

NVIDIA SOFTWARE LICENSE AGREEMENT

Release Date: October 20, 2016

IMPORTANT – READ BEFORE DOWNLOADING, INSTALLING, COPYING OR USING THE LICENSED SOFTWARE

This Software License Agreement ("SLA"), made and entered into as of the time and date of click through action ("Effective Date"), is a legal agreement between you and NVIDIA Corporation ("NVIDIA") and governs the use of the NVIDIA computer software and the documentation made available for use with such NVIDIA software. By downloading, installing, copying, or otherwise using the NVIDIA software and/or documentation, you agree to be bound by the terms of this SLA. If you do not agree to the terms of this SLA, do not download, install, copy or use the NVIDIA software or documentation. IF YOU ARE ENTERING INTO THIS SLA ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY TO THIS SLA, IN WHICH CASE "YOU" WILL MEAN THE ENTITY YOU REPRESENT. IF YOU DON'T HAVE SUCH AUTHORITY, OR IF YOU DON'T ACCEPT ALL THE TERMS AND CONDITIONS OF THIS SLA, THEN NVIDIA DOES NOT AGREE TO LICENSE THE LICENSED SOFTWARE TO YOU, AND YOU MAY NOT DOWNLOAD, INSTALL, COPY OR USE IT.

1. LICENSE.

1.1 License Grant. Subject to the terms of the AGREEMENT, NVIDIA hereby grants you a non-exclusive, non-transferable license, without the right to sublicense (except as expressly set forth in a Supplement), during the applicable license term unless earlier terminated as provided below, to have Authorized Users install and use the Software, including modifications (if expressly permitted in a Supplement), in accordance with the Documentation. You are only licensed to activate and use Licensed Software for which you have a valid license, even if during the download or installation you are presented with other product options. No Orders are binding on NVIDIA until accepted by NVIDIA. Your Orders are subject to the AGREEMENT.

SLA Supplements: Certain Licensed Software licensed under this SLA may be subject to additional terms and conditions that will be presented to you in a Supplement for acceptance prior to the delivery of such Licensed Software under this SLA and the applicable Supplement. Licensed Software will only be delivered to you upon your acceptance of all applicable terms.

1.2 Limited Purpose Licenses. If your license is provided for one of the purposes indicated below, then notwithstanding contrary terms in Section 1.1 or in a Supplement, such licenses are for internal use and do not include any right or license to sublicense and distribute the Licensed Software or its output in any way in any public release, however limited, and/or in any manner that provides third parties with use of or access to the Licensed Software or its functionality or output, including (but not limited to) external alpha or beta testing or development phases. Further:

(i) Evaluation License. You may use evaluation licenses solely for your internal evaluation of the Licensed Software for broader adoption within your Enterprise or in connection with a NVIDIA product purchase decision, and such licenses have an expiration date as indicated by NVIDIA in its sole discretion (or ninety days from the date of download if no other duration is indicated).

(ii) Educational/Academic License. You may use educational/academic licenses solely for educational purposes and all users must be enrolled or employed by an academic institution. If you do not meet NVIDIA's academic program requirements for educational institutions, you have no rights under this license.

(iii) Test/Development License. You may use test/development licenses solely for your internal development, testing and/or debugging of your software applications or for interoperability testing with the Licensed Software, and such licenses have an expiration date as indicated by NVIDIA in its sole discretion (or one year from the date of download if no other duration is indicated). NVIDIA Confidential Information under the AGREEMENT includes output from Licensed Software developer tools identified as "Pro" versions, where the output reveals functionality or performance data pertinent to NVIDIA hardware or software products.

1.3 Pre-Release Licenses. With respect to alpha, beta, preview, and other pre-release Software and Documentation ("**Pre-Release Licensed Software**") delivered to you under the AGREEMENT you acknowledge and agree that such Pre-Release Licensed Software (i) may not be fully functional, may contain errors or design flaws, and may have reduced or different security, privacy, accessibility, availability, and reliability standards relative to commercially provided NVIDIA software and documentation, and (ii) use of such Pre-Release Licensed Software may result in unexpected results, loss of data, project delays or other unpredictable damage or loss. THEREFORE, PRE-RELEASE LICENSED SOFTWARE IS NOT INTENDED FOR USE, AND SHOULD NOT BE USED, IN PRODUCTION OR BUSINESS-CRITICAL SYSTEMS. NVIDIA has no obligation to make available a commercial version of any Pre-Release Licensed Software and NVIDIA has the right to abandon development of Pre-Release Licensed Software at any time without liability.

1.4 Enterprise and Contractor Usage. You may allow your Enterprise employees and Contractors to access and use the Licensed Software pursuant to the terms of the AGREEMENT solely to perform work on your behalf, provided further that with respect to Contractors: (i) you obtain a written agreement from each Contractor which contains terms and obligations with respect to access to and use of Licensed Software no less protective of NVIDIA than those set forth in the AGREEMENT, and (ii) such Contractor's access and use expressly excludes any sublicensing or distribution rights for the Licensed Software. You are responsible for the compliance with the terms and conditions of the AGREEMENT by your Enterprise and Contractors. Any act or omission that, if committed by you, would constitute a breach of the AGREEMENT shall be deemed to constitute a breach of the AGREEMENT if committed by your Enterprise or Contractors.

1.5 Services. Except as expressly indicated in an Order, NVIDIA is under no obligation to provide support for the Licensed Software or to provide any patches, maintenance, updates or upgrades under the AGREEMENT. Unless patches, maintenance, updates or upgrades are provided with their separate governing terms and conditions, they constitute Licensed Software licensed to you under the AGREEMENT.

2. LIMITATIONS.

2.1 License Restrictions. Except as expressly authorized in the AGREEMENT, you agree that you will not (nor authorize third parties to): (i) copy and use Software that was licensed to you for use in one or more NVIDIA hardware products in other unlicensed products (provided that copies solely for backup purposes are allowed); (ii) reverse engineer, decompile, disassemble (except to the extent applicable laws specifically require that such activities be permitted) or attempt to derive the source code, underlying ideas, algorithm or structure of Software provided to you in object code form; (iii) sell, transfer, assign, distribute, rent, loan, lease, sublicense or otherwise make available the Licensed Software or its functionality to third parties (a) as an application services provider or service bureau, (b) by operating hosted/virtual system environments, (c) by hosting, time sharing or providing any other type of services, or (d) otherwise by means of the internet; (iv) modify, translate or otherwise create any derivative works of any Licensed Software; (v) remove, alter, cover or obscure any proprietary notice that appears on or with the Licensed Software or any copies thereof; (vi) use the Licensed Software, or allow its use, transfer, transmission or export in violation of any applicable export control laws, rules or regulations; (vii) distribute, permit access to, or sublicense the Licensed Software as a stand-alone product; (viii) bypass, disable, circumvent or remove any form of copy protection, encryption, security or digital rights management or authentication mechanism used by NVIDIA in connection with the Licensed Software, or use the Licensed Software together with any authorization code, serial number, or other copy protection device not supplied by NVIDIA directly or through an authorized reseller; (ix) use the Licensed Software for the purpose of developing competing products or technologies or assisting a third party in such activities; (x) use the Licensed Software with any system or application where the use or failure of such system or application can reasonably be expected to threaten or result in personal injury, death, or catastrophic loss including, without limitation, use in connection with any nuclear, avionics, navigation, military, medical, life support or other life critical application ("Critical Applications"), unless the parties have entered into a Critical Applications agreement; (xi) distribute any modification or derivative work you make to the Licensed Software under or by reference to the same name as used by NVIDIA; or (xii) use the Licensed Software in any manner that would cause the Licensed Software to become subject to an Open Source License. Nothing in the AGREEMENT shall be construed to give you a right to use, or otherwise obtain access to, any source code from which the Software or any portion thereof is compiled or interpreted. You acknowledge that NVIDIA does not design, test, manufacture or certify the Licensed Software for use in the context of a Critical Application 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 use. 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 you and your Enterprise, and their respective employees, contractors, agents, distributors, resellers, end users, officers and directors use of Licensed Software outside of the scope of the AGREEMENT or any other breach of the terms of the AGREEMENT.

2.2 Third Party License Obligations. You acknowledge and agree that the Licensed Software may include or incorporate third party technology (collectively "Third Party Components"), which is provided for use in or with the Software and not otherwise used separately. If the Licensed Software includes or incorporates Third Party Components, then the third-party pass-through terms and conditions ("Third Party Terms") for the particular Third Party Component will be bundled with the Software or otherwise made available online as indicated by NVIDIA and will be incorporated by reference into the AGREEMENT. In the event of any conflict between the terms in the AGREEMENT and the Third Party Terms, the Third Party Terms shall govern. Copyright to Third Party Components are held by the copyright holders indicated in the copyright notices indicated in the Third Party Terms.

Audio/Video Encoders and Decoders. You acknowledge and agree that it is your sole responsibility to obtain any additional third
NVIDIA SOFTWARE LICENSE AGREEMENT (V. 10.20.2016)

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 Components 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 as NVIDIA does not grant to you under the AGREEMENT any necessary patent or other rights with respect to audio and/or video encoders and decoders.

2.3 **Limited Rights.** Your rights in the Licensed Software are limited to those expressly granted under the AGREEMENT and no other licenses are granted whether by implication, estoppel or otherwise. NVIDIA reserves all rights, title and interest in and to the Licensed Software not expressly granted under the AGREEMENT.

3. CONFIDENTIALITY. Neither party will use the other party's Confidential Information, except as necessary for the performance of the AGREEMENT, nor will either party disclose such Confidential Information to any third party, except to personnel of NVIDIA and its Affiliates, you, your Enterprise, your Enterprise Contractors, and each party's legal and financial advisors that have a need to know such Confidential Information for the performance of the AGREEMENT, provided that each such personnel, employee and Contractor is subject to a written agreement that includes confidentiality obligations consistent with those set forth herein. Each party will use all reasonable efforts to maintain the confidentiality of all of the other party's Confidential Information in its possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own Confidential Information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing the other party's Confidential Information or the terms and conditions of the AGREEMENT as required under applicable securities regulations or pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such disclosure (i) gives reasonable notice to the other party to enable it to contest such order or requirement prior to its disclosure (whether through protective orders or otherwise), (ii) uses reasonable effort to obtain confidential treatment or similar protection to the fullest extent possible to avoid such public disclosure, and (iii) discloses only the minimum amount of information necessary to comply with such requirements.

4. OWNERSHIP. You are not obligated to disclose to NVIDIA any modifications that you, your Enterprise or your Contractors make to the Licensed Software as permitted under the AGREEMENT. As between the parties, all modifications are owned by NVIDIA and licensed to you under the AGREEMENT unless otherwise expressly provided in a Supplement. The Licensed Software and all modifications owned by NVIDIA, and the respective Intellectual Property Rights therein, are and will remain the sole and exclusive property of NVIDIA or its licensors, whether the Licensed Software is separate from or combined with any other products or materials. You shall not engage in any act or omission that would impair NVIDIA's and/or its licensors' Intellectual Property Rights in the Licensed Software or any other materials, information, processes or subject matter proprietary to NVIDIA. NVIDIA's licensors are intended third party beneficiaries with the right to enforce provisions of the AGREEMENT with respect to their Confidential Information and/or Intellectual Property Rights.

5. FEEDBACK. You have no obligation to provide Feedback to NVIDIA. However, NVIDIA and/or its Affiliates may use and include any Feedback that you provide to improve the Licensed Software or other NVIDIA products, technologies or materials. Accordingly, if you provide Feedback, you agree that NVIDIA and/or its Affiliates, at their option, may, and may permit their licensees, to make, have made, use, have used, reproduce, license, distribute and otherwise commercialize the Feedback in the Licensed Software or in other NVIDIA products, technologies or materials without the payment of any royalties or fees to you. All Feedback becomes the sole property of NVIDIA and may be used in any manner NVIDIA sees fit, and you hereby assign to NVIDIA all of your right, title and interest in and to any Feedback. NVIDIA has no obligation to respond to Feedback or to incorporate Feedback into the Licensed Software.

6. NO WARRANTIES. THE LICENSED SOFTWARE AND ANY OTHER CONFIDENTIAL INFORMATION AND/OR SERVICES ARE PROVIDED BY NVIDIA "AS IS" AND "WITH ALL FAULTS," AND NVIDIA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY NVIDIA ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. NVIDIA DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR ANY OTHER CONFIDENTIAL INFORMATION AND/OR SERVICES PROVIDED BY NVIDIA UNDER THE AGREEMENT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT NVIDIA'S OBLIGATIONS UNDER THE AGREEMENT ARE FOR THE BENEFIT OF YOU ONLY. Nothing in this warranty section affects any statutory rights of consumers or other recipients to the extent that they cannot be waived or limited by contract under applicable law.

7. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NVIDIA OR ITS LICENSORS 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 THE AGREEMENT OR THE USE OR PERFORMANCE OF THE LICENSED SOFTWARE AND ANY OTHER CONFIDENTIAL INFORMATION AND/OR SERVICES PROVIDED BY NVIDIA UNDER THE AGREEMENT, 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 TOTAL CUMULATIVE LIABILITY UNDER OR ARISING OUT OF THE AGREEMENT EXCEED THE NET AMOUNTS RECEIVED BY NVIDIA FOR YOUR USE OF THE PARTICULAR LICENSED SOFTWARE DURING THE TWELVE (12) MONTHS BEFORE THE LIABILITY AROSE (or up to US\$10.00 if you acquired the Licensed Software for no charge). THE NATURE OF THE LIABILITY, THE NUMBER OF CLAIMS OR SUITS OR THE NUMBER OF PARTIES WITHIN YOUR ENTERPRISE THAT ACCEPTED THE TERMS OF THE AGREEMENT SHALL NOT ENLARGE OR EXTEND THIS LIMIT. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER NVIDIA OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. The disclaimers, exclusions and limitations of liability set forth in the AGREEMENT form an essential basis of the bargain between the parties, and, absent any such disclaimers, exclusions or limitations of liability, the provisions of the AGREEMENT, including, without limitation, the economic terms, would be substantially different.

8. TERM AND TERMINATION.

8.1 AGREEMENT, Licenses and Services. This SLA shall become effective upon the Effective Date, each Supplement upon their acceptance, and both this SLA and Supplements shall continue in effect until your last access or use of the Licensed Software and/or services hereunder, unless earlier terminated as provided in this "Term and Termination" section. Each Licensed Software license ends at the earlier of (a) the expiration of the applicable license term, or (b) termination of such license or the AGREEMENT. Each service ends at the earlier of (x) the expiration of the applicable service term, (y) termination of such service or the AGREEMENT, or (z) expiration or termination of the associated license and no credit or refund will be provided upon the expiration or termination of the associated license for any service fees paid.

8.2 Termination and Effect of Expiration or Termination. NVIDIA may terminate the AGREEMENT in whole or in part: (i) if you breach any term of the AGREEMENT and fail to cure such breach within thirty (30) days following notice thereof from NVIDIA (or immediately if you violate NVIDIA's Intellectual Property Rights); (ii) if 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; or (iii) if you commence or participate in any legal proceeding against NVIDIA, with respect to the Licensed Software that is the subject of the proceeding during the pendency of such legal proceeding. If you or your authorized NVIDIA reseller fail to pay license fees or service fees when due then NVIDIA may, in its sole discretion, suspend or terminate your license grants, services and any other rights provided under the AGREEMENT for the affected Licensed Software, in addition to any other remedies NVIDIA may have at law or equity. Upon any expiration or termination of the AGREEMENT, a license or a service provided hereunder, (a) any amounts owed to NVIDIA become immediately due and payable, (b) you must promptly discontinue use of the affected Licensed Software and/or service, and (c) you must promptly destroy or return to NVIDIA all copies of the affected Licensed Software and all portions thereof in your possession or control, and each party will promptly destroy or return to the other all of the other party's Confidential Information within its possession or control. Upon written request, you will certify in writing that you have complied with your obligations under this section. Upon expiration or termination of the AGREEMENT all provisions survive except for the license grant provisions.

9. CONSENT TO COLLECTION AND USE OF INFORMATION.

You hereby agree and acknowledge that the Software may access, collect non-personally identifiable information about your Enterprise computer systems in order to properly optimize such systems for use with the Software. To the extent that you use the Software, you hereby consent to all of the foregoing, and represent and warrant that you have the right to grant such consent. In addition, you agree that you are solely responsible for maintaining appropriate data backups and system restore points for your Enterprise systems, and that NVIDIA will have no responsibility for any damage or loss to such systems (including loss of data or access) arising from or relating to (a) any changes to the configuration, application settings, environment variables, registry, drivers, BIOS, or other attributes of the systems (or any part of such systems) initiated through the Software; or (b) installation of any Software or third party software patches initiated through the Software. In certain systems you may change your system update preferences by unchecking "Automatically check for updates" in the "Preferences" tab of the control panel for the Software.

In connection with the receipt of the Licensed Software or services you may receive access to links to third party websites and services and the availability of those links does not imply any endorsement by NVIDIA. 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 personal information of individuals. NVIDIA is not responsible or liable for: (i) the availability or accuracy of such links; or (ii) the products, services or information available on or through such links; or (iii) the privacy statements or practices of sites and services controlled by other companies or organizations.

To the extent that you or members of your Enterprise provide to NVIDIA during registration or otherwise personal information, you acknowledge that such information will be collected, used and disclosed by NVIDIA in accordance with NVIDIA's privacy policy, available at URL http://www.nvidia.com/object/privacy_policy.html.

10. GENERAL.

This SLA, any Supplements incorporated hereto, and Orders constitute the entire agreement of the parties with respect to the subject matter hereto and supersede all prior negotiations, conversations, or discussions between the parties relating to the subject matter hereto, oral or written, and all past dealings or industry custom. Any additional and/or conflicting terms and conditions on purchase order(s) or any other documents issued by you are null, void, and invalid. Any amendment or waiver under the AGREEMENT must be in writing and signed by representatives of both parties.

The AGREEMENT and the rights and obligations thereunder may not be assigned by you, in whole or in part, including by merger, consolidation, dissolution, operation of law, or any other manner, without written consent of NVIDIA, and any purported assignment in violation of this provision shall be void and of no effect. NVIDIA may assign, delegate or transfer the AGREEMENT and its rights and obligations hereunder, and if to a non-Affiliate you will be notified.

Each party acknowledges and agrees that the other is an independent contractor in the performance of the AGREEMENT, and each party is solely responsible for all of its employees, agents, contractors, and labor costs and expenses arising in connection therewith. The parties are not partners, joint ventures or otherwise affiliated, and neither has any authority to make any statements, representations or commitments of any kind to bind the other party without prior written consent.

Neither party will be responsible for any failure or delay in its performance under the 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.

The AGREEMENT will be governed by and construed under the laws of the State of Delaware and the United States without regard to the conflicts of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The parties consent to the personal jurisdiction of the federal and state courts located in Santa Clara County, California. You acknowledge and agree that a breach of any of your promises or agreements contained in the AGREEMENT may result in irreparable and continuing injury to NVIDIA for which monetary damages may not be an adequate remedy and therefore NVIDIA is entitled to seek injunctive relief as well as such other and further relief as may be appropriate. If any court of competent jurisdiction determines that any provision of the AGREEMENT is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. Unless otherwise specified, remedies are cumulative.

The Licensed 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 set forth in the 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, 2701 San Tomas Expressway, Santa Clara, CA 95050.

You acknowledge that the Licensed Software described under the AGREEMENT is subject to export control under the U.S. Export Administration Regulations (EAR) and economic sanctions regulations administered by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC). Therefore, you may not export, reexport or transfer in-country the Licensed Software without first obtaining any license or other approval that may be required by BIS and/or OFAC. You are responsible for any violation of the U.S. or other applicable export control or economic sanctions laws, regulations and requirements related to the Licensed Software. By accepting this SLA, 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 Licensed Software.

Any notice delivered by NVIDIA to you under the AGREEMENT will be delivered via mail, email or fax. Please direct your legal notices or other correspondence to NVIDIA Corporation, 2701 San Tomas Expressway, Santa Clara, California 95050, United States of America, Attention: Legal Department.

GLOSSARY OF TERMS

Certain capitalized terms, if not otherwise defined elsewhere in this SLA, shall have the meanings set forth below:

- a. "Affiliate" means any legal entity that Owns, is Owned by, or is commonly Owned with a party. "Own" means having more than 50% ownership or the right to direct the management of the entity.
- b. "AGREEMENT" means this SLA and all associated Supplements entered by the parties referencing this SLA.
- c. "Authorized Users" means your Enterprise individual employees and any of your Enterprise's Contractors, subject to the terms of the "Enterprise and Contractors Usage" section.
- d. "Confidential Information" means the Licensed Software (unless made publicly available by NVIDIA without confidentiality obligations), and any NVIDIA business, marketing, pricing, research and development, know-how, technical, scientific, financial status, proposed new products or other information disclosed by NVIDIA to you which, at the time of disclosure, is designated in writing as confidential or proprietary (or like written designation), or orally identified as confidential or proprietary or is otherwise reasonably identifiable by parties exercising reasonable business judgment, as confidential. Confidential Information does not and will not include information that: (i) is or becomes generally known to the public through no fault of or breach of the AGREEMENT by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.
- e. "Contractor" means an individual who works primarily for your Enterprise on a contractor basis from your secure network.
- f. "Documentation" means the NVIDIA documentation made available for use with the Software, including (without limitation) user manuals, datasheets, operations instructions, installation guides, release notes and other materials provided to you under the AGREEMENT.
- g. "Enterprise" means you or any company or legal entity for which you accepted the terms of this SLA, and their subsidiaries of which your company or legal entity owns more than fifty percent (50%) of the issued and outstanding equity.
- h. "Feedback" means any and all suggestions, feature requests, comments or other feedback regarding the Licensed Software, including possible enhancements or modifications thereto.
- i. "Intellectual Property Rights" means all patent, copyright, trademark, trade secret, trade dress, trade names, utility models, mask work, moral rights, rights of attribution or integrity service marks, master recording and music publishing rights, performance rights, author's rights, database rights, registered design rights and any applications for the protection or registration of these rights, or other intellectual or industrial property rights or proprietary rights, howsoever arising and in whatever media, whether now known or hereafter devised, whether or not registered, (including all claims and causes of action for infringement, misappropriation or violation and all rights in any registrations and renewals), worldwide and whether existing now or in the future.
- j. "Licensed Software" means Software, Documentation and all modifications owned by NVIDIA.
- k. "Open Source License" includes, without limitation, a software license that requires as a condition of use, modification, and/or distribution of such software that the Software be (i) disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; or (iii) be redistributable at no charge.
- l. "Order" means a purchase order issued by you, a signed purchase agreement with you, or other ordering document issued by you to NVIDIA or a NVIDIA authorized reseller (including any on-line acceptance process) that references and incorporates the AGREEMENT and is accepted by NVIDIA.
- m. "Software" means the NVIDIA software programs licensed to you under the AGREEMENT including, without limitation, libraries, sample code, utility programs and programming code.
- n. "Supplement" means the additional terms and conditions beyond those stated in this SLA that apply to certain Licensed Software licensed hereunder.

cuDNN SUPPLEMENT TO SOFTWARE LICENSE AGREEMENT

Release date: January 5, 2017

The terms set forth in this cuDNN Supplement (“Supplement”) govern your use of the CUDA Deep Neural Network library (cuDNN) (the “cuDNN Licensed Software”) under the terms of your software license agreement (“SLA”) as modified by this Supplement. This Supplement is an exhibit to the SLA and is hereby incorporated as an integral part thereto. Capitalized terms used but not defined herein shall have the meaning assigned to them in the SLA. In the event of conflict between the terms in this Supplement and the terms in the SLA, this Supplement shall control.

1. CUDNN DISTRIBUTION. Subject to the terms of the SLA and this Supplement, NVIDIA hereby grants you a non-exclusive, non-transferable license during the applicable license term unless earlier terminated pursuant to the SLA, to distribute the runtime files (.so, .h) when delivered to you as part of the cuDNN Licensed Software in source code form or binary form (but not when provided to you as part of a hardware product), subject to such distribution being solely in binary form to your licensees (“Customers”) only as a component of your own software products having additional material functionality beyond the redistributable cuDNN Licensed Software (each, a “Licensee Application”). Subject to the terms and conditions of the SLA and this Supplement, you may further authorize Customers to redistribute the cuDNN Licensed Software as incorporated into a Licensee Application, solely in binary form, provided, however, that you shall require in your agreements with your Customers that their distributions be on terms at least as restrictive as those applicable for your use of the cuDNN Licensed Software within a Licensee Application. The expiration or termination of your licenses to the cuDNN Licensed Software under the SLA and this Supplement will not affect your previous cuDNN distributions in compliance with the SLA and this Supplement.

The above distributions are subject to the following: (a) all distributions by you or your distribution channels must be consistent with the terms of the AGREEMENT; (b) the distributed cuDNN License Software must include valid copyright notices indicating NVIDIA’s ownership of the Licensed Software and (if permitted) modifications; and (c) you must enter into enforceable agreements that pass down terms consistent with the terms set forth in the AGREEMENT for use of the distributable cuDNN License Software, including (without limitation) terms relating to the license grant and license restrictions, confidentiality and protection of NVIDIA’s Intellectual Property Rights in and to the cuDNN Licensed Software. You are liable for the distribution and use of cuDNN Licensed Software if you failed to comply with the distribution requirements of this Supplement. You agree to notify NVIDIA in writing of any known or suspected distribution or use of the cuDNN Licensed Software not in compliance with the terms of the AGREEMENT, and to enforce the terms of your agreements with respect to cuDNN Licensed Software you distributed.

2. LICENSE DURATION. Each cuDNN Licensed Software is licensed to you for an initial duration of one year starting from the date of delivery or download. The licenses granted will automatically renew for successive one year periods, provided that NVIDIA reserves the right to terminate licenses upon ninety days (90) days written notice to you prior to the commencement of a renewal year in addition to the termination rights set forth in the SLA.

3. AUDIT. During the term of the AGREEMENT and for three (3) years thereafter, you will maintain all usual and proper books and records of account relating to the cuDNN Licensed Software and services provided under the AGREEMENT. During such period and upon written notice to you, NVIDIA or its authorized third party auditors subject to confidentiality obligations will have the right to inspect and audit your Enterprise books and records for the purpose of confirming compliance with the terms of the AGREEMENT. Any such inspection and audit will be conducted during regular business hours and no more frequently than annually unless non-compliance was previously found. If such an inspection and audit reveals an underpayment of any amounts payable to NVIDIA, then you will promptly remit the full amount of such underpayment to NVIDIA, including interest accruing (without the requirement of a notice) from the time underpayment began 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 for the period audited and/or such an inspection and audit reveals a material non-conformance with the terms of the AGREEMENT, then you will also pay NVIDIA’s reasonable costs of conducting the inspection and audit. Further, you agree that the party delivering the cuDNN Licensed Software to you may collect and disclose to NVIDIA information for NVIDIA to verify your compliance with the terms of the AGREEMENT including (without limitation) information regarding your use of the cuDNN Licensed Software.

4. EXPIRATION OF TERMINATION OF THIS SUPPLEMENT. Your failure to comply with the terms of this Supplement is ground for termination for breach by NVIDIA under the SLA. This Supplement will automatically expire or terminate upon the expiration or termination of your rights to cuDNN Licensed Software under the SLA or this Supplement.