END USER LICENSE AGREEMENT
Release Date: April 13, 2016

NVIDIA SOFTWARE END-USER LICENSE AGREEMENT

IMPORTANT – READ BEFORE DOWNLOADING, INSTALLING, COPYING OR USING THE LICENSED SOFTWARE

READ CAREFULLY: This Enterprise End User License Agreement (“EULA”), 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 use of the NVIDIA computer software and the documentation made available for use with such NVIDIA software. By downloading, installing, copying, or otherwise using the NVIDIA software and/or documentation, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not download, install, copy or use the NVIDIA software or documentation. IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY TO THIS EULA, 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 EULA, THEN NVIDIA IS UNWILLING TO LICENSE THE SOFTWARE OR DOCUMENTATION TO YOU, AND YOU MAY NOT DOWNLOAD, INSTALL, COPY OR USE THEM.

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

1.1 “AGREEMENT” means this EULA, its exhibits and all associated Supplements entered by the parties referencing this EULA.

1.2 “Authorized Users” means your Enterprise individual employees and any of your Enterprise’s Contractors, subject to the terms of Section 2.3 below.

1.3 “Cloud Subscription” means the provision of Licensed Software as part of a NVIDIA internet based subscription offering, including associated services.

1.4 “Confidential Information” means the Licensed Software, and any NVIDIA business, marketing, pricing, research and development, know-how, technical, scientific, 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 the 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.

1.5 “Documentation” means the NVIDIA documentation made available for use with the Software, including (without limitation) user manuals, datasheets, operations instructions, installation guides, release notes and other materials provided to you under the AGREEMENT.

1.6 “Enterprise” means you or any company or legal entity for which you accepted the terms of this EULA, and their subsidiaries of which your company or legal entity owns more than fifty percent (50%) of the issued and outstanding equity.

1.7 “Feedback” means any and all suggestions, feature requests, comments or other feedback relating to the Licensed Software and/or a Cloud Subscription, including possible enhancements or modifications thereto.

1.8 “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.
1.9 “License Key” means a document (in physical or electronic form) provided by NVIDIA that includes the following information (i) the Software version, quantity licensed and duration of the license, and (ii) the codes that you may input to enable use of the Software.

1.10 “License Term” means the duration of the Licensed Software license, as set forth in an Order.

1.11 “Licensed Software” means Software, Documentation and all Modifications.

1.12 “Modifications” are any additions, deletions or alterations, adaptations, arrangements or derivative works made to Licensed Software delivered, regardless if made by or for NVIDIA, you, your Enterprise, Contractors or a third party.

1.13 “Open Source License” includes, without limitation, a software license that requires as a condition of use, modification, and/or distribution of such software that the Software be (i) disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; or (iii) be redistributable at no charge.

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

1.15 “Redistributable” means those portions of the Software for which NVIDIA expressly grants you the Section 2.1(iii) right. For clarity, where NVIDIA is silent the Software is not Redistributable.

1.16 “Services” means, as applicable, the Exhibit A services for Software installed on your premises and services associated with a Cloud Subscription.

1.17 “Software” means the NVIDIA software programs licensed to you under the AGREEMENT including, without limitation, libraries, sample code, utility programs and programming code.

1.18 “Supplement” means the additional terms and conditions beyond those stated in this EULA that apply to certain Licensed Software licensed hereunder.

2. LICENSE.

2.1 License Grant. Subject to the terms of the AGREEMENT, NVIDIA hereby grants you a non-exclusive, non-transferable license, without the right to sublicense (except as expressly set forth in a Supplement), to during the applicable License Term unless earlier terminated as provided below:

(i) have Authorized Users, as applicable, install and use the Software provided for installation on your premises or access and use the Software as part of a Cloud Subscription, including Modifications (if permitted), in accordance with the Documentation;

(ii) have Authorized Users modify, translate, adapt, arrange, or create derivative works of Software that is delivered to you in source code format and is expressly identified in a Supplement as modifiable; and

(iii) sub-license and distribute Software that is that is expressly identified in a Supplement as Redistributable, provided that: (a) all such distributions by you or our distribution channels are consistent with the terms of the AGREEMENT; (b) the Redistributable must include valid copyright notices indicating NVIDIA’s ownership of the Software and (if permitted) Modifications; (c) you must enter into enforceable agreements that pass down terms that are consistent with the terms set forth in the AGREEMENT for use of the Redistributable, including (without limitation) terms relating to the license grant and license restrictions, confidentiality and protection of NVIDIA’s Intellectual Property Rights in and to the Redistributable. You are liable for the distribution and use of a Redistributable if you failed to comply or enforce the distribution requirements of the AGREEMENT. You agree to notify NVIDIA in writing of any known or suspected use or distribution of the Licensed Software or Modifications thereto that are not in compliance with the terms of the AGREEMENT.

Orders: No Orders are binding on NVIDIA until accepted by NVIDIA. Your Orders are subject to the AGREEMENT.

Account: In order to access Licensed Software or Services, 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.

EULA Supplements: Certain Licensed Software licensed under this EULA may be subject to additional terms and conditions that will be presented to you in a Supplement for acceptance prior to the delivery of such Licensed Software under this EULA and the applicable Supplement. Licensed Software will only be delivered to you upon your acceptance of all applicable terms.

2.1.1 Limited Purpose Licenses. Licensed Software licenses provided to you under the AGREEMENT for one of the purposes indicated below or otherwise provided without payment of a fee do not include any right or license to use the Licensed Software or its output in any way in any public release, however limited, and/or in any manner that provides third parties with use of or access to the Licensed Software or its functionality or output, including (but not limited to) external alpha or beta testing or development phases. Further:

(i) Evaluation License. With respect to licenses indicated during product registration, installation and/or in the product name to be an evaluation license, you may exercise the Section 2.1(i) grant and, where permitted, Section 2.1(ii) grant except that evaluation licenses are solely for the purpose of internal evaluation of the Licensed Software in connection with a NVIDIA product purchase decision, such licenses have an expiration date as indicated by NVIDIA in its sole discretion, and NVIDIA is under no obligation to provide you any Services (notwithstanding that the license may be a Subscription License or a Cloud Subscription).

(ii) Educational/Academic License. With respect to licenses indicated during product registration, installation and/or in the product name to be an educational/academic license, you may exercise the Section 2.1(i) grant and, where permitted, Section 2.1(ii) grant except that educational/academic licenses are solely for educational purposes and all users must be enrolled or employed by an academic institution. If you do not meet NVIDIA’s academic program requirements for educational institutions, you have no rights under this license.

(iii) Test/Development License. With respect to licenses indicated during product registration, installation and/or in the product name to be a test/development license, you may exercise the Section 2.1(i) grant and, where permitted, Section 2.1(ii) grant except that test/development licenses are solely for the purpose of internal development, testing and/or debugging of your software applications that are interoperable with the Software, such licenses have an expiration date as indicated by NVIDIA in its sole discretion, and NVIDIA is under no obligation to provide you any Services (notwithstanding that the license may be a Subscription License or a Cloud Subscription).

2.2 Licensing Parameters. You are only licensed to activate and use a Licensed Software for which you a have a valid license, even if during the download or installation you are presented with other product options. The Software licensed under the AGREEMENT is available from NVIDIA pursuant to the licensing parameters described in Exhibit B; however only certain license combinations are available for each Licensed Software. Your Order, License Key and/or the product description will indicate the license features of your license.

2.3 Enterprise and Contractor Usage. Under the AGREEMENT you may allow (i) your Enterprise employees, and (ii) individuals who work primarily for your Enterprise on a contractor basis and from your secure network (each a "Contractor") to access and use the Licensed Software pursuant to the terms in Section 2 solely to perform work on your behalf, provided further that with respect to Contractors: (i) you obtain a written agreement from the Contractor which contains terms and obligations with respect to access to or use of Licensed Software no less protective of NVIDIA than those set forth in the AGREEMENT, and (ii) such Contractor’s access and use expressly excludes any sublicensing or distribution rights for the Licensed Software. You are responsible for the compliance with the terms and conditions of the AGREEMENT by your Enterprise and Contractors. Any act or omission that if committed by you would constitute a breach of the AGREEMENT shall be deemed to constitute a breach of the AGREEMENT if committed by your Enterprise or Contractors.

2.4 Exhibit A Service. The Exhibit A describes the Service Subscriptions that you may obtain directly from NVIDIA for the Licensed Software installed on your premises. In the event that you have an agreement with a NVIDIA reseller specifying that a third
party will deliver the same Service Subscriptions described in Exhibit A for a Licensed Software, the Exhibit A does not apply and such Service Subscriptions are delivered to you pursuant to the terms of your agreement with the NVIDIA reseller.

3. LIMITATIONS.

3.1 License Restrictions. Except as expressly authorized in the AGREEMENT, you agree that you will not (nor allow third parties to): (i) copy and use Software that was licensed to you for use in one or more devices in other unlicensed devices (provided that copies solely for backup purposes are allowed); (ii) reverse engineer, decompile, disassemble (except to the extent applicable laws specifically require that such activities be permitted) or attempt to derive the source code, underlying ideas, algorithm or structure of Software provided to you in object code form; (iii) sell, transfer, assign, distribute, rent, loan, lease, sublicense or otherwise make available the Licensed Software or its functionality to third parties (a) as an application services provider or service bureau, (b) by operating hosted/virtual system environments, (c) by hosting, time sharing or providing any other type of services, or (d) otherwise by means of the internet; (iv) modify, translate or otherwise create any Modifications or derivative works of any of the Licensed Software; (v) remove, alter, cover or obscure any proprietary notice that appears on or with the Licensed Software or any copies thereof; (vi) use the Licensed Software, or allow its use, transfer, transmission or export in violation of any export control laws or regulations administered by the United States government; (vii) distribute, permit access to, or sublicense the Licensed Software as a stand-alone product; (viii) bypass, disable, circumvent or remove any form of copy protection, encryption, security or digital rights management or authentication mechanism used by NVIDIA in connection with the Licensed Software, or use the Licensed Software together with any authorization code, serial number, or other copy protection device not supplied by NVIDIA directly or through an authorized reseller; (ix) use the Licensed Software for the purpose of developing competing products or technologies or assisting a third party in such activities; (x) disclose the results of any benchmarking or other competitive analysis relating to the Licensed Software without the prior written permission from NVIDIA; (xi) distribute any Modification you make to Software under or by reference to the same name as used by NVIDIA; (xii) use the Licensed Software in any manner that would cause the Licensed Software to become subject to an Open Source License; (xiii) access or attempt to access the administrative portions of a NVIDIA Cloud Subscription solution; or (xiv) engage in activities that interfere with or disrupts a NVIDIA Cloud Subscription solution, including interfering with other users’ enjoyment of the solution. Nothing in the AGREEMENT shall be construed to give you a right to use, or otherwise obtain access to, any source code from which the Software or any portion thereof is compiled or interpreted.

3.2 Critical Applications. Unless the parties have entered into a life critical applications agreement, this section shall apply. You will not use the Licensed Software with any system or application where the use or failure of such system or application can reasonably be expected to threaten or result in personal injury, death, or catastrophic loss including, for example, use in connection with any nuclear, avionics, navigation, military, medical, life support or other life critical application (“Critical Applications”). You acknowledge that NVIDIA does not design, test, manufacture or certify the Licensed Software for use in the context of a Critical Application. NVIDIA shall not be liable to you or any third party, in whole or in part, for any claims or damages arising from such use.

3.3 Third Party License Obligations. You acknowledge and agree that the Licensed Software may include or incorporate third party technology (collectively “Third Party Components”), which is provided for use in or with the Software and not otherwise used separately. If the Licensed Software includes or incorporates Third Party Components, then the third-party pass-through terms and conditions (“Third Party Terms”) for the particular Third Party Component will be bundled with the Software or otherwise made available online as indicated by NVIDIA and will be incorporated by reference into the AGREEMENT. In the event of any conflict between the terms in the AGREEMENT and the Third Party Terms, the Third Party Terms shall govern. Copyright to Third Party Components are held by the copyright holders indicated in the copyright notices indicated in the Third Party Terms. To obtain source code for Open Source Software in accordance with the associated Third Party Terms, contact oss-requests@nvidia.com within three years of the date of first access to the Licensed Software.

Audio/Video Encoders and Decoders. You acknowledge and agree that it is your sole responsibility to obtain any additional third party licenses required to make, have made, use, have used, sell, import, and offer for sale your products or services that include or incorporate any Third Party Components and content relating to audio and/or video encoders and decoders from, including but not limited to, Microsoft, Thomson, Fraunhofer IIS, Sisvel S.p.A., MPEG-LA, and Coding Technologies as NVIDIA does not grant to you under the AGREEMENT any necessary patent rights with respect to audio and/or video encoders and decoders.

3.4 Limited Rights. Your rights in the Licensed Software are limited to those expressly granted in Section 2 and no other licenses are granted whether by implication, estoppel or otherwise. NVIDIA reserves all other rights, title and interest in and to the Licensed Software not expressly granted to you under the AGREEMENT.
4. CONFIDENTIALITY. Each party will not use the other party’s Confidential Information, except as necessary for the performance of the AGREEMENT, and will not disclose such Confidential Information to any third party, except to NVIDIA personnel, you, your Enterprise and your Enterprise Contractors that have a need to know such Confidential Information for the performance of the AGREEMENT, provided that each such personnel, employee and Contractor 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 the 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 the AGREEMENT, and (iii) discloses only the minimum amount of information necessary to comply with such requirements.

5. OWNERSHIP AND FEEDBACK.

5.1 Ownership. You are not obligated to disclose to NVIDIA any Modifications that you, your Enterprise or your Enterprise Contractors make to the Licensed Software as permitted under the AGREEMENT. The Licensed Software and all Modifications, and their respective Intellectual Property Rights therein, are and will remain the sole and exclusive property of NVIDIA and its licensors, whether the Licensed Software is separate from or combined with any other products or materials. You shall not knowingly engage in any act or omission that would impair NVIDIA’s and/or its licensors’ Intellectual Property Rights in the Licensed Software or any other materials, information, processes or subject matter matter proprietary to NVIDIA. NVIDIA’s licensors are intended third party beneficiaries with the right to enforce provisions of the AGREEMENT with respect to their Confidential Information and/or Intellectual Property Rights. You will reproduce on each copy you make of the Licensed Software, and not alter, remove or obscure, the Intellectual Property Rights notices of NVIDIA and its licensors that may appear on the Licensed Software.

5.2 Feedback. You have no obligation to give NVIDIA any Feedback. However, NVIDIA may use and include any Feedback that you voluntarily provide to improve the Licensed Software or other related NVIDIA products, technologies or materials. Accordingly, if you provide Feedback, you agree that NVIDIA may at its option, and may permit its licensees, to use, reproduce, license, distribute, and otherwise commercialize the Feedback in the Licensed Software or in other technologies or products 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 Licensed Software.

6. NO WARRANTIES. THE LICENSED SOFTWARE, CLOUD SUBSCRIPTIONS AND ANY OTHER CONFIDENTIAL INFORMATION AND/OR SERVICES 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 COURSE OF TRADE. NVIDIA DOES NOT WARRANT THAT THE LICENSED SOFTWARE, CLOUD SUBSCRIPTIONS OR ANY OTHER CONFIDENTIAL INFORMATION AND/OR SERVICES PROVIDED BY NVIDIA UNDER THE AGREEMENT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT NVIDIA’S OBLIGATIONS UNDER THE AGREEMENT ARE FOR THE BENEFIT OF YOU ONLY. Nothing in this warranty section affects any statutory rights of consumers or other purchasers to the extent that they cannot be waived or limited by contract.

7. 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 THE AGREEMENT OR THE USE OR PERFORMANCE OF THE LICENSED SOFTWARE, CLOUD SUBSCRIPTIONS AND ANY OTHER CONFIDENTIAL INFORMATION AND/OR SERVICES PROVIDED BY NVIDIA UNDER THE AGREEMENT, 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 THE
AGREEMENT EXCEED THE NET AMOUNTS RECEIVED BY NVIDIA FOR YOUR USE OF THE PARTICULAR LICENSED SOFTWARE OR CLOUD SUBSCRIPTION 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 WITHIN YOUR ENTERPRISE THAT ACCEPTED THE TERMS OF THE 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 the AGREEMENT. The disclaimers, exclusions and limitations of liability set forth in the 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 the AGREEMENT, including, without limitation, the economic terms, would be substantially different. You may not bring a claim under the 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 the AGREEMENT, you cannot recover a cumulative amount greater than the net amounts received by NVIDIA for the particular Licensed Software or Cloud Subscription (or up to $10.00 USD if you acquired the Licensed Software for no charge).

8. TERM AND TERMINATION.

8.1 AGREEMENT, Licenses and Services. This EULA shall become effective upon the Effective Date, each Supplement upon their acceptance, and both this EULA and Supplements shall continue until your last access or use of the Licensed Software and/or Services hereunder, unless earlier terminated by the parties as provided in this Section 8. Each Licensed Software license commences upon delivery and ends at the earlier of (a) the expiration of the applicable License Term, or (b) termination of such license or the AGREEMENT. Each Service commences upon delivery and ends at the earlier of (a) the expiration of the applicable Service Term, or (b) termination of such Service or the 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.

8.2 Termination. The AGREEMENT, Licensed Software licenses and/or Services may be terminated (in whole or in part) at any time: (i) by either party in the event that the other party breaches any material term of the 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 Licensed 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 license fees or Service Fees when due then NVIDIA may, in its sole discretion, suspend or terminate your license grants, Services and any other rights provided under the AGREEMENT for the affected Licensed Software, in addition to any other remedies NVIDIA may have at law or equity. Termination of the AGREEMENT, a license 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 the AGREEMENT to survive termination. Notwithstanding the foregoing, the party terminating the AGREEMENT, a license or a Service as permitted by any provision in this Section 8 shall incur no additional liability merely by virtue of such termination. Termination of the AGREEMENT, a license 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.

8.3 Effect of Expiration or Termination. Upon any expiration or termination of the AGREEMENT, a license or a Service provided hereunder, (i) you must promptly discontinue use of the affected Licensed Software and/or Service, and (ii) you must promptly destroy or return to NVIDIA all copies of the affected Licensed Software and all portions thereof in your possession or control, 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 and 3 through 10 will survive the expiration or termination of the AGREEMENT for any reason.

9. CONSENT TO COLLECTION AND USE OF INFORMATION.
You hereby acknowledge that the Software may access, collect and transmit both non-personally identifiable information and personally identifiable information about you and your computer system ("Customer System") as well as configures Customer System in order to (a) properly optimize Customer System for use with the Software, (b) deliver Software and Services, or content through the Software, (c) optimize, maintain, repair and/or administer NVIDIA products and services, and/or (d) deliver marketing communications. Information collected by the Software includes, but is not limited to, Customer System’s (i) hardware configuration and ID, (ii) operating system and driver configuration, (iii) installed applications, (iv) applications settings, performance, and usage metrics, and (iv) usage metrics of the Software. To the extent that you use the Software, you hereby consent to all of the foregoing, and represent and warrant that you have the right to grant such consent. In addition, you agree that you are solely responsible for maintaining appropriate data backups and system restore points for Customer System, and that NVIDIA will have no responsibility for any damage or loss to Customer System (including loss of data or access) arising from or relating to (y) any changes to the configuration, application settings, environment variables, registry, drivers, BIOS, or other attributes of Customer System (or any part of Customer System) initiated through the Software; or (z) installation of any Software or third party software patches initiated through the Software. 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 the receipt of the Licensed Software or Services you may receive access to links to third party 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 or liable for: (i) the availability or accuracy of such links; or (ii) the products, services or information available on or through such links; or (iii) the privacy statements or practices of websites controlled by other companies or organizations.

To the extent that you provide to NVIDIA during registration or otherwise your personal 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. You consent to the processing of personal information by NVIDIA Corporation, its subsidiaries and their respective agents to facilitate the subject matter of the AGREEMENT and you will obtain all required consents from third parties before providing personal information to NVIDIA, including as required under privacy and data protection laws and regulations.

10. GENERAL PROVISIONS.

10.1 Changes to this EULA and Supplements. NVIDIA reserves the right to, from time to time, modify this EULA or a Supplement (or any part thereof) with or without notice. When you purchase a license or renew a license the then-current licensing terms in effect will apply for the length of the license.

10.2 NVIDIA Entities. NVIDIA Corporation and its subsidiaries, including, but not limited to, NVIDIA Singapore Pte Ltd., have agreed to their respective rights and obligations regarding the distribution of the Licensed Software and Services and the performance of obligations related to the Licensed Software and Services. Ordering and delivery shall be with the NVIDIA entity with distribution rights for the geographic region in which the Licensed Software will be used or Services will be provided, as communicated by NVIDIA to you.

10.3 Assignment. This EULA 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 the AGREEMENT and its rights and obligations hereunder without restriction. Subject to the foregoing, the AGREEMENT will bind and inure to the benefit of each party’s permitted successors and assigns.

10.4 Audit. During the term of the AGREEMENT and for a period of three (3) years thereafter, you will (a) upon written request no more frequently than on a semiannual basis provide to NVIDIA a written statement declaring the Licensed Software products and quantities in use within your Enterprise, and (b) maintain complete and accurate books and records regarding use of the Licensed Software and your performance and administration of the AGREEMENT. During such period and upon written notice to you, NVIDIA or its authorized third party auditors subject to confidentiality obligations will have the right to inspect and audit your Enterprise books and records for the purpose of confirming your compliance with the terms of the AGREEMENT. Any such inspection and audit will be conducted during regular business hours, in a manner that minimizes interference with your normal business activities, and no more frequent than annually unless non-compliance was previously found. If such an inspection and audit reveals an underpayment of any amounts payable to NVIDIA, then you will promptly remit the full amount of such underpayment to NVIDIA, including interest.
that will accrue (without the requirement of a notice) at the lower of 1.5% per month or the highest rate permissible by law. If the underpaid amount exceeds five percent (5%) of the amounts payable to NVIDIA for the period audited and/or such an inspection and audit reveals a material non-conformance with the terms of the AGREEMENT, then you will also pay NVIDIA’s reasonable costs of conducting the inspection and audit. Further, you agree that the party delivering the Licensed Software to you may collect and disclose to NVIDIA (subject to confidentiality obligations) information for NVIDIA to verify your compliance with the terms of the AGREEMENT including (without limitation) information regarding your usage of the Licensed Software.

10.5 Governing Law; Jurisdictions. This EULA 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 the 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.

10.6 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) use of a Licensed 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 export and import laws, rules or regulations; or (iv) negligence or willful misconduct.

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

10.8 Injunctive Relief. The parties agree that a breach of any of the promises or agreements contained in the AGREEMENT may result in irreparable and continuing injury for which monetary damages would not be an adequate remedy and therefore the parties are entitled to seek injunctive relief as well as such other and further relief as may be appropriate.

10.9 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 the AGREEMENT or its exhibits and addenda are null, void, and invalid. In the event of a conflict or inconsistency between any exhibit and the AGREEMENT, the conflict or inconsistency shall be resolved in favor of the AGREEMENT.

10.10 Waiver. The failure by either party to enforce its rights under the 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.

10.11 Severability. If for any reason a court of competent jurisdiction finds any provision of the 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 the AGREEMENT will remain in full force and effect.

10.12 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 the AGREEMENT and all related matters. The Licensed Software has been developed entirely at private expense and is “commercial items” consisting of “commercial software” and “commercial 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 set forth in the agreement under which Licensed 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.

10.13 Force Majeure. Neither party will be responsible for any failure or delay in its performance under the 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.
10.14 **Relationship of Parties.** Each party acknowledges and agrees that the other is an independent contractor in the performance of the 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.

10.15 **Export Control.** You acknowledge that the Licensed Software, technology and related documentation described under the 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 Licensed 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 Licensed 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).

10.16 **Entire Agreement.** This EULA, including the terms of the exhibits below and any EULA Supplements incorporated hereto, Orders and a life critical applications agreement entered into by the parties (if applicable) 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 the AGREEMENT and all past dealing or industry custom. Any notice delivered by NVIDIA to you under the AGREEMENT will be delivered via mail, email or fax.
Exhibit A
NVIDIA Software Service Terms and Conditions

1. SCOPE. If your Order indicates that NVIDIA will directly provide Technical Support, Maintenance, Updates and/or Upgrades for the Supported Software licenses you purchased, then NVIDIA agrees to provide the below 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.

The services described in this exhibit are provided by NVIDIA to you in accordance with the terms and conditions of the AGREEMENT and this Exhibit A. Further, the below services are provided by NVIDIA to you in accordance with the then-current Service Subscription plan(s) available for the particular Supported Software. NVIDIA may update the scope of services under the Service Subscription plan you purchased and any such modifications are binding on you, provided that such modifications apply to customers generally and do not single you out.

2. SERVICES.

2.1 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. Notwithstanding NVIDIA’s confidentiality obligations under the AGREEMENT, you hereby grant NVIDIA permission to discuss your Support Issues with the third party from which the system was purchased for the purpose of resolving the Support Issue, including sharing with such third party any relevant information (including, for the avoidance of doubt, Confidential Information) that would be useful in assisting with such resolution.

Support Issue Response and Resolution: A Designated User identified as a site manager shall prioritize Support Issues by ranking them in a queue order (the “Support Issue Ranking”). 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. NVIDIA shall issue a Response to all potential Support Issues filed within the Response time indicated for your Technical Support plan purchased. Such Response will indicate one or more of the following: (a) acceptance of the request as a Support Issue; (b) request for further information; and/or (c) notification that such potential Support Issue does not qualify as a Support Issue receiving service coverage under this Exhibit A. For Support Issues of type (c) that NVIDIA determines do not qualify as a Support Issue (and for potential Errors that do not require Error Correction), NVIDIA shall provide you with one or a combination of the following:

(i) a statement with supporting detail that the Supported Software operates as described in its then-current applicable Documentation;
(ii) a statement with supporting detail that the test case/Support Issue was not reproducible by NVIDIA on a Certified System;
(iii) a statement with supporting detail that the potential Error arises because you used the Supported Software in a manner not intended for such Supported Software design or because you modified or otherwise altered the Supported Software outside of the scope of the applicable license or Documentation; or
(iv) a statement with supporting detail that the potential Support Issue arises because (y) you and/or the Designated User reporting such Support Issue did not use the Supported Software in the manner set forth in the applicable Documentation; or (z) potential Support Issues are filed on clusters that do not contain Certified Systems.

You may then fix the test case and/or supplement documentation and assistance before resubmitting a potential Error.

Support Issue Prioritization: During the Service Term, for the Support Issue currently ranked highest in the Support Issue Ranking (the “Active Support Issue”), NVIDIA shall use commercially reasonable efforts to address and provide resolution for such Active Support Issue, until the earlier of: (a) resolution of such Active Support Issue; or (b) reprioritization of the Support Issue Ranking (by reordering Support Issues on the Support Issue Ranking). The Support Issue Ranking order may be changed by a Designated User identified as a site manager up to once every seven (7) days.
2.2 **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.

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

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

2.5 **Service Subscription Reinstatement.** If you elect not to renew certain Service Subscriptions and later you desire to re-enroll to receive such services, you must pay with respect to the services being reinstated at the then-current rates: (a) Service Fees for the period between the last expiration of the Service Subscription and until commencement of the new Services Subscription, (b) Service Fees for the new Services Subscription, for the Service Term, and (c) the applicable reinstatement fees in addition to Service Fees under (a) and (b). Service Subscription re-enrollment is subject to availability of the Service Subscription plans at the time of ordering and software version restrictions.

2.6 **Purchase Requirements.** You shall (a) purchase the initial Service Subscription for a Supported Software only for the most current generally available version of the Supported Software, and (b) initially purchase and renew Service Subscriptions for all of your licenses of a Supported Software.

2.7 **Service Availability.** The Service Subscription plans will indicate the types of Exhibit A services that are available for Supported Software during the General Support Period and the Extended Support Period. NVIDIA may, at its sole discretion, decide that a Supported Software version has reached the end of the Extended Support Period. NVIDIA is not obligated to provide any services under this Exhibit A for a Supported Software version after the end of the Extended Support Period. NVIDIA is not obligated to initiate or renew any Service Subscription if such Service Subscription is no longer made generally available by NVIDIA to its customers.

3. **EXCLUSIONS.** You shall not request, and NVIDIA shall not provide Exhibit A services under the 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 accident, catastrophe, or negligence of your users, or due to operator error, improper use of the Supported Software or attempted support by unauthorized persons;
(c) causes external to the Supported Software, including weather conditions, air conditioning and humidity control, faulty electrical power, hardware failure, misuse, neglect, damage or use of the Supported Software with hardware or software not supplied or recommended by NVIDIA;
(d) your use of the Supported Software outside of the scope permitted under the AGREEMENT or your failure to implement Maintenance, Updates or Upgrades supplied by NVIDIA which would correct the Error and were previously made available by NVIDIA;
(e) modifications to the Supported Software made by you or on your behalf, or any modifications made by any third party without NVIDIA’s authorization;
(f) use of the Supported Software that deviates from the operating procedures, indicated supported operating systems and any other specifications indicated in the Documentation;
(g) 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;
(h) your combination of the Supported Software with other products or technologies not provided by NVIDIA; or
(i) Supported Software or services provided free of charge.

Further, Exhibit A services under the AGREEMENT do not include any enhancement(s) or addition(s) to the Supported Software beyond Maintenance, Updates and Upgrades.

4. **YOUR SERVICE RESPONSIBILITIES.** In order for NVIDIA to deliver the Exhibit A 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;
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, including, without limitation, access via the internet or via direct modem or VPN connection to relevant servers, minimally intrusive access to your facilities, 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 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 performing any 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; PAYMENT TERMS. When you purchase Exhibit A services directly from NVIDIA the following applies: 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. All Service Fees are non-refundable. All payments will be made in U.S. Dollars. 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 AGREEMENT 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 resell 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 the 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 Exhibit A services, in addition to any other remedies it may have, until the payment delinquency is corrected. Payment obligations survive any expiration or termination of the AGREEMENT and upon expiration or termination of the 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. DEFINITIONS

6.1 “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.

6.2 “Day(s)” (only when 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.

6.3 “Designated User” means the individual(s) designated by you as the technical contact(s) who may file and engage with NVIDIA on Technical Support.

6.4 “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.

6.5 “Error Correction(s)” means adapting, re-configuring, or reprogramming the Supported Software to correct the Error(s).

6.6 “Extended Support Period” means the period of time starting upon general availability of the next Upgrade version of a Supported Software product, and until the product reaches the product cycle milestone when Service Subscriptions are no longer made generally available for customers of the product (also referred to as the “end of life” milestone), which milestone is at NVIDIA’s sole discretion.

6.7 “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.

6.8 “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 Service Subscription contract with NVIDIA that specifically includes “Maintenance”. Maintenance may include revisions to Documentation.
“Response” means NVIDIA’s initial acknowledgment of a Technical Support request filed by a Designated User.

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

“Service Subscription” means the particular services described in this Exhibit A that you purchased from NVIDIA or a NVIDIA authorized reseller, which will be some combination of the following: (i) Technical Support, (ii) Maintenance, (iii) Updates, and/or (iv) Upgrades.

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

“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.

“Supported Software” means the Software installed on your premises that are under a current and valid license and for which you purchased Service Subscriptions, 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.

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

“Technical Support” means the provision of telephone or 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.

“Updates” means those modifications to the Supported Software other than Maintenance deliverables 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 Service Subscription contract 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.

“Upgrades” means those modifications to the Supported Software other than Maintenance 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 Service Subscription contract 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.

“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.
Exhibit B

Enterprise Software Licensing Parameters

A. By duration:

(i) “Perpetual License” means a license that is exclusive of any Services, provided that NVIDIA may further require the additional purchase of certain Services for a minimum period. After the expiration of Services you retain the right to use a perpetual license at the last-supported level subject to the terms of the AGREEMENT.

(ii) “Subscription License” means a license with a fixed duration and inclusive of certain Services for the duration of the license. You may have the option to purchase additional Services for the duration of the subscription license, based on NVIDIA’s then-current Service offerings available for the Software.

B. By other licensing parameters:

(i) As a Cloud Subscription, as described in the EULA and further described in a Supplement.

(ii) “Concurrent Users License” or “CCU” means a license that allows for concurrent Authorized Users to access or use the Software, provided that the simultaneous number of Authorized Users does not exceed the maximum number of CCUs authorized under the license.

(iii) “HPC Cluster License” means a Floating License that enables the use of a Licensed Software on a single computing machine that takes the form of a multi-user, multi-node compute cluster. The cluster is composed of multiple compute nodes but is managed, accessed, and used as a single entity. If you decommission a cluster you may use the HPC Cluster License in another cluster within a five mile radius of the decommissioned cluster, for the remainder of the license duration. Temporarily aggregated computing units and cloud resources are not considered to be HPC Clusters for the purpose of this license type.

(iv) “Named User License” is a license that may only be used by a single named Authorized User and that the named Authorized User may not re-assign or share with any other party (including, without limitation, other Authorized Users); provided, however, that if the named Authorized User is no longer employed by your Enterprise or no longer requires any access to the Licensed Software as part of their job function, you may re-assign the named user license to a new named Authorized User. You shall track the names and the access period of individuals in conjunction with the use of Named User Licenses.

(v) “Node Locked License” is a license that may only execute and run on the node (i.e., the specific machine) where the Licensed Software is installed and may be accessed only by an Authorized User that is physically present at such node. Further, a node locked license may only be used by one Authorized User at a time running one instance of the License Software at a time.

(vi) “Floating License” is a network license that allows multiple Authorized Users to request access to the license from any machine that can access the host license server, and where a license manager is employed to allocate usage based on availability the number of licenses hosted by the server to Authorized Users.

(vii) “Per GPU License” means a Floating License that enables machines located within a five (5) mile radius to request access to the Licensed Software from the host license server. Each machine may have one or more GPUs, and a license is required per each GPU.
DGX-1 CLOUD SUBSCRIPTION SUPPLEMENT TO END USER LICENSE AGREEMENT
Release Date: June 15, 2016

The terms set forth in this DGX-1 Cloud Subscription Supplement ("Supplement") govern (a) your use of certain Licensed Software licensed and associated services provided to you for use with the NVIDIA DGX-1 appliance ("Product") under the terms of your end user license agreement ("EULA") as modified by this Supplement, and (b) other software that you are permitted to access and use and activities that you are permitted to do as described below. This Supplement is an exhibit to the EULA and is hereby incorporated as an integral part thereto. Capitalized terms used but not defined herein shall have the meaning assigned to them in the EULA. In the event of conflict between the terms in this Supplement and the terms in the EULA, this Supplement shall control.

The Cloud Subscription will be accessed from NVIDIA's website with the primary domain name at compute.nvidia.com. Access to the Cloud Subscription requires internet and such access will be available from NVIDIA during your Cloud Subscription period (unless your license is earlier terminated in accordance with the EULA).

Each Cloud Subscription, including the Licensed Software and related services, will be associated with a single Product unit. Multiple Product units require an equivalent number of Cloud Subscriptions. All Licensed Software delivered under the EULA and this Supplement is licensed for use with Products only.

1. THE CLOUD SOLUTION. During your Cloud Subscription period NVIDIA will provide access to one or more of the following, as available at NVIDIA’s sole discretion to subscribers, subject to the terms of the EULA and this Cloud Supplement:
   (a) NVIDIA cloud based Software, including management, monitoring, scheduling and container related Software for use with your Products, as updated from time to time per the “Cloud Solution Updates” section below;
   (b) Maintenance, Updates and Upgrades to the Licensed Software, if and when made available by NVIDIA to subscribers generally, for use with your Products under a Cloud Subscription;
   (c) additional Licensed Software licensed by NVIDIA, if and when made available by NVIDIA to subscribers generally ("NVIDIA Containerized Software"), for use with your Products under a Cloud Subscription as further described below in this Supplement; and/or
   (d) the ability to upload your containers consisting of software executables, software libraries, software environment and/or embedded software files and notices (each, a “Customer Containerized Software”) to private repositories in the cloud solution for use as further described below in this Supplement.

You agree that your use of the Cloud Subscription is not contingent on the delivery of any future functionality or feature, or dependent on any oral or written public comments made with regards to future functionality or features.

NVIDIA Containerized Software available in the cloud solution may be subject to other terms and conditions that will be presented to you for acceptance and/or fees that will be required prior to your first access to the NVIDIA Containerized Software. If no terms and conditions are presented for certain NVIDIA Containerized Software, then such NVIDIA Containerized Software is licensed under the EULA and this Supplement. Also, if no further fees are required prior to your first access, then no further fees apply to the use of such NVIDIA Containerized Software under the applicable terms.

2. AUTHORIZED USERS. Each email and password login account may be used by a single individual Authorized User. You are responsible for all use and misuse of the Cloud Subscription and all activities that occur under your Authorized User’s login credential, and you agree to notify NVIDIA’s product security Incident response team at psirt@nvidia.com of any unauthorized access or use of which you become aware. You agree that you will not (nor allow Authorized Users to) access the Cloud Subscription using shared login credentials. The terms that apply to you under this Supplement apply to all of your Authorized Users.

3. PERMITTED USE OF NVIDIA CONTAINERIZED SOFTWARE. You may upload to and download from the cloud solution NVIDIA Containerized Software made available by NVIDIA at its sole discretion to subscribers from time to time and place the NVIDIA Containerized Software in repositories within the cloud solution for use with the Product. You may then access, use, organize and share NVIDIA Containerized Software in such repositories privately with your other Authorized Users.

4. PERMITTED USE OF CUSTOMER CONTAINERIZED SOFTWARE. You may upload to and download from the cloud solution Customer Containerized Software and place the Customer Containerized Software in repositories within the cloud solution for use with the Product. You may then access, use, modify, organize and share Customer Containerized Software in such repositories privately with your other Authorized Users. NVIDIA will treat your Customer Containerized Software placed in a private repository as
You are entirely responsible for all Customer Containerized Software uploaded and otherwise made available through the Cloud Subscription under your Authorized User's accounts, and for protecting your privacy and rights. Any content in the cloud solution that you were not authorized to upload or make available in the cloud solution as described in the “Prohibited Uses” section below is shared at your sole risk and you understand it can be read, collected, used and modified by those with access to the repository and NVIDIA is not responsible for such content including (without limitation) your legal and regulatory compliance.

5. **PROHIBITED USES.** Other than Customer Containerized Software in repositories you are not authorized to upload or make available in the cloud solution other data, text, links, graphics, images, sounds, and other materials. In connection with providing or otherwise making available Customer Containerized Software through the cloud solution, you represent and warrant that neither the Customer Containerized Software nor your posting, publication, submission or transmittal of it or the use of it (or any portion thereof) will: (a) infringe, misappropriate or violate a third party’s patent, copyright, trademark, trade secret, moral rights or other Intellectual Property Rights, or rights of publicity or privacy, or otherwise violates the terms under which you are licensed; (b) contain mass mailings or any form of “spam”; (c) express or imply any endorsement of your Customer Containerized Software by NVIDIA; or (d) violate applicable national or international export and import laws, rules and regulations. You further represent and warrant that you will not post, submit or otherwise transmit any Customer Containerized Software or other material that: (i) violates, or encourages any conduct that would violate any applicable law or regulation or would give rise to legal liability; (ii) is fraudulent, false, misleading or deceptive; (iii) is defamatory, obscene, pornographic, vulgar or offensive; (iv) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (v) is violent or threatening or promotes violence or actions that are threatening to any other person; (vi) promotes illegal activities; (xii) contains any malware, viruses, drop dead device, worm, trojan horse, trap, back door or other software routine that is designed to delete, disable, deactivate, interfere with or otherwise harm any other software, program, data, device, system or service, or which is intended to provide unauthorized access or to produce unauthorized modifications; or (xiii) use any robot, spider, data scrapping or extraction tool or other similar mechanism with respect to the cloud solution. Last, you agree not to impersonate another person (via email account or other means) or otherwise misrepresent yourself as the source of any Customer Containerized Software or exploit the cloud solution for any unauthorized commercial use. You are responsible for the consequences of Customer Containerized Software that does not conform to the usage right and limitations described in this Supplement.

6. **CUSTOMER CONTAINERIZED SOFTWARE LICENSES.** You represent and warranty that you and your Authorized Users have sufficient rights, permissions and consents necessary (i) to submit all Customer Containerized Software; and (ii) grant NVIDIA and its personnel, personnel of its subsidiaries, other NVIDIA designees the non-exclusive worldwide limited right and license to access, use and transmit Customer Containerized Software for the purpose of servicing you under this Supplement.

7. **HANDLING OF CUSTOMER CONTAINERIZED SOFTWARE.** NVIDIA does not pre-screen Customer Containerized Software submitted and, as such, NVIDIA does not provide support, endorse and is not responsible for the accuracy, usefulness, or Intellectual Property Rights of or relating to Customer Containerized Software. You understand that NVIDIA and its designees may scan Customer Containerized Software at any time to check for potential security vulnerabilities and other issues and may request that you immediately remedy any issue it discovers in your Customer Containerized Software. NVIDIA shall have the right (but not the obligation), at any time and without prior notice, to deny, remove or disable access to any Customer Containerized Software: (i) that NVIDIA considers, in its sole discretion, to be in violation of this Supplement or otherwise harmful to the cloud solution; (ii) for the purpose of operating and maintaining the cloud solution; (iii) to ensure your compliance with this Supplement; or (iv) to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. Further, NVIDIA may elect to remove any Customer Containerized Software if properly notified that such Customer Containerized Software infringes on another party's Intellectual Property Rights.

If you are a copyright owner or an agent thereof and believe that any Customer Containerized Software infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by mailing your notice to the attention of the NVIDIA Copyright Agent, NVIDIA Corporation Legal Department, with an address at 2701 San Tomas Expressway, Santa Clara CA 95050 USA in accordance with 17 U.S.C 512(c)(3). Additional information about NVIDIA’s copyright notice and procedures are located at [http://www.nvidia.com/object/copyright_claims.html](http://www.nvidia.com/object/copyright_claims.html). You acknowledge that if you fail to comply with all of the DMCA requirements, your DMCA notice may not be valid.
8. **CLOUD SOLUTION UPDATES.** NVIDIA is constantly innovating in order to improve the user experience and as such the form and nature of the cloud solution, the services, and the Licensed Software and features may change from time to time at NVIDIA’s sole discretion, in addition to patches and maintenance (collectively, “Solution Updates”). You consent to Solution Updates and agree that NVIDIA shall not be liable for any damages, loss of data or loss of functionalities arising therefrom. It is recommended that you backup your Customer Containerized Software frequently.

9. **EXPIRATION OR TERMINATION OF THE CLOUD SUBSCRIPTION.** Upon the expiration of your Cloud Subscription (or any renewals thereof), you may retain the NVIDIA Containerized Software that was downloaded under this Supplement during your Cloud Subscription period as follows: (i) for an undetermined period of time, except if you obtained a time based license that lasts only for the specified period of time, and (ii) subject to continued compliance with the terms of the EULA and this Supplement, provided that the such continued use is solely with the Products in which the NVIDIA Containerized Software was used during your Cloud Subscription period. You may download Customer Containerized Software at any time during your Cloud Subscription period. After thirty (30) days of the termination or expiration of your Cloud Subscription NVIDIA has no obligation to retain, and may delete, your Customer Containerized Software and any other of your materials from the cloud solution at any time. NVIDIA reserves the right to maintain your account information from previous Cloud Subscriptions for future use with you.

10. **THIRD PARTY LICENSES.** Prior to using the NVIDIA Containerized Software that includes the 1-bit Stochastic Gradient Descent (1-bit SGD) for the Computational Network Toolkit, you must obtain a license for the Microsoft software directly from Microsoft, available licenses being located at https://www.cntk.ai/. Your use of Microsoft software delivered by NVIDIA must be consistent with the scope of the license you obtain from Microsoft.

11. **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 your Customer Containerized Software and the use thereof as permitted under this Supplement.

12. **WARRANTY.** The terms in the “NO WARRANTIES” section of the EULA applies to this Supplement, including (without limitation) the Cloud Solution, Licensed Software, NVIDIA Containerized Software and Solution Updates.

13. **LIMITATION OF LIABILITY.** NVIDIA will not be liable for (I) any interruption of business, (II) access delays or access interruption to the Cloud Subscription Service or a website you may access through the Cloud Subscription Service, (III) data non-delivery, miss delivery, corruption, destruction or other modification, (IV) unauthorized access to data via the Cloud Subscription Service, or (V) events beyond NVIDIA’s reasonable control. In addition to the preceding terms, all of the terms in the “LIMITATION OF LIABILITY” section of the EULA applies to this Supplement, including (without limitation) the Cloud Solution, Licensed Software, NVIDIA Containerized Software and Solution Updates.

14. **EXPIRATION OF TERMINATION OF THIS SUPPLEMENT.** Your failure to comply with the terms of this Supplement is ground for termination for breach by NVIDIA under the EULA. This Supplement will automatically expire or terminate upon the expiration or termination of the Cloud Subscription plan purchased or the EULA.