

## NVIDIA RIVA LICENSE AGREEMENT

This license, including the exhibit attached, is a legal agreement between you and NVIDIA Corporation ("NVIDIA") and governs the use of NVIDIA Riva Products (as defined below). By accessing or using Riva Products, you are affirming that you have read and agree to this license.

This license can be accepted only by an adult of legal age of majority in the country in which Riva Products are used. If you are under the legal age of majority, you must ask your parent or legal guardian to consent to this license.

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

If you don't have the required age or authority to accept this license, or if you don't accept all the terms and conditions of this license, do not use Riva Products.

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

### 1. Definitions.

1.1 "ASR Usage" means the number of hours of audio-to-text conversion using a Riva Product.

1.2 "Community License" as defined in Section 2.3 below.

1.3 "Enterprise Subscription License" as defined in Section 2.3 below.

1.4 "Feedback" means suggestions, fixes, modifications, feature requests or other feedback regarding Riva Products including proposed changes.

1.5 "Riva Products" means NVIDIA Riva software and materials, which may include software, models, helm charts and other content delivered by NVIDIA in a container (each, a "CONTAINER") or other form, each as available at NVIDIA's discretion.

1.6 "TTS Usage" means the number of characters-to-audio conversion using a Riva Product.

### 2. License.

2.1 Grant. Subject to the terms of this license, the applicable limitations of your license (for example, your license type and duration) and payment of fees (where applicable), NVIDIA grants you a non-exclusive, non-transferable, non-sublicensable (except as described in this license) license to:

- a. Install and use copies of the Riva Product delivered in a CONTAINER or other form,
- b. Configure the Riva Product using the configuration files provided (as applicable),
- c. Create derivative works of samples or example source code delivered in the Riva Product (if applicable), to develop and test services and applications,

d. Deploy the Riva Product delivered in a CONTAINER on infrastructure you own or lease to offer a service to third parties, without distributing the Riva Product or exposing the NVIDIA APIs in the Riva Product directly to such service users,

e. Develop and extend the Riva Product delivered in a CONTAINER to create a Compatible (as defined below) derived CONTAINER that includes the entire CONTAINER plus other software with primary functionality, to develop and compile applications, and distribute such derived CONTAINER to run applications, subject to the distribution requirements indicated in this license. As used in this section, “Compatible” means that extensions to the CONTAINER must not adversely affect the functionality of the other components in the CONTAINER, and

f. Use Riva Products delivered in a form other than a CONTAINER: as described in subsection (a) above, or with Riva Product delivered in a CONTAINER as described above, or to develop other applications and you may distribute the applications including such Riva Product subject to the distribution requirements indicated in this license.

2.2 Promotional Offerings. NVIDIA may, from time to time, offer free or discounted pricing programs covering certain uses of a Riva Product, as examples for evaluation or academic use. NVIDIA may stop accepting new sign-ups or discontinue a promotional offering at any time. Standard charges will apply after a promotional offering end or if you exceed the promotional offering use terms. You must comply with any additional terms, restrictions, or limitations (e.g., limitations on the total amount of usage) for a promotional offering as described in the corresponding offer terms.

2.3 Reporting. During each month that you have valid licenses to Riva Products, NVIDIA may request in writing, and you shall provide within 10 business days of NVIDIA’s request, a written certification indicating the ASR Usage and TTS Usage utilized.

### 2.3 License Types.

Riva Products obtained under this license may be used commercially, provided however that an entity may only have one Community License to a Riva Product at any point in time without purchasing an Enterprise Subscription License. Once you have an Enterprise Subscription License to a Riva Product, all your licenses to such Riva Product must be under an Enterprise Subscription License. Additional details of your license may be indicated in your order, license key and/or the product description.

“Community License” means a license that allows authorized users within an entity to use a Riva Product up to the maximum amount of 1,000 hours per day with respect to ASR Usage, and 25 million characters per day with respect to TTS Usage, and such license is exclusive of the services described in the Software Support Supplement.

“Enterprise Subscription License” means a license with a fixed duration that allows authorized users within an entity to use a Riva Product up to the maximum amount of ASR Usage or TTS Usage authorized under the license, and such license is inclusive of certain services described in the Software Support Supplement for the duration of the license. You may have the option to purchase additional services for the duration of an Enterprise Subscription License, based on NVIDIA’s then-current service offerings.

### 3. Distribution Requirements.

For purposes of this Section 3, the term “distribution” also means the deployment of Riva Product in a service or an application for third parties to access over the internet. These are the distribution requirements for you to exercise the grants described above:

3.1 A service or application must have material additional functionality, beyond the included portions of the Riva Products.

3.2 You agree to notify NVIDIA in writing of any known or suspected distribution or use of the Riva Products not in compliance with the requirements of this license, and to enforce the terms of your agreements with respect to the distributed Riva Products.

3.3 The following notice shall be included in modifications and derivative works of source code distributed: “This software contains source code provided by NVIDIA Corporation.”

3.4 The terms under which you distribute a Riva Product must be at least as protective as the terms of this license (including, but not limited to, terms relating to the license grant, license restrictions and protection of NVIDIA’s intellectual property rights). Additionally, you agree that you will protect the privacy, security and legal rights of your application users.

4. Authorized Users. You may allow employees and contractors of your entity or of your subsidiary(ies) to access and use Riva Products 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 Riva Products from your secure network. You are responsible for the compliance with the terms of this license by your authorized users.

5. Limitations. Your license to use Riva Products is restricted as follows:

5.1 The Riva Product is licensed to you to develop services or applications only for their use in systems with NVIDIA GPUs.

5.2 You shall use Riva Products exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others.

5.3 You may not combine the use of paid and unpaid Riva Products to bypass paying license or service fees to NVIDIA.

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

5.5 Except as expressly provided in this license, you may not copy, sell, rent, sublicense, transfer, distribute, modify or create derivative works of any portion of Riva Products, including (without limitation) in any publicly accessible software repositories.

5.6 You may not indicate that a product or service developed with Riva Products is sponsored or endorsed by NVIDIA.

5.7 You may not bypass, disable, or circumvent any technical limitations, encryption, security, digital rights management or authentication mechanism in Riva Products.

5.8 You may not replace any NVIDIA software components that are governed by this license with other software that implements NVIDIA APIs.

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

5.10 Unless you have an agreement with NVIDIA for the use of Riva Products in critical applications, you may not use Riva Products 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 avionics, navigation, military, medical, life support or other life critical applications. NVIDIA does not design, test or manufacture Riva Products 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.

5.11 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 Riva Products outside of the scope of this license, or not in compliance with its terms. If you are prohibited by law from entering into the indemnification obligation above, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation above.

6. Updates and Support. NVIDIA will at its sole discretion update the Riva Products. Except if pursuant to an accepted order, NVIDIA is under no obligation to provide support services, maintenance, updates or upgrades as described in Software Support Supplement. Unless revisions are provided with their separate governing terms, they are deemed part of the Riva Product, as applicable, and governed by this license.

7. Pre-Release Versions. The Riva Products identified as alpha, beta, preview, early access or otherwise as pre-release may not be fully functional, may contain errors or design flaws, and may have reduced or different security, privacy, availability, and reliability standards relative to commercial versions of NVIDIA offerings. You may use a pre-release Riva Products offering at your own risk, understanding that such versions are not intended for use in business-critical systems. NVIDIA may choose not to make available a commercial version of any pre-release Riva Products offering. NVIDIA may also choose to abandon development and terminate the availability of a pre-release Riva Products offering at any time without liability.

8. Components Under Other Licenses. Riva Products may include NVIDIA or third-party components with separate legal notices or terms as may be described in proprietary notices accompanying the Riva Products component. If and to the extent there is a conflict between the terms in this license and the license terms associated with a component, the license terms associated with a component control only to the extent necessary to resolve the conflict.

Subject to the other terms of this license, you may use the Riva Products to develop and test applications released under Open Source Initiative (OSI) approved open source software licenses.

9. Ownership. NVIDIA reserves all rights, title and interest in and to Riva Products not expressly granted to you

under this license. NVIDIA and its suppliers hold all rights, title and interest in and to Riva Products, including their respective intellectual property rights. Riva Products are copyrighted and protected by the laws of the United States and other countries, and international treaty provisions.

10. Feedback. You may, but are not obligated to, provide Feedback to NVIDIA or a NVIDIA affiliate. Feedback, even if designated as confidential by you, shall not create any confidentiality obligation for NVIDIA and its affiliates. NVIDIA and its designees have a perpetual, non-exclusive, worldwide, irrevocable license to use, reproduce, publicly display, modify, create derivative works of, license, sublicense, and otherwise distribute and exploit Feedback as NVIDIA sees fit without payment and without obligation or restriction of any kind on account of intellectual property rights or otherwise. You represent and warrant that you have sufficient rights in any Feedback that you provide to grant the rights described above.

#### 11. Data Collection.

You hereby acknowledge that the Riva Products may access and collect data in order to: (a) check for compliance with the license obtained; and (b) improve NVIDIA products and services. Information collected by the Riva Products is limited to: (i) usage data such as ASR Usage and TTS Usage; and (ii) diagnostic data, including crash reports, when technical support is provided.

Riva Products may contain links to websites and services. 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 data. NVIDIA is not responsible for the privacy statements or practices of sites and services controlled by other companies or organizations.

You should review the NVIDIA Privacy Policy, located at <https://www.nvidia.com/en-us/about-nvidia/privacy-policy/>, which explains NVIDIA's policy for collecting and using data.

12. No Warranties. RIVA PRODUCTS ARE PROVIDED AS-IS AND WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NVIDIA AND ITS AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NVIDIA DOES NOT WARRANT THAT RIVA PRODUCTS WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS CAN OR WILL BE CORRECTED. NVIDIA does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links or other items contained in Riva Products.

13. Limitations Of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NVIDIA AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST PROFITS, PROJECT DELAYS, 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 LICENSE OR THE USE OR PERFORMANCE OF RIVA PRODUCTS, 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, EVEN IF NVIDIA HAS PREVIOUSLY BEEN ADVISED OF, OR COULD REASONABLY HAVE FORESEEN, THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS IF A REMEDY FAILS ITS ESSENTIAL PURPOSE. IN NO EVENT WILL NVIDIA'S AND ITS AFFILIATES TOTAL CUMULATIVE LIABILITY UNDER OR ARISING OUT OF THIS LICENSE EXCEED THE NET AMOUNTS RECEIVED BY NVIDIA OR ITS AFFILIATES FOR YOUR USE OF THE PARTICULAR UNEXPIRED RIVA PRODUCTS LICENSES GIVING RISE TO THE CLAIM BEFORE THE LIABILITY AROSE (or up to US\$10.00 if you obtained licenses or services at no charge). THE NATURE OF THE LIABILITY OR THE NUMBER OF

CLAIMS OR SUITS SHALL NOT ENLARGE OR EXTEND THIS LIMIT. The disclaimers, exclusions and limitations of liability set forth in this license form an essential basis of the bargain between the parties, and, absent any such disclaimers, exclusions or limitations of liability, the provisions of the license, including, without limitation, the economic terms, would be substantially different.

#### 14. Termination.

14.1 NVIDIA may terminate this license upon notice if: (i) you fail to comply with any term of this license and the non-compliance is not fixed within ten (10) days following notice from NVIDIA (or immediately if you violate NVIDIA's intellectual property rights); (ii) you commence or participate in any legal proceeding against NVIDIA with respect to the software; or (iii) you become 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 you cease to do business. 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 this license including failure to pay any invoices from NVIDIA in a timely manner.

14.2 For Riva Products for which NVIDIA indicates a fixed license duration (i.e., an Enterprise Subscription License with a term), your license ends at the earlier of the expiration or termination of the applicable subscription term or this license. For Riva Products for which NVIDIA does not indicate a fixed license duration, either party may terminate the license at any time for convenience with 30 days prior written notice. Each service ends at the earlier of the expiration or termination of the service or this license, or upon the expiration or termination of the associated license and no credit or refund will be provided for any fees paid.

14.3 Upon any expiration or termination of this license, a particular license or a service, any amounts owed to NVIDIA become immediately due and payable and you agree to promptly discontinue use of the affected Riva Products 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 license all provisions survive except for the licenses granted to you.

#### 15. General

15.1 Applicable Law. This license will 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. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. You agree to all terms of this license 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 license. Notwithstanding this, you agree that NVIDIA shall still be allowed to apply for injunctive remedies or urgent legal relief in any jurisdiction.

15.2 No Assignment. This license and your rights and obligations thereunder may not be assigned by you by any means or operation of law without NVIDIA's permission. Any attempted assignment not approved by NVIDIA in writing shall be void and of no effect. NVIDIA may assign, delegate or transfer this license and its rights and obligations, and if to a non-affiliate you will be notified.

15.3 Audit Rights. During the term of this license and for a period of three (3) years thereafter, NVIDIA or an independent auditor will have the right to audit you during regular business hours to check for compliance with the terms of this license. Audits will be conducted no more frequently than annually, unless inaccurate reporting or non-compliance was previously found. If an audit reveals an underpayment, 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 during the audited period and/or if the audit reveals a material non-conformance with the terms of this license, then you will reimburse NVIDIA's reasonable audit costs. Further, you agree that the party delivering Riva Products licenses or services to you may share with NVIDIA information regarding your compliance with this license.

15.4 Export. Riva Products are subject to United States export laws and regulations. You agree to comply with all applicable U.S. and international export laws, including the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce and economic sanctions administered by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC). These laws include restrictions on destinations, end-users and end-use. By accepting this license, you confirm that you are not currently residing in a country or region currently embargoed by the U.S. and that you are not otherwise prohibited from assessing or using Riva.

15.5 Government Use. Riva Products are, and shall be treated as being, "Commercial Items" as that term is defined at 48 CFR § 2.101, consisting of "commercial computer software" and "commercial computer software documentation", respectively, as such terms are used in, respectively, 48 CFR § 12.212 and 48 CFR §§ 227.7202 & 252.227-7014(a)(1). Use, duplication or disclosure by the U.S. Government or a U.S. Government subcontractor is subject to the restrictions in this license pursuant to 48 CFR § 12.212 or 48 CFR § 227.7202. In no event shall the US Government user acquire rights in Riva Products beyond those specified in 48 C.F.R. 52.227-19(b)(1)-(2).

15.6 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) to the extent due to causes beyond its reasonable control for so long as such force majeure event continues in effect.

15.7 Notices. 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. If NVIDIA needs to contact you about Riva Products, you consent to receive the notices by email or through Riva Products. You agree that any such notices that NVIDIA sends you electronically will satisfy any legal communication requirements.

15.8 Entire Agreement. This license, together with the Software Support Supplement, is the final, complete and exclusive agreement between the parties relating to the subject matter of this license and supersedes all prior or contemporaneous understandings and agreements relating to this subject matter, whether oral or written. If any court of competent jurisdiction determines that any provision of this license is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. Any additional and/or conflicting terms and conditions on any other documents are null, void, and invalid. Any amendment or waiver under this license shall be in writing and signed by representatives of both parties to be valid.

15.9 Licensing. If the distribution terms in this license are not suitable for your organization, or for any questions regarding this license, please contact NVIDIA at [Riva-license-questions@nvidia.com](mailto:Riva-license-questions@nvidia.com).

(v. March 30, 2022)

## SOFTWARE SUPPORT SUPPLEMENT

The terms in this supplement describe the support services that you may obtain directly from NVIDIA for certain Riva Products under the terms of your license agreement as modified by this supplement. Capitalized terms used but not defined below shall have the meaning assigned to them in the license.

This supplement is an exhibit to the license and is incorporated as an integral part of the license. In the event of conflict between the terms in this supplement and the terms in the license, 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 license(s), then NVIDIA agrees to provide the below services for the applicable Supported Products based on the service subscription purchased during the applicable service term, solely on Certified System(s), 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 Supported Products. If you have an agreement with a NVIDIA reseller specifying that a third-party will deliver the same services described in this supplement for Supported Products, 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 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 applicable Supported Products 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 applicable Supported Products 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 applicable Supported Products 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 applicable Supported Products during the service term.

2.5 Reinstatement. If you elect not to renew certain service subscriptions and later you desire to re-enroll, 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 service subscription, (b) fees for service term of the new service subscription, and (c) any 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 Supported Products only for the most current generally available version of Supported Products, and (b) initially purchase and renew service subscriptions for all of your licenses of the applicable Supported Products. The service subscription plans will indicate the types of services (from the above) that are available for specific Supported Products. NVIDIA is not obligated to provide any services under this supplement for Supported Products 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.



NVIDIA does not provide services under this supplement related to:

- (a) errors in your own or your licensors' products that are not due to Errors in Riva Products;
- (b) service necessary due to operator error, improper use of Riva Products or attempted support by unauthorized persons;
- (c) use of Riva Products outside of this license scope;
- (d) modifications to Riva Products made by you or on your behalf, or any modifications made by any third party without NVIDIA's authorization;
- (e) use of Riva Products 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) Riva Products licenses or related services provided free of charge.

Further, services under this supplement do not include any enhancement(s) or addition(s) to Supported Products beyond Maintenance, Updates and Upgrades for Supported Products.

#### **4. Your 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 Supported Products;
- (b) your failure to deploy a Maintenance, Update or Upgrade available to you as promptly as possible may render the applicable Supported Products non-operable or non-conforming to 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 Products, (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 Supported Products 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. Service Fees; Payment Terms.**

When you purchase service subscriptions directly from NVIDIA the following applies: 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, fees will be invoiced upon your purchase, are payable upon invoice and are expressed in U.S. Dollars. All fees are non-refundable, and don't 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 under the license 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 resale 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 license 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 is overdue,

NVIDIA reserves the right to suspend or terminate service subscriptions, in addition to any other remedies it may have, until the payment delinquency is corrected. Payment obligations survive any expiration or termination of the license.

## 6. Definitions.

- i. "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.
- ii. "Error(s)" means a reproducible defect, problem, logical error or bug in the Supported Products that constitutes a failure to comply substantially with the applicable documentation and is reported using standard NVIDIA procedures.
- iii. "Error Correction(s)" means adapting, re-configuring, or reprogramming the Supported Products to correct the Error(s).
- iv. "Maintenance" means security patch(es), Error Correction(s) and Workaround(s) to the Supported Products 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 Products who have the same Supported Products version under a service subscription contract with NVIDIA that specifically includes "Maintenance". Maintenance may include revisions to documentation.
- v. "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.
- vi. "Supported Products" means the Riva Products installed for your use 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 Products made by NVIDIA pursuant to a consulting services agreement or any portion of the Supported Product not developed by NVIDIA.
- vii. "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 Products, including basic instruction or assistance related to functional Errors in the Supported Products.
- viii. "Updates" means those modifications to the Supported Products 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 Riva Products who have the same Supported Products 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).
- ix. "Upgrades" means those modifications to the Supported Products 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 Products who have the same Supported Products 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).
- x. "Workarounds" means procedures and routines, for use by you, which, when employed in the regular operation of, or access to, the Supported Products, will avoid or substantially diminish the practical adverse effects of the relevant Error.