

**SERVICES FOR DGX PRODUCTS
TERMS AND CONDITIONS
Release Date: March 10, 2021**

NVIDIA Corporation or a designated subsidiary of NVIDIA Corporation (as applicable, "NVIDIA") agrees to provide the below described services for a NVIDIA DGX product (each, a "Product") to the end user customer ("you") upon purchase from NVIDIA or a NVIDIA authorized reseller ("Reseller"). Support Services, Installation Services, 4-hr RMA Services, NCSS, and/or SRE are collectively referred to as "Services".

SUPPORT SERVICES ("Support Services")

A. ASSOCIATED WITH A PRODUCT PURCHASE

- ✓ In the event of defects in material and workmanship of the Product hardware under normal use and service, shipment of replacement Product or part within next business day of Return Material Authorization (RMA) approval and may take place prior to the return to NVIDIA of the replaced Product or part (see note 1) (the "RMA Services"). RMA approval will be for a full Product or a part at NVIDIA's discretion,
- ✓ At NVIDIA's discretion, as part of your RMA Services NVIDIA may offer to send Support Services technicians on-site, for diagnostics, support, and as needed hardware repair and/or replacement assistance subject to the availability of technicians and availability of this support service in your geographic location (see note 2). Travel and labor are included,
- ✓ 24x7 online support portal with access to tracking tool for bug reporting and issue resolution, knowledge base materials and troubleshooting information ("24x7 Online Support"),
- ✓ 24x7 call center telephone assistance for support service requests (English only) ("24x7 Call Center Support"),
- ✓ 8 AM - 5 PM business days at Local Time Zone telephone technical assistance where technicians assist with support service troubleshooting (English only) ("8-5 Telephone Technical Assistance"),
- ✓ Access to Supported Software Service Subscription (includes Technical Support, Maintenance, Updates and Upgrades) for Supported Software that is factory installed in the Product (see note 2),
- ✓ Access to services for certain NVIDIA containers and models available from the NVIDIA GPU Cloud, including the private management and sharing of custom images (see notes 2 and 3).

You must purchase the above Support Services at the time of your purchase of the Product, provided that you may choose the duration of Support Services based on the then-current plans available for the Product.

The Support Services will start from the date of Product shipment from NVIDIA, or will start on the date of expiration of the immediately prior service period in the case of renewals.

B. ASSOCIATED WITH A PRODUCT SPARE PART PURCHASE

Notwithstanding any other provision of these terms and conditions, you will be entitled to receive the hardware-related Support Services described in this paragraph for each NVIDIA Product spare part for: (i) 90 days if the spare part shipment by NVIDIA takes place during the last 90 days of your Support Services period under section (A) above, provided that these terms and conditions will continually apply for the duration of the spare part Support Services; or (ii) the remainder of your Support Services period under section (A) above, if the Product spare part shipment by NVIDIA takes place before the last 90 days of your Support Services period under section (A) above. For Product spare parts the following hardware-related Support Services are provided: RMA Services and, to the extent concerning hardware inquiries, 24x7 Online Support, 24x7 Call Center Support and 8-5 Telephone Technical Assistance.

C. ASSOCIATED WITH A PRODUCT HARDWARE UPGRADE

NVIDIA may from time to time in its sole discretion make available hardware upgrades for your existing Product. If you purchase the upgrade, NVIDIA or a NVIDIA authorized service provider may visit your site to upgrade the Product, including software in the Product, if applicable. You agree to schedule these services within thirty days of NVIDIA's written request, if applicable. Notwithstanding any other provision of these terms and conditions, you will be entitled to receive the hardware-related Support Services described in this paragraph for each NVIDIA hardware upgrade for the remainder of your Support Services period under section (A) above for the Product prior to such hardware upgrade. For NVIDIA hardware upgrades the

following hardware-related Support Services are provided: RMA Services and, to the extent concerning hardware inquiries, 24x7 Online Support, 24x7 Call Center Support and 8-5 Telephone Technical Assistance.

INSTALLATION SERVICES (“Installation Services”)

You must purchase Installation Services at the time of your DGX-2 or DGX A100 Product purchase from NVIDIA, a Reseller or an NVIDIA authorized service provider. If you purchase Installation Services from NVIDIA or a Reseller, you must redeem within six months of the date of DGX-2 or DGX A100 Product shipment or the installation is deemed completed without a credit or refund. If either party needs to re-schedule Installation Services, the requesting party shall provide reasonable notice and the parties will set an alternative date to complete installation.

OPTIONAL EXPEDITED 4-HOUR RMA SERVICES (“4-hr RMA Services”)

If you purchase 4-hr RMA Services, in the event of defects in material and workmanship of the Product hardware under normal use and service, delivery of replacement Product or part by a carrier will be scheduled by NVIDIA to take place within 4 hours of the expedited timeframe of Return Material Authorization (RMA) approval and may take place prior to the return to NVIDIA of the replaced Product or part. NVIDIA 4-hr RMA Services options may include delivery on local business days and hours or on a 24x7 basis, check the part number descriptions. Please consult with NVIDIA which specific Products have the option for 4-hr RMA Services.

OPTIONAL NVIDIA COORDINATED SUPPORT SERVICES (“NCSS”)

If you purchase NCSS, NVIDIA’s support scope will include level 1 triaging and troubleshooting of select 3rd party storage products used with Product clusters, and NVIDIA may coordinate issues to support to you with the 3rd party storage vendors. NVIDIA will maintain, and from time to time update, its list of supported 3rd party storage products. For clarity, NCSS does not include hardware repair or replacement or level 2 or level 3 support for 3rd party storage products. As a pre-requisite to NCSS support, you shall have a valid service contract of the 3rd party storage product. Please consult with NVIDIA which specific Products have the option for NCSS.

OPTIONAL SITE RELIABILITY ENGINEER SERVICES (“SRE”)

If you purchase SRE, NVIDIA’s SRE support scope includes the following remote assistance for Product clusters:

- ✓ Assisting with Product cluster deployment, including bring up, installation and configuration of workload manager and other cluster software that runs on the Product cluster
- ✓ Assisting with Product cluster management, including how to configure and use performance monitoring tools, and
- ✓ Assisting with Deep Learning Ops (DLOps) and cluster management, including how to configure, run and job scheduling software.

GENERAL SERVICE TERMS

The above Services are either delivered directly by NVIDIA, or in certain jurisdictions certain Services are available from and delivered by a NVIDIA agent all pursuant to these terms and conditions; except that these terms and conditions do not apply to Installation Services for DGX-2 or DGX A100 Products that you purchase from an NVIDIA authorized service provider. NVIDIA and its authorized service providers will have access to your information (including in the online support portal) and will exchange information in order to fulfill and optimize the delivery of Product Services.

Services are non-transferable, non-assignable and your Services are terminated when the Product is transferred to another party.

Note 1: You are deemed to have purchased a replacement Product or part after ten (10) days from its delivery, unless you (i) tender to the carrier in the NVIDIA provided package the replaced Product or part within ten (10) days of replacement delivery, or (ii) you receive from NVIDIA a written extension of the ten (10) days period or a waiver of the obligation to return the replaced Product or part. For each additional purchase, an invoice will be issued to you from NVIDIA or a Reseller for payment of the replacement Product or part delivered based on the price stated in the NVIDIA then current price list at the time of replacement delivery. With the shipment of a replacement Product or part under these terms and conditions, you

will receive the return label, package and instructions to return the replaced Product or part. In certain jurisdictions RMA Services may be delivered by a NVIDIA agent.

Note 2: The Support Services identified above as subject to this note are only available in limited geographical locations, as updated by NVIDIA from time to time in its sole discretion. The unavailability of this Support Service in your location does not make you eligible for any discounts, credits or refunds to the price paid for the Support Services plan.

Note 3: NVIDIA will define from time to time, in its sole discretion, and indicate to subscribers when a license or service fee is required for a NVIDIA container and model made available in the NVIDIA GPU Cloud for the Product. If no separate service fee is indicated as required for a NVIDIA containers and models, then the NVIDIA-developed portions of NVIDIA containers and models listed at <https://docs.nvidia.com/ngc/ngc-ready-systems/index.html#ngc-ready-software-list> is supported as part of your Support Services under these terms and conditions.

The optional Services listed above, namely 4-hr RMA Services, NCSS and SRE are only available to select parties upon approval from NVIDIA at its sole discretion and are add-on Services. Only Products that are under a valid contract for base Support Services qualify for the optional Services, and further Premium TAM services are a pre-requisite to obtaining SRE. No credits or refunds will be provided for any gaps in the provision of optional Services purchased under these terms and conditions if the related base Support Services or Premium TAM services expire or terminate.

As part of these Services NVIDIA may deliver to you diagnostics software which is licensed in accordance with and subject to the terms of the end user license agreement (“EULA”) for the Product. Supported Software Service Subscriptions are subject to the terms of the EULA. The NVIDIA GPU Cloud services and content are subject to the terms of the NVIDIA GPU Cloud terms of use. Capitalized terms used but not defined herein shall have the meaning assigned to them in the EULA or the NVIDIA GPU Cloud terms of use.

While NVIDIA will strive to deliver the Services as described above, NVIDIA shall be excused from delays or non-performance due to reasons beyond NVIDIA’s reasonable control.

REGISTRATION

You are responsible for registering the Product and Software, as applicable, to be supported in order to receive these Services, using the registration instructions within each package, email, or as otherwise directed by NVIDIA. NVIDIA IS NOT OBLIGATED TO PROVIDE THESE SERVICES IF YOU DO NOT COMPLETE REGISTRATION AS STATED HEREIN.

WHAT THESE SERVICES DO NOT COVER

These Services apply only to unmodified Products used in accordance with NVIDIA’s intended use as specifically set forth in NVIDIA’s published documentation. NVIDIA does not warrant uninterrupted or error-free operation of the Product, operating systems, or other integrated software. Further, these Services do not cover:

- (a) Products that are free from defects in materials or workmanship under normal use and service;
- (b) software, operating systems, applications, services or data installed in the Products, all the foregoing with respect to those portions of the Licensed Software supplied but not developed by NVIDIA; provided, however, that NVIDIA will make efforts to provide you input with respect to known bugs in the third party components with no commitment to fixes or resolution;
- (c) modifications by you or any third party, modifications made by NVIDIA under a consulting service agreement, and NVIDIA-developed Software you obtained outside of the Product or the NVIDIA GPU Cloud for the Product, all the foregoing with respect to those portions of the Licensed Software supplied and developed by NVIDIA;
- (d) configuration of all communication software, unless required for troubleshooting;
- (e) all non-NVIDIA supplied software, hardware and peripherals, and their installation, configuration, validation or compatibility with the Product;
- (f) firmware updates for non-NVIDIA systems, unless required for issue resolution;
- (g) invalid software and hardware configurations;
- (h) your applications and data, or backing up and restoring them;
- (i) repair of system after virus infection other than installation of the operating system to the default NVIDIA factory settings;
- (j) cosmetic damage or normal wear and tear;

- (k) expendable or consumable parts;
- (l) sample Products, free of charge Products, or pre-release Product versions;
- (m) commercial upgrades;
- (n) interoperability or compatibility issues that may arise when (i) products, software, or options not supported by NVIDIA are used; (ii) configurations not supported, provided or approved by NVIDIA are used; or (iii) parts intended for one system are installed in another system of different make or model; or (iv) other hardware or non-NVIDIA supplied software is introduced after the time of purchase; or
- (o) defects or damage to the Products arising from or related to: (i) any modifications, alterations, tampering, repair, or servicing by any party other than NVIDIA or its authorized representatives (see note 4); (ii) handling, transit (including the frequent transportation of datacenter Products), storage, installation, testing, maintenance, or use not in accordance with the Product documentation; (iii) abuse, negligence, neglect, accidents, or misuse; (iv) third party hardware, software or malware (e.g., virus, worm); or software loss or data loss that may occur during repair or replacement; (v) fire or spillage of food or liquid, external electrical fault, or any acts of God (such as, but not limited to, lightning), or any other external factor; and
- (p) unnecessary work in NVIDIA's assessment.

Note 4: The Product contains parts that can be easily removed and replaced by you without tampering with or removing the hardware case, and your normal operation of such parts in and out will not void these Support Services. However, these Support Services are void if you tamper with or remove the original hardware case in performing self-service.

TERMINATION

NVIDIA shall be excused from performing any of its obligations hereunder up to termination to the extent any such non-performance is attributable to your failure to perform your obligations under these terms and conditions including failure to return RMA Products or parts replaced, or if you provide inaccurate information in the site survey form for DGX-2 or DGX A100 installation or if after the site survey form is submitted the conditions for DGX-2 or DGX A100 installation change.

UNLESS DIRECTLY CAUSED BY NVIDIA'S OWN NEGLIGENCE, NVIDIA IS NOT RESPONSIBLE FOR ANY PRODUCT DAMAGE OR SUPPORT SERVICE ISSUES (INCLUDING, BUT NOT LIMITED TO, THE VOIDING OF A THIRD PARTY PRODUCT SUPPORT) THAT MAY OCCUR BY USING, INTEGRATING OR SUBSTITUTING THE NVIDIA PRODUCT WITH OR INTO A THIRD PARTY PRODUCT.

WHAT YOU SHOULD DO IF THERE IS A SERVICE ISSUE

For Support Service issues please contact the NVIDIA Enterprise Support Team, details on how to log issues and request Support Services via the dedicated support portal will be sent by email after registering your Product. You are responsible for keeping your email account updated to receive communications from NVIDIA. You may only return non-conforming Product upon written approval of NVIDIA and after you have received a written RMA from NVIDIA. All returned Products must be identified with an RMA number validly issued by NVIDIA. If, during the Support Services period: (i) you are eligible for a Product replacement or repair under these terms and conditions, and (ii) you notify NVIDIA in writing of the nature of the repair and return the Product to NVIDIA in accordance with these terms and conditions, NVIDIA shall at its own expense and as its sole obligation and as your sole and exclusive remedy under these terms and conditions, use commercially reasonable efforts to: (i) repair or replace the non-conforming Product, or (ii) if after a reasonable opportunity to cure NVIDIA determines in its reasonable discretion that it cannot repair or replace the non-conforming Product, then NVIDIA shall refund or issue a credit equal to the price paid by you or the Reseller to NVIDIA (net of rebates and/or other credits issued to you or the Reseller) for the applicable Product. Any such repair or replacement will not extend the original Support Services period. NVIDIA may, at its sole discretion, use new or refurbished parts or units in connection with Product repairs under these Support Services.

For Product technical support during your Support Services period, you will be permitted to designate in writing to NVIDIA up to four designated users, 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 Services to such designated users via a dedicated Support Services portal that allows the designated user(s) to make Support Service requests for the Product through the dedicated Support Services portal. You acknowledge that NVIDIA may discuss Product specifications, design, manufacture, assembly and/or testing with its suppliers.

You agree to provide through designated users such information, and/or access to resources as NVIDIA may reasonably require in order to deliver Support Services, including, without limitation, access via the internet or via direct modem or VPN connection to relevant servers, access to your facilities and the Product for requested on-site visits, 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 Product version(s) to which a potential Support Service issue relates, (ii) provide the documentation and assistance necessary to demonstrate and diagnose each potential Support Service issue, including providing necessary test cases that NVIDIA can reproduce, (iii) provide remote system access for NVIDIA to replicate potential errors, and (iv) provide embedded diagnostic information associated with the Product.

INTELLECTUAL PROPERTY RIGHTS

No transfer of ownership of any intellectual property will occur under these terms and conditions. You grant NVIDIA a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for NVIDIA and its designees to perform the Services.

YOUR SOFTWARE AND DATA

You are responsible for the security, backup and reinstallation of your software and data at all times. You understand that it will be your responsibility to remove, as you deem appropriate, software and data prior to receiving Services for a Product or prior to returning a Product to NVIDIA on a temporary or permanent basis. In addition, software installed or in use may be unable to run or function in the same manner after the delivery of Services or Products and data may no longer be present. YOU ACKNOWLEDGE THAT AFTER RECEIVING SERVICES OR PRODUCTS, THE PRODUCT MAY NOT BE CAPABLE OF BEING RESTORED TO ITS ORIGINAL CONDITION AND THAT SOFTWARE MAY BE AFFECTED. FURTHER, YOU UNDERSTAND THAT DATA FROM SUCH SOFTWARE THAT YOU CREATE OR CHANGE WHILE RECEIVING SERVICES OR PRODUCTS MAY BE INCAPABLE OF BEING RESTORED OR RECOVERED. NVIDIA SHALL NOT BE RESPONSIBLE FOR ANY COSTS, EXPENSES OR OTHER LIABILITIES YOU MAY INCUR AS A RESULT OF YOUR ELECTIONS TO LEAVE OR REMOVE SOFTWARE AND DATA FROM THE PRODUCT.

PERSONAL INFORMATION

In order to obtain Services, you or a representative of your entity will need to register and create an account with NVIDIA and become a registered user. When creating an account, the registrant will be required to provide certain information and establish a username and a password. NVIDIA reserves the right to suspend or terminate an account if any information provided is inaccurate, false or misleading. Each registrant is responsible for safeguarding the password created for the account and for any activities or actions under such account, whether or not authorized by the registrant. NVIDIA will not be liable for any loss or damage arising from any registrant's failure to comply with the above requirements. For more information on how NVIDIA handles data from NVIDIA enterprise customers, please visit NVIDIA's Privacy Policy at: <https://www.nvidia.com/en-us/about-nvidia/privacy-policy/>.

DISCLAIMER OF WARRANTY

NVIDIA EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATING TO OR ARISING FROM THE PRODUCT OR THESE SERVICES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO INFORMATION OR ADVICE GIVEN BY NVIDIA, A RESELLER OR ANY OTHER PARTY SHALL IN ANY WAY INCREASE THE SCOPE OF ANY SERVICES EXPRESSLY PROVIDED HEREIN.

NVIDIA PRODUCTS ARE NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN CONNECTION WITH THE DESIGN, CONSTRUCTION, MAINTENANCE, AND/OR OPERATION OF ANY SYSTEM WHERE THE USE OR A FAILURE OF SUCH SYSTEM COULD RESULT IN A SITUATION THAT THREATENS THE SAFETY OF HUMAN LIFE OR SEVERE PHYSICAL HARM OR PROPERTY DAMAGE (INCLUDING, FOR EXAMPLE, USE IN CONNECTION WITH ANY NUCLEAR, AVIONICS, LIFE SUPPORT OR OTHER LIFE CRITICAL APPLICATION). NVIDIA EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH HIGH-RISK USES. 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.

LIMITATION OF LIABILITY

IN NO EVENT SHALL NVIDIA BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, OR ANY LOSS OF PROFITS, LOSS OF TECHNOLOGY, LOSS OF DATA, LOSS OF REVENUE, LOSS OF PRODUCTION OR USE, OR BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE SERVICES, OR THE USE OR PERFORMANCE OF ANY PRODUCT OR SOFTWARE, WHETHER BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, OR ANY OTHER LEGAL THEORY, EVEN IF NVIDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NVIDIA DOES NOT WARRANT ANY SOFTWARE UNDER THESE TERMS AND CONDITIONS. WARRANTIES, IF ANY, FOR THE SOFTWARE ARE CONTAINED IN THE APPLICABLE LICENSE AGREEMENT WHICH ACCOMPANIES THE SOFTWARE.

ADDITIONALLY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NVIDIA'S TOTAL CUMULATIVE AGGREGATE LIABILITY FOR ANY AND ALL LIABILITIES, OBLIGATIONS OR CLAIMS ARISING OUT OF OR RELATED TO ALL PRODUCT SERVICES SOLD UNDER THESE TERMS AND CONDITIONS, SHALL NOT EXCEED THE PRICE PAID BY YOU OR THE RESELLER TO NVIDIA (NET OF REBATES AND/OR OTHER CREDITS ISSUED TO YOU OR THE RESELLER) FOR THE PRODUCT(S) UPON WHICH LIABILITY IS BASED. THESE LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER SUCH CLAIMS OR CAUSES OF ACTION ARISE FROM BREACH OF CONTRACT, WARRANTY, TORT, INDEMNITY, STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF THE LOSS OR DAMAGE OR IF THE LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. YOU ACKNOWLEDGE THAT NVIDIA HAS SET ITS PRICES AND ENTERED INTO THESE TERMS AND CONDITIONS IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THESE TERMS AND CONDITIONS WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

GOVERNING LAW; JURISDICTION

These terms and conditions shall 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 thereof. You hereby agree to all terms here in the English language. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. The state and/or federal courts residing in Santa Clara County, California shall have exclusive jurisdiction over any dispute or claim arising out of these Service terms. The invalidity in whole or in part of any provision of these terms and conditions and the RMA policy, shall not affect the validity of any other provision thereof.

CHANGES TO SERVICES TERMS AND CONDITIONS

If NVIDIA makes changes to these terms and conditions, then NVIDIA will present such revised terms and conditions to you by posting an updated version generally on the Product website page, through the Services portal, in an email notification or through other reasonable means. The new Service terms will apply to you, provided they apply to customers generally and do not single you out.

CONTACT INFORMATION

For additional information about these Services, please contact enterpriseservices@nvidia.com.