

# NVIDIA® Tegra Software License Agreement – Linux For Tegra

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## 1. **DEFINITIONS.**

1.1 “**Affiliate**” means any company or legal entity that at various times controls, is controlled by, or is under common control with Licensee. Only for the purposes of this definition, “Control” means (a) direct or indirect ownership of at least fifty percent (50%) of the voting power of the shares or other securities for election of directors (or other managing authority) of the controlled or commonly controlled entity; (b) holding, directly or indirectly, the power to exercise more than fifty percent (50%) of the entity’s voting rights; or (c) holding, directly or indirectly, the power to appoint the majority of the members of the entity’s board of directors (or similar governing body), or in each case, the maximum percentage permitted where a lesser percentage is required in a jurisdiction. The parties shall be fully responsible for the actions / inactions of their Affiliates under this Agreement.

1.2 “**Competitors**” shall mean any company that develops, manufactures, produces, sells, distributes or licenses application processors, computers-on-chips, systems-on-chips, CPUs, DSPs or GPU technology.

1.3 “**Confidential Information**” shall mean (a) the Licensed Materials; (b) either parties’ technology, ideas, know-how, documentation, processes, algorithms and trade secrets embodied in the Licensed Materials; (c) any other information disclosed by either party to the other that is (i) identified as “confidential,” “proprietary” or with a similar legend at the time of disclosure, or (ii) if unmarked or disclosed orally or visually, are identified as confidential at the time of disclosure and confirmed by a written memorandum sent to the receiving party within thirty (30) calendar days of disclosure summarizing the confidential information sufficiently for identification; and (d) the terms and conditions of this Agreement.

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1.4 “Contractor” shall mean any third party company or individuals, including but not limited to original device manufacturers, who Licensee engages for the purpose of such third party performing services for the benefit of Licensee in connection with this Agreement.

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- (c) provide Licensee commercially reasonable assistance in the defense thereof, at Licensee's expense; and
- (d) give Licensee sole control of the defense thereof and all negotiations for its settlement and compromise, which shall not be finalized without the prior written consent of NVIDIA.

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- (b) reimburse NVIDIA for any licensing fees and/or penalties incurred by NVIDIA in connection with a Claim; and
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- (b) Licensee shall protect the source code of the Licensed Materials to the same degree as Licensee protects its own Confidential Information;
- (c) Licensee shall not grant third parties, excluding Affiliates or Contractors, access to the source code of the Licensed Materials;
- (d) Licensee shall restrict disclosure and access to and use of the Licensed Materials (in source code form) to those employees (including those of its Affiliates and/or Contractors) who have agreed to be bound by a written confidentiality agreement which incorporates the protections and restrictions no less protective than those set forth in this Agreement with respect to the Licensed Materials;
- (e) Licensee shall secure the source code to the Software and Licensed Materials in a secure location at all times;
- (f) Licensee shall not use the Licensed Materials and/or Derivative Work(s) created by Licensee to compete against NVIDIA or shall not use the Licensed Materials and/or Derivative Work(s) in litigation against NVIDIA; and
- (g) Licensee's employees, Affiliates, or Contractors who have been exposed to source code of the Licensed Materials shall not be permitted to use any ideas, techniques or know-how obtained from their respective use of the Licensed Materials for any engagement, including but not limited to services or product development (hardware or software) work for the benefit of NVIDIA's Competitors.

3.7 Defensive Suspension. If Licensee and/or its Affiliates commence or participates in any legal proceeding against NVIDIA, then NVIDIA may, in its sole discretion, suspend or terminate all license grants and any other rights provided under this Agreement during the pendency of such legal proceedings.

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#### 5. **CONFIDENTIAL INFORMATION; ACCESS TO SOFTWARE.**

5.1 Protection of Confidential Information. The parties shall not use or disclose any Confidential Information received from the other party, except as expressly authorized by this Agreement, and shall protect all such Confidential Information using the same degree of care which the receiving party uses with respect to its own proprietary information, but in no event with safeguards less than a reasonably prudent business would exercise under similar circumstances. The parties shall not use the Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information. The parties shall use commercially reasonable efforts to prevent any actual or threatened unauthorized copying, use or disclosure of Confidential Information, and shall promptly notify the other party of any such actual or threatened unauthorized disclosure or use. If any Confidential Information must be disclosed to any third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of the disclosing party, the disclosing party shall promptly notify the other party of the order or request and permit the other party (at its own expense) to seek an appropriate protective order.

For the sake of clarity, the parties agree that, notwithstanding the preceding paragraph, any and all information identified as Confidential Information (as defined in the NDA) by the disclosing party in connection with this Agreement shall also be protected under the NDA; provided, however, that in the event of any conflict between the confidentiality obligations pursuant to this Agreement and the obligations pursuant to the NDA with regard to any Confidential Information (as defined in the NDA) in connection with this Agreement, including, without limitation, the source code to the Licensed Materials, the terms of this Agreement shall prevail.

#### 6. **TERM; TERMINATION**

6.1 Term. This Agreement and the licenses granted hereunder shall be effective as of the date Licensee first uses the Licensed Materials ("Effective Date") and continue for a period of one (1) year (the "Initial Term"), unless terminated in accordance with Section 6.2. Unless either party notifies the other party of its intent to terminate this Agreement at least one (1) month prior to the end of the Initial Term or the applicable renewal period ("Renewal Period(s)"), this Agreement will be automatically renewed for one (1) year Renewal Periods, provided however that this Agreement will automatically expire at such time when Licensee no longer intends to use the Licensed Materials for the authorized purposes described in this Agreement, at this time Licensee will comply with the termination provisions in Section 6.2 below.

6.2 Termination. Either party may terminate this Agreement immediately upon written notice for the material breach of the other party, which material breach is curable and has remained uncured for a period of thirty (30) days from the date of delivery of written notice thereof to the other party. Upon the termination or expiration of this Agreement,

- (a) Licensee shall (i) immediately cease using the Licensed Materials for any purpose whatsoever; (ii) immediately destroy or return to NVIDIA all materials belonging to NVIDIA, including without limitation all copies of the Software and NVIDIA Confidential Information then in Licensee's possession or control; and (iii) certify to NVIDIA in writing that it has done so; and
- (b) NVIDIA shall (i) immediately destroy or return to Licensee all materials belonging to Licensee that were provided to NVIDIA pursuant to this Agreement, including without limitation, Licensee's Confidential Information then in NVIDIA's possession or control; and (ii) certify to Licensee in writing that it has done so. These remedies shall be cumulative and in addition to any other remedies available to NVIDIA.

6.3 Survival. Those provisions in this Agreement, which by their nature need to survive the termination or expiration of this Agreement, The following Sections shall survive termination or expiration of the Agreement, including but not limited to Sections 1, 2.2, 2.3, 2.4, 3, 4, 5, 6.2 , 6.3, 7, 8, 9 and Exhibit A.

## 7. **WARRANTIES**

THE LICENSED MATERIALS ARE LICENSED FOR LICENSEE'S USE "AS IS" AND NVIDIA AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. NVIDIA DOES NOT REPRESENT OR WARRANT THAT THE LICENSED MATERIALS WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE CONTAINED THEREIN OR RESULTING THEREFROM WILL BE UNINTERRUPTED OR ERROR-FREE. NO INFORMATION OR ADVICE GIVEN BY NVIDIA, ITS REPRESENTATIVES, AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

(A) Licensee represents and warrants that it has, or will have prior to the commercial release of the Licensee Products, a valid and current license to all the Third Party Components referenced in the exhibits of this Agreement, for use in connection with Licensed Materials provided pursuant to this Agreement and Licensee Products.

## 8. **LIMITATION OF LIABILITY**

IN NO EVENT SHALL:

(A) NVIDIA BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, OF ANY KIND OR CHARACTER, INCLUDING LOST PROFITS, LOST REVENUE, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, LOSS OF DATA OR USE, AND CLAIMS BY ANY THIRD PARTY, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT; AND

(B) NVIDIA'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY LICENSEE FOR USE OF THE LICENSED MATERIALS. THE FOREGOING EXCLUSION AND LIABILITY LIMITATIONS APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF

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## 9. GENERAL

9.2 Governing Law. This Agreement shall be governed in all respects by the laws of the United States and of the State of Delaware, without regard to the conflicts of laws principles thereof.

9.3 Jurisdiction. The state and/or federal courts residing in Santa Clara County, California shall have exclusive jurisdiction over any dispute or claim arising out of this Agreement.

9.4 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

9.5 Amendments. The Agreement shall not be modified except by a written agreement that names this Agreement and any provision to be modified, is dated subsequent to the Effective Date, and is signed by duly authorized representatives of both parties.

9.6 No Waiver. No failure or delay on the part of either party in the exercise of any right, power or remedy under this Agreement or under law, or to insist upon or enforce performance by the other party of any of the provisions of this Agreement or under law, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy; rather the provision, right, or remedy shall be and remain in full force and effect.

9.7 No Assignment. This Agreement, and each party's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by either party without the other party's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon assignees.

9.8 Independent Contractors. NVIDIA's relationship to Licensee is that of an independent Contractor, and neither party is an agent or partner of the other. Neither party will have, and will not represent to any third party that it has, any authority to act on behalf of the other party.

9.9 Export Restrictions. The parties acknowledge that the Licensed Materials are subject to U.S. export control laws and regulations. The parties agree to comply with all applicable international and national laws that apply to the Licensed Materials, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

9.10 U.S. Government Legend. If Licensee is a branch or agency of the United States Government, the following provision applies. Any software provided under this Agreement, including any releases are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.



9.11 Headings. The headings in this Agreement are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

9.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

9.13 No Third Party Beneficiaries. This Agreement is solely between NVIDIA and Licensee. There are no third party beneficiaries, express or implied, to this Agreement.

9.14 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contemplated herein, and merges all prior and contemporaneous communications.

## Exhibit A

### **1. Coding Technologies/AAC+**

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