



BINARY SDK USER SUPPORT AGREEMENT

This Support Agreement is entered into as of [], 2009 ("Effective Date"), by and between **NVIDIA Corporation**, a Delaware corporation ("NVIDIA") having its principal place of business at 2701 San Tomas Expressway, Santa Clara, California 95050, USA, and [enter complete legal name of company], a [enter state or country of company's incorporation] having its principal place of business at [enter company's address] ("Company"), supplements the NVIDIA PhysX SDK End User License Agreement between Company and NVIDIA ("License Agreement"). Terms with initial capitalization, unless otherwise defined herein, are as defined in the License Agreement. The Support offering elected by Company will be as provided in Exhibit A to this Agreement.

1. Definitions.

1.1 "**Day**" or "**Days**" (only when capitalized) means Monday through Friday, excluding U.S. public holidays. All other usage of "day" or "days" means calendar days.

1.2 "**Designated User**" means the individual(s) designated as technical contacts for Company. Designated Users are identified in Exhibit A to this Agreement. Company may change the identity, but not the number, of personnel specified in Exhibit A upon written notice to NVIDIA.

1.3 "**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 NVIDIA documentation or specification.

1.4 "**On-Site Support**" means on-site support by NVIDIA at a Company location as specified hereunder.

1.5 "**Response**" means NVIDIA's initial acknowledgement of Company's Ticket Support request within the Ticket Support system.

1.6 "**Support**" means the support, at various levels, to be provided to Company by NVIDIA under these terms.

1.7 "**Support Fees**" means the fees for Support hereunder as specified in Exhibit A to this Agreement.

1.8 "**Support Forum**" means those areas of NVIDIA's website including FAQs, discussion forums and other forms of self help made available by NVIDIA for all registered customers.

1.9 "**Supported Software**" means the PhysX SDK, but not any modifications to the Supported Software made by Company or any portion of any Game, Engine or any other software that was not developed by NVIDIA.

1.10 "**Ticket Support**" consists of support provided by NVIDIA in response to issues and/or Errors logged by Designated Users in the NVIDIA Ticket Support system.

1.11 "**Update**" means any code in any form, provided by NVIDIA to Company, where such code provides added functionality or enhancements, or is a bug fix, patch, or error correction, to the Supported Software provided to Company by NVIDIA.

2. Term of Support Obligations.

Support at the Platinum levels, as defined below and for the fees specified in Exhibit A to this Agreement, is provided in one year increments (each a "Support Term") beginning on the Effective Date. Support will renew automatically unless Company notifies NVIDIA in writing that it does not wish to renew Support not later than 30 days prior to expiration of a Support Term. References to a "quarter" herein mean each consecutive three-month period following the Support Term Effective Date.

3. Support Options.

3.1 Universal Support. Universal Support consists of unlimited use of the Support Forum available to all NVIDIA registered licensees without fee.

3.2 Platinum Support. Platinum Support consists of Universal Support, User Ticket Support with Response from NVIDIA within 2 Days.

3.3 Optional On-site Support. Optional On-site Support is available with Platinum levels of Support at the fees specified in Exhibit A. On-site Support is only available once per quarter, must be purchased in two-day increments, and requires reimbursement of reasonable travel expenses for NVIDIA personnel, to include airfare, local transportation, hotel, and per diem.

3.4 Limitations. NVIDIA is not required to resolve Errors directly related to: (a) errors in Company's own or its Licensors' products that are not due to Errors in the Supported Software, (b) service necessary due to accident, catastrophe, or negligence of Company 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 faulty electrical power, hardware failure, or use of the Supported Software with hardware or software not supplied or recommended by NVIDIA; (d) Company's failure to implement corrections, bug fixes or Updates supplied by NVIDIA which would correct the Error and were previously made available by NVIDIA, or (e) modifications to the Supported Software made by or on behalf of Company or a permitted sub-licensee, or any modifications made by any third party without NVIDIA's authorization.

4. Support Fees.

Company will pay NVIDIA fees as set forth in Exhibit A to this Agreement for any Support requested by Company. Support Fees are exclusive of expenses such as transportation, insurance, federal, state and local taxes, uses taxes, value added taxes, property or similar taxes, export or import fees. Any such fees will be paid by the party incurring the expense. The fees for any renewal Support Term beyond the initial one-year Support Term may increase annually by up to 7% per year.

5. Maintenance.

If NVIDIA provides Updates, Company will use commercially reasonable efforts to discontinue use of the pre-Update version of the Supported Software. Company will distribute only those versions of Supported Software obtained utilizing NVIDIA's Installer/PhysX loader for release in Company Titles. NVIDIA will arrange for Company Designated Users to have access to current versions, Updates and bug fixes through the developer support website, and all such versions, Updates and bug fixes may be used by Company only as provided in the License Agreement and as reasonably designated by NVIDIA from time to time for particular Updates. In no circumstance will NVIDIA be required to correct Errors in a version of the Supported Software that is not presently supported in the developer support website. Through its developer support website, NVIDIA will notify Company when Support for prior versions will cease to be available.

6. Support and Feature Requests.

NVIDIA is entitled to use any information provided by Company in connection with Support for any purpose, including in the NVIDIA products. NVIDIA may classify certain Ticket Support or other Support inquiries which are not Errors as Feature Requests. Feature Requests are requests or suggestions for additional features or functionality in the Supported Software. Feature Requests become the sole property of NVIDIA and may be used in any manner NVIDIA sees fit, and Company hereby assigns to NVIDIA all of its right, title and interest in any Feature Request. NVIDIA has no obligation to respond to Feature Requests or to incorporate them into the Supported Software.

7. Miscellaneous.

7.1 Applicable Terms. All Updates, bug fixes, patches or new versions of the Supported Software and related Support are licensed under the terms of the License Agreement, and all the limitations, restrictions and other terms and conditions contained therein apply in full to this Agreement. In the event of any conflict with the terms of this Agreement, the terms of this Agreement will control.

7.2 Company Assistance. Company will provide NVIDIA with full and free access to the software being used by Company or its studios that is the subject of a particular Support Inquiry, and NVIDIA agrees to treat all such software that does not consist of NVIDIA Licensed Software as Confidential Information under this Agreement. Company will further provide NVIDIA with all other reasonable assistance, as requested by NVIDIA, to assist NVIDIA in reproducing the operating conditions on the platform in use and otherwise in

responding to Support Inquiries. Company further agrees, upon NVIDIA's reasonable request, to provide NVIDIA access to the Source Code for its Games and Runtimes, strictly for purposes of NVIDIA internal quality evaluations and performance profiling.

7.3 Designated Users. Company will appoint as Designated Users only those of its employees who have reasonably appropriate technical backgrounds and skills. Company may remove or replace any of the Designated Users at any time during the Support Term upon written notice to NVIDIA.

7.4 Escalation. NVIDIA and Company will each assign designated contact support and engineering contacts and escalation managers.

7.5 Assignment. This Agreement and the rights and obligations hereunder may be assigned by either party only with the prior written consent of the other party, except that (a) NVIDIA may, without Company's consent, assign this Agreement and its rights and obligations hereunder to a successor of all or substantially all of NVIDIA's assets, stock or business to which this Agreement relates (whether by sale, acquisition, merger, operation of law or otherwise). This Agreement will be binding on, inure to the benefit of, and be enforceable by the parties and their respective heirs, successors and permitted assigns.

7.6 Notices. Any notice or other communication to be given to either party under this Agreement will be deemed sufficiently given on the date of delivery if delivered in person or by overnight commercial courier service with tracking capabilities with costs prepaid, or 5 days after the date of mailing if sent by certified first class U.S. mail, return receipt requested and postage prepaid, to the address of the parties (and addressed to the representative) set forth below or such other address (or representative) as may be given from time to time under the terms of this notice provision:

If to NVIDIA: 2701 San Tomas Expressway
Santa Clara, CA 95050
Attn: General Counsel
Tel: 408-486-2000
Fax: 408-486-2200

If to Company: [enter company's address and phone number]

7.7 Force Majeure. Neither party will be liable hereunder for any delay or failure in performance caused by an event of force majeure (that is, circumstances beyond the reasonable control of the affected party, including acts of God, fire, flood, war, governmental action, 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. In no case will force majeure apply to any duty to make payment hereunder.

7.8 Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject

matter hereof and supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom.

7.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the

same instrument. This Agreement may be executed by facsimile with the original signatures following promptly by one of the methods of delivery or mailing set forth in Section 12.6 above.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives.

NVIDIA CORPORATION:

[COMPANY]:

By (Signature): _____

By (Signature): _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

EXHIBIT A

SUPPORT AND FEES

Platinum Support, per year: \$10,000 U.S. per platform

Optional additional On-site Support for Platinum Customers: \$2,000 U.S. per man day, minimum of 2 days, maximum of once per calendar quarter, plus reimbursement of travel expenses

The foregoing amounts may increase annually for renewal Support Terms after the initial Support Term in accordance with NVIDIA's standard rates, not to exceed an increase of 7% per year. Initial Support Term payment is due within 30 days of date of NVIDIA's invoice. Renewal Support Terms will be invoiced 30 days in advance of expiration of the initial Support Term and payment is due within 30 days of date of invoice. Any Optional Support fees are invoiced monthly by NVIDIA and payment is due within 30 days of date of invoice. All payments will be made (a) at NVIDIA's address as indicated in this Agreement or at such other address as NVIDIA may from time to time indicate by proper notice hereunder or (b) by wire transfer to a bank and account number to be designated by NVIDIA. Past due amounts are subject to interest at the rate of 1.5% per month (or the highest rate permitted by law, if lower) from the date payment was due until the date paid.

DESIGNATED USERS

- 1.
- 2.
- 3.
- 4.