals, datasheets, operations instructions, installation guides, release notes and other materials provided to you under this AGREEMENT.
1.6 “Enterprise” means you or any company or legal entity for which you accepted the terms of this AGREEMENT, and their subsidiaries of which your company or legal entity owns more than fifty percent (50%) of the issued and outstanding equity.
1.7 “Error(s)” means a reproducible defect, problem, logical error or bug in the Supported Software that constitutes a failure to comply substantially with the applicable Documentation and is reported using standard NVIDIA procedures.
1.8 “Error Correction(s)” means adapting, re-configuring, or reprogramming the Supported Software to correct the Error(s).
1.9 “EULA” means the end user license agreement or other form of agreement under which you were licensed to use the Supported Software to which the Services provided hereunder relate to.
1.10 “Feedback” means any and all suggestions, feature requests, comments or other feedback relating to the Supported Software, including possible enhancements or modifications thereto.
1.11 “General Support Period” means the period of time between general availability of one Upgrade version of a Supported Software product, and until the immediately following general availability of the next Upgrade version of the same product.
1.12 “Intellectual Property Rights” means all patent, copyright, trademark, trade secret, trade dress, trade names, utility models, mask work, moral rights, rights of attribution or integrity service marks, master recording and music publishing rights, performance rights, author’s rights, database rights, registered design rights and any applications for the protection or registration of these rights, or other intellectual or industrial property rights or proprietary rights, howsoever arising and in whatever media, whether now known or hereafter devised, whether or not registered, (including all claims and causes of action for infringement, misappropriation or violation and all rights in any registrations and renewals), worldwide and whether existing now or in the future.
1.13 “Maintenance” means security patch(es), Error Correction(s) and Workaround(s) to the Supported Software made available by NVIDIA in its sole discretion and on a “when and if generally made available” basis to its other commercial customers of the Supported Software who have the same Supported Software version under a Services contract coverage with NVIDIA that specifically includes “Maintenance”. Maintenance may include revisions to Documentation.

1.14 “Order” means a purchase order issued, a signed purchase agreement, or other ordering document issued by you to NVIDIA or a NVIDIA authorized reseller (including any on-line acceptance process) that references and incorporates this AGREEMENT and is accepted by NVIDIA.

1.15 “Response” means NVIDIA’s initial acknowledgment of a Technical Support request filed by a Designated User.

1.16 “Services” means, as the context requires, each or all of the following: (i) Technical Support, and (ii) Maintenance to the Supported Software provided by NVIDIA hereunder based on the Service Subscription you purchased.

5.1 “Service Fee(s)” means the fees for the purchased Service Subscriptions, as applicable for each Order.

1.17 “Service Subscription” means the particular Services you purchased from NVIDIA or a NVIDIA-approved reseller.

1.18 “Support Issue(s)” means the Technical Support requests filed by Designated Users hereunder that relate to the Supported Software.

1.19 “Supported OS” means the supported operating system(s) listed in conjunction with a particular Certified System on the list maintained by NVIDIA and made available to you.

1.20 “Supported Software” means the NVIDIA CUDA computer software (including CUDA based libraries and other tools as further described by NVIDIA at https://developer.nvidia.com/cuda-toolkit) installed on your premises that is under a current and valid license and for which you purchased Services, and does not include any modifications made by you or a third party on your behalf, any modifications to the Supported Software made by NVIDIA pursuant to a consulting services agreement or any portion of the Software not developed by NVIDIA.

1.21 “Service Term” means the duration of the Service Subscription, as set forth in an Order.

1.22 “Technical Support” means the provision of web-based technical assistance by qualified NVIDIA personnel to questions from Designated Users related to the installation, use and operation of the Supported Software, including basic instruction or assistance related to functional Errors in the Supported Software.

1.23 “Updates” means those modifications to the Supported Software other than Maintenance releases made available by NVIDIA in its sole discretion and on a “when and if generally made available” basis to its other commercial customers of the Supported Software who have the same Supported Software version under a Services contract coverage with NVIDIA that specifically includes “Updates” and that is indicated by NVIDIA as being an update by means of a change in the digit to right of first decimal point (e.g., version 5.0 to version 5.1). Updates may include revisions to Documentation.

1.24 “Upgrades” means those modifications to the Supported Software other than Maintenance releases made available by NVIDIA in its sole discretion and on a “when and if generally made available” basis to its other commercial customers of the Supported Software who have the same Supported Software version under a Services contract coverage with NVIDIA that specifically includes “Upgrades” and that is indicated by NVIDIA as being an upgrade by means of a change in the digit to left of first decimal point (e.g., version 5.0 to version 6.0). Upgrades may include revisions to Documentation.

1.25 “Workarounds” means procedures and routines, for use by you, which, when employed in the regular operation of, or access to, the Supported Software, will avoid or substantially diminish the practical adverse effects of the relevant Error.

2. SERVICES.

2.1 Scope. If your Order indicates that NVIDIA will directly provide Services for your Supported Software licenses, then NVIDIA agrees to provide the Services to the Supported Software based on the Service Subscription purchased during the applicable Service Term, solely on Certified System(s) operating the Supported Software, and solely for the Supported OSs. Further, the Services are provided by NVIDIA to you in accordance with the then-current the Service Subscription plan(s) available for the particular Supported Software. NVIDIA may update the scope of Service under the plan you purchased and any such modifications are binding on you, provided that such modification apply to customers generally and do not single you out. CUDA Supported Software licenses, including Updates and/or Upgrades, are outside of the scope of this AGREEMENT.

2.2 Technical Support. If your Service Subscription for a Supported Software includes Technical Support, subject to payment of applicable Service Fees NVIDIA will make available to you Technical Support for such Supported Software during the Service Term.

You will be permitted to designate in writing to NVIDIA Designated Users for purposes of obtaining Technical Support from NVIDIA, which list of Designated Users may be updated by you at any time by written notice to NVIDIA (which may include notice by email or other electronic transmission). NVIDIA will provide Technical Support to such Designated Users via a dedicated support portal that allows the Designated User(s) to make Support Issue requests for the Supported Software through the dedicated support portal. For potential Support Issues filed by a Designated User, NVIDIA will use commercially reasonable efforts to analyze each such potential
Support Issue to determine if it qualifies as a Support Issue and NVIDIA will respond, provided no commitment is made with respect to the resolution. If NVIDIA needs to discuss your Confidential Information with the third party from which your system was purchased for the purpose of resolving the Support Issue, then NVIDIA will contact you to request written permission to have such discussions as this may affect the resolution of your Support Issue.

2.3 Maintenance. If your Service Subscription for a Supported Software includes Maintenance, subject to payment of applicable Service Fees NVIDIA will make available to you the Maintenance associated with such Supported Software during the Service Term.

2.4 Orders, Delivery. No Orders are binding on NVIDIA until accepted by NVIDIA. Your Orders are subject to this AGREEMENT. The Services and Service deliverables shall be deemed delivered and accepted upon delivery. Unless otherwise agreed by the parties, NVIDIA will deliver the Service deliverables electronically in every jurisdiction where electronic delivery is permitted. Electronic delivery is completed when the Service deliverables are made available for retrieval by you.

2.5 Account. In order to access Services or Service deliverables, you may need to register and create an account and become a registered user. When creating an account, you will be required to provide certain personal information about yourself and establish a username and a password. NVIDIA reserves the right to suspend or terminate your account if any information provided is inaccurate, false or misleading. You are responsible for safeguarding the password that you use for your account and for any activities or actions under your account, whether or not you have authorized such activities or actions. NVIDIA will not be liable for any loss or damage arising from your failure to comply with the above requirements. NVIDIA shall maintain your registration details pursuant to the terms described in the “Consent to Collection and Use of Information” section below.

2.6 Enterprise. Under this AGREEMENT you may allow your Enterprise employees to receive and communicate with NVIDIA regarding the Services and Service deliverables, provided that you are responsible for the compliance with the terms and conditions of this AGREEMENT by your Enterprise. 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 Enterprise.

3. EXCLUSIONS. You shall not request, and NVIDIA shall not provide Services under this AGREEMENT related to:

(a) errors in your own or your licensors’ products that are not due to Errors in the Supported Software;
(b) service necessary due to operator error, improper use of the Supported Software or attempted support by unauthorized persons;
(c) your use of the Supported Software outside of the scope permitted under the EULA;
(d) modifications to the Supported Software made by you or on your behalf, or any modifications made by any third party without NVIDIA’s authorization;
(e) use of the Supported Software that deviates from the operating procedures, indicated supported operating systems and any other specifications indicated in the Documentation; or
(f) to the extent the provision thereof would violate NVIDIA’s obligations to its third party licensors and suppliers with respect to such third parties’ intellectual property.

Further, Services under this AGREEMENT do not include any enhancement(s) or addition(s) to the Supported Software beyond Technical Support and Maintenance.

4. YOUR SERVICE RESPONSIBILITIES. In order for NVIDIA to deliver the Services to you hereunder, you agree that:

(a) you are responsible for procuring, installing and maintaining all equipment and obtaining all consents for other software and other hardware necessary to operate the Supported Software;
(b) your failure to deploy a Maintenance, Update or Upgrade available to you as promptly as possible may render the applicable Supported Software non-operable or non-conforming to the later Documentation provided by NVIDIA and you assume all risks and liability arising therefrom;
(c) you shall further provide through Designated Users such information, and/or access to your resources as NVIDIA may reasonably require in order to provide Services, minimally intrusive access to your facilities (upon mutual agreement), and/or access to, and assistance of, your personnel who possess information required by NVIDIA for purposes of performing its obligations hereunder. As examples, as reasonably requested by NVIDIA you shall (i) identify the correct version(s) of Supported Software to which a potential Support Issue relates, (ii) provide the documentation and assistance necessary to demonstrate and diagnose each potential Support Issue, including providing necessary test cases that NVIDIA can reproduce on a Certified System, (iii) provide remote system access (upon mutual agreement) for NVIDIA to replicate potential Errors, and (iv) provide embedded diagnostic information associated with the Supported Software;
(d) When you use Maintenance, Update or Upgrade, access to a new product version does not change the number of authorized licenses you have for the Supported Software and you shall discontinue use of the prior version as necessary to maintain your authorized number of licenses;

(e) you will appoint as Designated Users only those of your employees who have reasonably appropriate technical backgrounds and skills. You may remove or replace any of the Designated Users at any time during a Service Term upon written notice to NVIDIA; and

(f) you will appoint, at NVIDIA’s request, designated Service and engineering contacts for Service issue escalations.

NVIDIA shall be excused from any non-performance of its obligations hereunder to the extent any such non-performance is attributable to your failure to perform your obligations under this section.

5. SERVICE FEES AND PAYMENT TERMS. Service Fees for the Service Subscriptions are set forth in the associated Order and are payable pursuant to the terms of such Order. Unless otherwise expressly indicated in an Order, Service Fees will be invoiced upon your purchase and are payable net thirty (30) days of the invoice date. Unless otherwise expressly indicated in an Order, all payments will be made in U.S. Dollars. All Service Fees are non-refundable. The Service Fees do not include any taxes, duties or similar charges. If NVIDIA is required to pay sales, use, property, value-added or other taxes based on the payments provided in the Order and if NVIDIA is required to collect and remit such taxes, then such taxes shall be billed to and paid by you or your reseller, unless NVIDIA receives a valid exemption or resale certificate. If you are not billed the applicable tax under the Order, then it is your responsibility to properly remit the tax directly to the applicable tax jurisdiction. Further, you acknowledge that the payments to NVIDIA under this AGREEMENT shall be made in full without reduction for withholding taxes, if applicable. This section shall not apply to taxes based on NVIDIA’s net income or payroll taxes. All amounts not paid when due will accrue interest (without the requirement of a notice) at the lower of 1.5% per month or the highest rate permissible by law until the unpaid amounts are paid in full. If payment of any Service Fee is overdue, NVIDIA reserves the right to suspend or terminate Services, in addition to any other remedies it may have, until the payment delinquency is corrected. Payment obligations survive any expiration or termination of this AGREEMENT and upon expiration or termination of this AGREEMENT any amounts owed to NVIDIA will be due and payable immediately on the effective date of expiration or termination, even if longer terms had been provided previously.

6. CONFIDENTIALITY. Each party will not use the other party’s Confidential Information, except as necessary for the performance of this AGREEMENT, and will not disclose such Confidential Information to any third party, except to those of its employees and employees of its Enterprise that have a need to know such Confidential Information for the performance of this AGREEMENT, provided that each such employee is subject to a written agreement that includes confidentiality obligations consistent with those set forth herein. Each party will use all reasonable efforts to maintain the confidentiality of all of the other party’s Confidential Information in its possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own Confidential Information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing the other party’s Confidential Information or the terms and conditions of this AGREEMENT as required under applicable securities regulations or pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure (i) gives reasonable notice to the other party to enable it to contest such order or requirement prior to its disclosure (whether through protective orders or otherwise), (ii) uses reasonable effort to obtain confidential treatment or similar protection to the fullest extent possible to avoid public disclosure of the terms of this AGREEMENT, and (iii) discloses only the minimum amount of information necessary to comply with such requirements.

7. OWNERSHIP AND FEEDBACK. All Service deliverables constitute Supported Software and once delivered are governed by the terms of the relevant EULA for the Supported Software. Nothing delivered under this AGREEMENT constitutes works made for hire. You have no obligation to give NVIDIA any Feedback. However, NVIDIA may use and include any Feedback that you voluntarily provide to improve the Supported Software or other related NVIDIA products, technologies or materials. Accordingly, if you provide Feedback, you agree that NVIDIA and its licensees may freely use, reproduce, license, distribute, and otherwise commercialize the Feedback in the Supported Software or other related technologies without the payment of any royalties or fees to you. All Feedback becomes the sole property of NVIDIA and may be used in any manner NVIDIA sees fit, and you hereby assign to NVIDIA all of your right, title and interest in and to any Feedback. NVIDIA has no obligation to respond to Feedback or to incorporate Feedback into the Supported Software.

8. NO WARRANTIES. THE SERVICES, SERVICE DELIVERABLES AND ANY OTHER NVIDIA CONFIDENTIAL INFORMATION ARE PROVIDED BY NVIDIA “AS IS” AND “WITH ALL FAULTS,” AND NVIDIA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY NVIDIA ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR
9. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NVIDIA SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, 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 SERVICES, SERVICE DELIVERABLES AND ANY OTHER NVIDIA CONFIDENTIAL INFORMATION PROVIDED BY NVIDIA HEREUNDER, 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 AND WHETHER OR NOT NVIDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NVIDIA'S TOTAL CUMULATIVE LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED THE NET SERVICE FEES RECEIVED BY NVIDIA FOR THE PARTICULAR SERVICE DURING THE TWELVE (12) MONTHS BEFORE THE LIABILITY AROSE. THE NATURE OF THE LIABILITY, THE NUMBER OF CLAIMS OR SUITS OR THE NUMBER OF PARTIES THAT ACCEPTED THE TERMS OF THIS AGREEMENT SHALL NOT ENLARGE OR EXTEND THIS LIMIT. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER NVIDIA OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. NVIDIA's licensors shall have no liability of any kind under this AGREEMENT. The disclaimers, exclusions and limitations of liability set forth in this AGREEMENT form an essential basis of the bargain between the parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this AGREEMENT, including, without limitation, the economic terms, would be substantially different. You may not bring a claim under this AGREEMENT more than eighteen (18) months after the cause of action arises.

To the extent that some states and countries do not allow incidental, consequential, or other damages to be limited or excluded by contract, those limitations or exclusions may not apply to you. If your local law allows you to recover other damages from NVIDIA even though NVIDIA does not provide for them under this AGREEMENT, you cannot recover more than you paid for the particular Service (or up to $10.00 USD if you acquired the Services for no charge).

10. TERM AND TERMINATION.

10.1 AGREEMENT and Services. This AGREEMENT shall become effective upon the Effective Date and shall continue until your last access or use of Services hereunder, unless earlier terminated by the parties as provided in this Section 10. Each Service commences upon delivery and ends at the earlier of (a) the expiration of the applicable Service Term, (b) termination of such Service or this AGREEMENT, or (c) expiration or termination of the associated license and no credit or refund will be provided upon the expiration or termination of the associated license for any Service Fees paid.

10.2 Termination. This AGREEMENT and/or Services may be terminated at any time: (i) by either party in the event that the other party breaches any material term of this AGREEMENT and fails to cure such breach within thirty (30) days following notice thereof from the non-breaching party, or within ten (10) days following notice thereof in the event you breach any payment-related obligation; or (ii) by either party upon written notice if the other party becomes 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 a party ceases to do business; or (c) by NVIDIA if you commence or participate in any legal proceeding against NVIDIA, with respect to the Supported Software that is the subject of the proceeding during the pendency of such legal proceeding. If you or your NVIDIA authorized reseller fail to pay Service Fees when due then NVIDIA may, in its sole discretion, suspend or terminate your Services, license grants for Service deliverables and any other rights provided under this AGREEMENT for the affected Supported Software, in addition to any other remedies NVIDIA may have at law or equity. Termination of this AGREEMENT or a Service hereunder shall not release the parties from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this AGREEMENT to survive termination. Notwithstanding the foregoing, the party terminating this AGREEMENT or a Service as permitted by any provision in this Section 10 shall incur no additional liability merely by virtue of such termination. Termination of this AGREEMENT or a Service regardless of cause or nature, shall be without prejudice to any other rights or remedies of the parties and shall be without liability for any loss or damage occasioned thereby.

10.3 Effect of Expiration or Termination. Upon any expiration or termination of this AGREEMENT or a Service provided hereunder, (i) you must promptly discontinue use of the affected Service and Service deliverables, and (ii) you must promptly
destroy or return to NVIDIA all copies of the affected Service deliverables and all portions thereof, and each party will promptly destroy or return to the other all of the other party’s Confidential Information within its possession or control. Upon written request, you will certify in writing that you have complied with your obligations under this section. Sections 1, 3 and 5 through 12 will survive the expiration or termination of this AGREEMENT for any reason.

11. CONSENT TO COLLECTION AND USE OF INFORMATION.

You hereby agree and acknowledge that the Supported Software may access, collect and transmit to NVIDIA and/or its subsidiaries personally identifiable information about your system in order to deliver content through the Supported Software, or optimize, maintain, repair and/or administer such system for use with the Supported Software or NVIDIA products and services. Information collected by the Supported Software may include, but is not limited to, your system’s (a) hardware configuration and ID, (b) operating system and driver configuration. In addition, you agree that you are solely responsible for maintaining appropriate data backups and system restore points for your system, and that NVIDIA will have no responsibility for any damage or loss to such system (including loss of data or access) arising from or relating to (i) any changes to the configuration, application settings, environment variables, registry, drivers, BIOS, or other attributes of the system (or any part of such system) initiated through software; or (ii) installation of any software or third party software through a NVIDIA update. For system update preferences, check the options available to you under “Settings”, “Preferences” or other similar tab of the applicable NVIDIA control panel or license manager for the Software.

In connection with your receipt of Services you may receive access to links to websites and services and the availability of those links does not imply any endorsement by NVIDIA. NVIDIA encourages you to review the privacy statements on those sites and services that you choose to visit so that you can understand how they may collect, use and share your personal information. NVIDIA is not responsible for the privacy statements or practices of sites and services controlled by other companies or organizations or your reliance on information you gather from use of the links.

To the extent that you provide to NVIDIA during registration or otherwise your information, you acknowledge that such information will be collected, used and disclosed by NVIDIA in accordance with NVIDIA’s privacy policy, available at URL http://www.nvidia.com/object/privacy_policy.html.

12. GENERAL PROVISIONS.

12.1 Assignment. This AGREEMENT and the rights and obligations hereunder may not be assigned, delegated or transferred by you, in whole or in part, including by merger, consolidation, dissolution, operation of law, or any other manner, without written consent of NVIDIA, and any purported assignment in violation of this provision shall be void and of no effect. NVIDIA may assign, delegate or transfer this AGREEMENT and its rights and obligations hereunder without restriction. Subject to the foregoing, this AGREEMENT will bind and inure to the benefit of each party’s permitted successors and assigns.

12.2 Governing Law; Jurisdictions. This AGREEMENT will be governed by and construed in accordance with the laws of the United States and 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 law provisions thereof. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this AGREEMENT will be brought exclusively in the federal courts located in the Northern District of California or the state courts located in Santa Clara County and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

12.3 Indemnity. You agree to defend, indemnify and hold harmless NVIDIA 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 you and your Enterprise, and their respective employees, contractors, agents, officers and directors: (i) failure to comply with any term of this AGREEMENT or use of a Supported Software in a critical application; (ii) violation of any third party right, including without limitation any right of privacy or intellectual property rights; (iii) failure to comply with any applicable law, rule or regulation; or (iv) negligence or willful misconduct.

12.4 Nonexclusive Remedy. Except as expressly set forth in this AGREEMENT, the exercise by either party of any of its remedies under this AGREEMENT will be without prejudice to its other remedies under this AGREEMENT or otherwise.

12.5 Injunctive Relief. The parties agree that a breach of any of the promises or agreements contained in this AGREEMENT
adversely affecting NVIDIA’s Intellectual Property Rights in the Supported Software may result in irreparable and continuing injury to NVIDIA for which monetary damages would not be an adequate remedy and NVIDIA is therefore entitled to seek injunctive relief as well as such other and further relief as may be appropriate.

12.6 **Conflicts; Order of Precedence.** Any printed or other terms and conditions on an Order or similar order document conflicting with and/or in addition to the terms and conditions of this AGREEMENT or its exhibits and addenda are null, void, and invalid. In the event of a conflict or inconsistency between any exhibit and this AGREEMENT, the conflict or inconsistency shall be resolved in favor of this AGREEMENT.

12.7 **Waiver.** The failure by either party to enforce its rights under this AGREEMENT at any time for any period will not constitute a waiver of future enforcement of that right or any other right. Any waiver will be effective only if in writing and signed by duly authorized representatives of each party.

12.8 **Severability.** If for any reason a court of competent jurisdiction finds any provision of this AGREEMENT invalid or unenforceable, that provision of the AGREEMENT will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the other provisions of this AGREEMENT will remain in full force and effect.

12.9 **U.S. Government Legend.** You agree and certify that you will comply with all laws, regulations, rules, and other requirements applicable to transaction(s) with any government(s) occurring pursuant to this AGREEMENT and all related matters. The Supported Software has been developed entirely at private expense and is commercial computer software provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government or a U.S. Government subcontractor is subject to the restrictions set forth in the agreement under which Supported Software was obtained pursuant to DFARS 227.7202-3(a) or as set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19, as applicable. Contractor/manufacturer is NVIDIA, 2701 San Tomas Expressway, Santa Clara, CA 95050.

12.10 **Force Majeure.** 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, including, but not limited to, acts of God, fire, flood, war, earthquake, environmental conditions, governmental action, acts of civil or military authority, riots, wars, sabotage, strikes, compliance with laws or regulations, strikes, lockouts or other serious labor disputes, or shortage of or inability to obtain material or equipment for so long as such event of force majeure continues in effect.

12.11 **Relationship of Parties.** Each party acknowledges and agrees that the other is an independent contractor in the performance of this AGREEMENT, and each is solely responsible for all of its employees, agents, contractors, and labor costs and expenses arising in connection therewith. The parties are not partners, joint ventures or otherwise affiliated, and neither has any authority to make any statements, representations or commitments of any kind to bind the other without the prior written consent of the other party.

12.12 **Export Control.** You acknowledge that the Supported Software, technology and related documentation described under this AGREEMENT are subject to the U.S. Export Administration Regulations (EAR) and economic sanctions regulations administered by the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC). You agree to comply with the EAR and OFAC regulations and all applicable international and national export and import laws. You agree not to export or re-export the Supported Software, technology and related documentation to any destination requiring an export license or other approval under the EAR or OFAC regulations otherwise without first obtaining such export license or approval and NVIDIA’s permission. You will not, without prior governmental authorization, export or re-export NVIDIA Supported Software, technology and related documentation, directly or indirectly, (i) to any end-user whom you know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; (ii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government; or (iii) to any countries that are subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria and the Region of Crimea).

12.13 **Entire Agreement.** This AGREEMENT and Orders entered into by the parties constitute the entire agreement with respect to the subject matter hereof and supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter of this AGREEMENT and all past dealing or industry custom. Any notice delivered by NVIDIA to you under this AGREEMENT will be delivered via mail, email or fax.