

## SOFTWARE LICENSE AGREEMENT

(August 7, 2018 version)

This Software License Agreement, including exhibits attached ("Agreement") is a legal agreement between you and NVIDIA Corporation ("NVIDIA") and governs your use of a NVIDIA software and materials provided hereunder ("SOFTWARE").

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the legal authority to bind the entity to this Agreement, in which case "you" will mean the entity you represent.

If you don't have the required authority to accept this Agreement, or if you don't accept all the terms and conditions of this Agreement, do not download, install, copy or use the SOFTWARE.

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

### 1. License.

#### 1.1 Grant

Subject to the terms of this Agreement, NVIDIA hereby grants you a non-exclusive, non-transferable license, without the right to sublicense to install and use the SOFTWARE with the associated NVIDIA DGX product.

#### 1.2 Authorized Users

You may allow employees and contractors of your entity or of your subsidiary(ies) to access and use the SOFTWARE from your secure network to perform work on your behalf.

If you are an academic institution you may allow users enrolled or employed by the academic institution to access and use the SOFTWARE from your secure network.

You are responsible for the compliance with the terms of this Agreement by your authorized users. If you become aware that your authorized users didn't follow the terms of this Agreement, you agree to take reasonable steps to resolve the non-compliance and prevent new occurrences.

#### 1.3 Updates

NVIDIA may, at its option, make available patches, workarounds or other updates to this SOFTWARE. Unless the updates are provided with their separate governing terms, they are deemed part of the SOFTWARE licensed to you as provided in this Agreement.

#### 1.4 Third Party Licenses

The SOFTWARE may come bundled with, or otherwise include or be distributed with, third party software licensed by a NVIDIA supplier and/or open source software provided under an open source license. Use of third party software is subject to the third-party license terms, or in the absence of third party terms, the terms of this Agreement. Copyright to third party software is held by the copyright holders indicated in the third-party software or license.

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 software 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. NVIDIA does not grant to you under this Agreement any necessary patent or other rights with respect to any audio and/or video encoders and decoders.

## 1.5 Reservation of Rights

NVIDIA reserves all rights, title and interest in and to the SOFTWARE not expressly granted to you under this Agreement.

## 2. Limitations.

The following license limitations apply to your use of the SOFTWARE:

2.1 You may not reverse engineer, decompile or disassemble, or remove copyright or other proprietary notices from any portion of the SOFTWARE or copies of the SOFTWARE.

2.2 Except as expressly provided in this Agreement, you may not copy, sell, rent, sublicense, transfer, distribute, provide commercial hosting services to others, modify, or create derivative works of any portion of the SOFTWARE.

2.3 You may not bypass, disable, or circumvent any encryption, security, digital rights management or authentication mechanism in the SOFTWARE.

2.4 You may not use the SOFTWARE in any manner that would cause it to become subject to an open source software license. As examples, licenses that require as a condition of use, modification, and/or distribution that the SOFTWARE be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

2.5 Unless you have an agreement with NVIDIA for this purpose, you may not use the SOFTWARE with any system or application where the use or failure of the system or application can reasonably be expected to threaten or result in personal injury, death, or catastrophic loss. Examples include use in nuclear, avionics, navigation, military, medical, life support or other life critical applications. NVIDIA does not design, test or manufacture the SOFTWARE for these critical uses and NVIDIA shall not be liable to you or any third party, in whole or in part, for any claims or damages arising from such uses.

2.6 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 use of the SOFTWARE outside of the scope of this Agreement, or not in compliance with its terms.

## 3. Ownership.

3.1 NVIDIA or its licensors hold all rights, title and interest in and to the SOFTWARE and its modifications, including their respective intellectual property rights. This SOFTWARE may include software and materials from NVIDIA's licensors, and these licensors are intended third party beneficiaries with the rights to enforce this Agreement with respect to their intellectual property rights.

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

## 4. No Warranties.

THE SOFTWARE IS PROVIDED BY NVIDIA "AS IS" AND "WITH ALL FAULTS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, NVIDIA AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO

WARRANTY IS MADE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE.

## **5. Limitations of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NVIDIA AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL, OR THE COSTS OF PROCURING SUBSTITUTE PRODUCTS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER CAUSE OF ACTION OR THEORY OF LIABILITY. IN NO EVENT WILL NVIDIA'S AND ITS AFFILIATES TOTAL CUMULATIVE LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED 30% OF THE NET AMOUNT RECEIVED BY NVIDIA FOR THE NVIDIA HARDWARE IN WHICH THE SOFTWARE IS USED. THE NATURE OF THE LIABILITY OR THE NUMBER OF CLAIMS OR SUITS SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

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

## **6. Termination.**

6.1 NVIDIA may, at any time, terminate this Agreement if: (i) you fail to comply with any term of this Agreement and the non-compliance is not fixed within thirty (30) days following notice from NVIDIA (or immediately if you violate NVIDIA's intellectual property rights); or (ii) you commence or participate in any legal proceeding against NVIDIA with respect to the SOFTWARE.

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

## **7. General.**

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

You agree to cooperate with NVIDIA and provide reasonably requested information to verify your compliance with this Agreement.

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

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

If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, such provision will be construed as limited to the extent necessary to be consistent with and fully enforceable under the law and the remaining provisions will remain in full force and effect. Unless otherwise specified, remedies are cumulative.

Each party acknowledges and agrees that the other is an independent contractor in the performance of this Agreement.

Neither party will be responsible for any failure or delay in its performance under this Agreement to the extent due to causes beyond its reasonable control for so long as the cause or event continues in effect.

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

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

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

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

## SOFTWARE SERVICES SUPPLEMENT

(August 7, 2018 version)

The terms set forth in this supplement describe the service subscriptions that you may obtain directly from NVIDIA for SOFTWARE under the terms of your software license agreement (“Agreement”) as modified by this supplement. Capitalized terms used but not defined below shall have the meaning assigned to them in the Agreement.

This supplement is an exhibit to the Agreement and is incorporated as an integral part of the Agreement. In the event of conflict between the terms in this supplement and the terms in the Agreement, the terms in this supplement shall govern.

**1. SCOPE.** If your order indicates that NVIDIA will directly provide Technical Support, Maintenance, Updates and/or Upgrades for your licenses, then NVIDIA agrees to provide the below services for 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 supplement are provided by NVIDIA to you based on the then-current service subscription plan(s) available for the particular Supported Software. In the event that you have an agreement with a NVIDIA reseller specifying that a third party will deliver the same services described in this supplement for a SOFTWARE, this supplement does not apply. NVIDIA may update the scope of services under your service subscription plan 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 includes Technical Support, subject to payment of applicable fees NVIDIA will make available to you Technical Support for the Supported Software during the service term. You will be permitted to designate in writing to NVIDIA designated users for purposes of obtaining Technical Support. NVIDIA will provide Technical Support to such designated users only via a dedicated support portal. NVIDIA will use commercially reasonable efforts to analyze each potential Technical Support issue to determine if it qualifies for service. NVIDIA shall issue a response to all potential Technical Support issues filed, provided no commitment is made with respect to the specific resolution.

2.2 Maintenance. If your service subscription includes Maintenance, subject to payment of applicable fees NVIDIA will make available to you the Maintenance associated with the Supported Software during the service term.

2.3 Updates. If your service subscription includes Updates, subject to payment of applicable fees NVIDIA will make available to you the Updates associated with the Supported Software during the service term.

2.4 Upgrades. If your service subscription includes Upgrades, subject to payment of applicable fees NVIDIA will make available to you the Upgrades associated with the Supported Software during the service term.

2.5 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) fees for the period between the last expiration of the service subscription and until commencement of the new services subscription, (b) fees for the new services subscription for the service term, and (c) the applicable reinstatement fees in addition to 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 Requirements and Availability. 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. The service subscription plans will indicate the types of services (from the above) that are available for Supported Software. NVIDIA is not obligated to provide any services under this supplement for a Supported Software version after the end of support period to its licensees. NVIDIA is not obligated to initiate or renew any service subscription if such service subscription plan is no longer made available by NVIDIA.

**3. EXCLUSIONS.** You shall not request, and NVIDIA shall not provide services under this supplement 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 Agreement;
- (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;
- (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; or
- (g) Supported Software or services provided free of charge.

Further, services under this supplement 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 services under this supplement, 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;
  - (c) you shall further provide through designated users such information, and/or access to your resources and personnel as NVIDIA may reasonably require for providing services. As examples, as reasonably requested you shall (i) identify the correct version(s) of Supported Software, (ii) provide the documentation and assistance necessary to demonstrate and diagnose each potential Technical 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;
  - (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 designated users during the service term with 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 responsibilities under this section.

## **5. DEFINITIONS**

5.1 "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.

5.2 "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.

5.3 "Error Correction(s)" means adapting, re-configuring, or reprogramming the Supported Software to correct the Error(s).

5.4 "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.

5.5 "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.

5.6 "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.

5.7 “Technical Support” means the provision of telephone or web-based technical assistance 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.

5.8 “Updates” 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 “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.

5.9 “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.

5.10 “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.