

## NGC PUBLISHING AGREEMENT

This NGC Publishing Agreement (this “Agreement”) is a contract between you and NVIDIA Corporation (“NVIDIA”) for Content (as defined below) you publish and make available to NGC users. By accepting the terms of this Agreement or publishing Content to NGC users, you indicate that you understand this Agreement and agree to be bound by all of its terms and conditions. If you do not agree to all of the terms and conditions of this Agreement, then NVIDIA is unwilling to grant you the right to make Content available on NGC and you must not publish Content.

The NVIDIA GPU Cloud includes the websites [ngc.nvidia.com](https://ngc.nvidia.com), [nvcr.io](https://nvcr.io), and [packages.nvidia.com](https://packages.nvidia.com) and their subdomains and associated services, containerized software, models, helm charts, downloadable software tools, and APIs, as updated by NVIDIA at its discretion from time to time. The websites, services, software and materials referenced in this paragraph are collectively referred to as “NGC”.

### 1. PUBLISHING CONTENT.

1.1. Submissions. After acceptance of this Agreement, NVIDIA will provide you with instructions and a staging repository for making your containerized software, models, helm charts, or other software and materials that you own or have sufficient rights to use and distribute as contemplated in this Agreement (“Content”) available to NGC users. Any Content published by you to NGC users shall be subject to the terms and conditions of this Agreement.

1.2. Pre-Publish Obligations. Prior to submitting any Content under this Agreement, you shall ensure the Content: (i) comply with the terms and conditions of this Agreement, (ii) comply with any technical requirements and acceptance criteria communicated by NVIDIA to you in writing, (iii) are compatible with and run on at least one NVIDIA hardware product with Pascal or later NVIDIA GPUs, or other system(s) powered by NVIDIA GPUs as later agreed by the parties, (iv) contain no confidential information, (v) are free of critical bugs and errors and security bugs and errors, (vi) contain industry standard security protection, including without limitation, through the use of encryption technology to protect against unauthorized access, and (vii) are provided in a containerized format suitable for NGC use.

1.3. Testing. NVIDIA may, but is not required to, test each Content received under this Agreement. You agree to cooperate with NVIDIA on reasonable testing, including by providing a read me file and test plan information when requested in writing by NVIDIA.

1.4. Display and Access. NVIDIA will, at its sole discretion, display, make available, and market Content via NGC.

1.5. Promotion. NVIDIA may use your trademarks, logos, and trade names to advertise Content on NVIDIA’s websites, external presentations, and in advertising and marketing materials for NGC, solely for purposes of marketing and promoting NGC and Content.

1.6. Limits and Takedown. NVIDIA may reject Content for any reason, including without limitation, if NVIDIA determines the Content do not comply with Section 1.2. NVIDIA may, but is not obligated to, impose limits on the number of Content downloads. Notwithstanding anything to the contrary in this Agreement, NVIDIA may immediately remove, or cease displaying, making available, and marketing, Content via NGC at NVIDIA’s sole discretion.

1.7. Content Removal. Subject to the terms in the Term and Termination section below, you may, at any time, request in writing that NVIDIA ceases to display, make available, and market any Content via NGC. Any such requests must be submitted in writing to [NGC\\_Partners@nvidia.com](mailto:NGC_Partners@nvidia.com). Within 90 calendar days of receipt of your written request, NVIDIA will cease displaying, making available, and marketing the identified Content via NGC.

1.8. Lead Data. If requested by you in writing, NVIDIA may provide you with certain user information collected from Content users to the extent permitted by law and/or with the appropriate user's consent and in conformance with NVIDIA's policies, including without limitation its security and privacy policies. You shall protect all lead data according to your privacy policy that complies with all applicable laws and regulations.

1.9. DMCA. If a copyright owner or an agent thereof believes that any Content infringes its copyrights, such owner or agent may submit a notification to NVIDIA pursuant to the Digital Millennium Copyright Act. NVIDIA will handle all such notices pursuant to its copyright notice and procedures as it deems appropriate. Information on how NVIDIA handles DMCA claims is located at: [https://www.nvidia.com/object/copyright\\_claims.html](https://www.nvidia.com/object/copyright_claims.html).

## **2. YOUR OBLIGATIONS.**

2.1. Content. You are solely responsible for: (i) the development, operation, backing up, updating, and management of all Content and related data, including without limitation, the design, production, performance, legal and contractual compliance, and technical and functional operation of the Content, (ii) the accuracy of Content descriptions and any marketing statements, (iii) compliance with all Content license agreement, and (iv) NGC users' use of Content.

2.2. Updates. If you publicly release updates to Content available on NGC, you shall submit the updated Content under section 2.1 until the Content is no longer provided on NGC.

2.3. Content Licensing. NGC users' use of Content shall be pursuant to a license agreement directly between you and the applicable NGC user; NVIDIA shall not be a party to any such agreement. NVIDIA may post a license agreement as readme files or other format within an area of NGC designated by NVIDIA, and at your choice you may incorporate within the Content, the license agreement or a hyperlink which will route NGC users to the applicable license agreement. If Content contains open source software, you are solely responsible for complying with the open source software licenses. Any payments required of Content users is solely between you and the applicable user and all related disputes shall be resolved between you and that user.

2.4. Content Security. If NVIDIA discovers a security flaw in Content and requests you to correct the flaw, you shall respond to NVIDIA within 24 hours of such request with a resolution or a written resolution plan and the estimated time for delivery of a resolution.

2.5. NGC Security. NVIDIA will use industry standard practices for the physical and technical security of Content on NGC. Subject to the foregoing, NVIDIA is not liable for any unauthorized access or use of Content and you shall not bring any claim, action, or proceeding against NVIDIA, its affiliates, licensors, or suppliers for damage or loss arising therefrom.

2.6. Content Support. For all Content displayed, made available, and marketed via NGC, you shall ensure that the Content applications run and provide a channel (such as web or app support, user forum, email address or phone number) to support users with the use of Content, including without limitation, installation, use, features, reporting bugs, and feature requests. If NVIDIA receives a support request from a NGC user relating to Content,

NVIDIA may direct the user to you for resolution. The obligations of this section survive for the duration of NGC users' use of Content.

### **3. INTELLECTUAL PROPERTY.**

3.1. License Grants to NVIDIA. You hereby grant to NVIDIA, its affiliates, and its suppliers, a worldwide, royalty-free, fully-paid up, non-exclusive, non-transferable license, without the right to sublicense, to access, use, test, copy, distribute and display Content via NGC and use your trademarks, logos, and trade names for the purpose of this Agreement. NVIDIA will use your trademarks in accordance with your trademark guidelines if and as provided to NVIDIA from time to time.

3.2. Ownership. As between the parties, you own and retain all right, title, and interest in and to Content. Except as provided in this Agreement, no license or rights, either express, implied, or established by operation of law, are granted under this Agreement, including without limitation, any IPR. "Intellectual Property Rights" or "IPR" means all worldwide common law and statutory rights associated with: (i) patents and patent applications, (ii) copyrights and all other literary property and author rights, including without limitation copyright applications, copyright registrations, certificates of copyrights and copyrighted interests, and "moral" rights, (iii) all rights, title and interest in and to inventions (whether patentable or not in any country) and invention disclosures, (iv) know-how, trade secrets, or the protection of confidential information, (v) trademarks, logos, or trade names, (vi) other proprietary rights related to intangible intellectual property, (vii) analogous rights to the rights set forth in (i) – (vi), and (viii) all divisions, continuations, renewals, reissuances, and extensions of the foregoing (as applicable) now existing or hereafter filed, issued or acquired.

3.3. Residuals. You hereby grant to NVIDIA and its affiliates a perpetual, irrevocable, worldwide, royalty-free, fully paid-up, unlimited right and license to use or have used Residuals (as defined below) for any purpose (including without limitation, use in the design, development, manufacture, marketing, and maintenance of NVIDIA's products and services). As used herein, the term "Residuals" means any information in non-tangible form that may be retained in the unaided memory of individuals who have had rightful access to Content, including the ideas, concepts, know-how, or techniques contained therein. NVIDIA shall not have any obligation to limit or restrict the assignment of such individuals or to pay royalties for any work resulting from the use of Residuals. Further access to or use of the Content shall not be construed as a representation or inference that NVIDIA is not developing or will not independently develop products that compete with the Content. NVIDIA retains the right to develop product or deliver services to any third parties at its choice, irrespective of any similarities to the Content.

### **4. TERM & TERMINATION.**

4.1. Term. This Agreement shall commence at the time of acceptance and shall remain in effect until terminated (this period the "Term").

4.2. Termination Without Cause. Either party may terminate this Agreement without cause by giving the other party 30 days' prior written notice.

4.3. Termination by NVIDIA. NVIDIA may immediately terminate this Agreement with written notice to you if: (i) you breach any of the terms of this Agreement, or (ii) you commence or participate in any legal proceeding against NVIDIA, with respect to Content or NGC that is the subject of the proceeding during the pendency of such legal proceeding.

4.4. Wind-Down and Effect of Termination. At NVIDIA's request, for 6 months following the date a Content is removed from general availability to users via NGC or the termination of this Agreement ("Wind-Down Period"), you hereby authorize NVIDIA to continue displaying, making available, and marketing Content via NGC for access by those NGC users who have previously accessed the Content. All terms and conditions of this Agreement remain valid and enforceable, as applicable, during any Wind-Down Period. Sections 2.6, 3.3, 4.4, 6 through 10, as well as any other section that must survive to fulfill its essential purpose, survive any termination of this Agreement during and after the Wind-Down Period.

## 5. REPRESENTATIONS AND WARRANTIES.

5.1. From Each Party. Each party represents and warrants that it has and will have full power and authority to enter into and fully perform this Agreement and that no agreement or understanding with any other person or other entity exists or will exist that would interfere with the parties' obligations under this Agreement.

5.2. From You. You represent and warrant that:

5.2.1. Content does not and shall not infringe or misappropriate any IPR of NVIDIA or any third party, or if you know or have reason to know that Content may infringe or misappropriate the IPR of any third party you shall immediately notify NVIDIA.

5.2.2. You and Content comply with and shall comply with applicable laws, rules, and regulations, including without limitation, anti-bribery, export and data protection and privacy laws (as examples, informing uses of your privacy policy and obtaining consents from data subjects where needed for the transfer, use or transfer or data).

5.2.3. If Content is used for any medical or health related applications, (i) you and Content comply with the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time ("HIPAA"), and any regulations issued under it, and (ii) NVIDIA does not intend uses of NGC to create obligations for NVIDIA or users under HIPAA, and NVIDIA makes no representations that NGC satisfy HIPAA requirements. If you are (or become) a Covered Entity or Business Associate, as defined in HIPAA, you will not use NGC for any purpose or in any manner involving Protected Health Information (as defined in HIPAA) unless you have received prior written consent from NVIDIA.

5.2.4. If Content is used in applications where the use or failure of the application could lead to death, personal injury, or catastrophic damages (such as avionics, navigation, military, medical, life support or other life critical applications), you, or your Content users based on agreement with, you are responsible for ensuring that the Content (or the Content as used in an application or system) include sufficient fail-safe features to comply with applicable safety, regulatory and industry security standards.

5.2.5. You comply with and shall comply with all applicable licenses covering any and all open source software contained in Content and, as required by such licenses, provide source code.

5.2.6. Content does not and shall not contain or deliver Malware, or if you know or have reason to know that Content include Malware you shall immediately notify NVIDIA. "Malware" means: (i) any software traps, viruses, spyware, Trojan horses, worms, trap doors, malicious code, disabling code, or other means or functions which may detrimentally interfere with or otherwise adversely affect use of NGC or NGC user's software systems, or otherwise damage or destroy NGC or other hardware and software services, (ii) any software that replicates, transmits, or otherwise distributes itself or data, or (iii) any master key access, back door, ID, password, or other means of remote control or remote command or access to NGC or NGC user's software systems.

5.2.7. Neither your actions nor its posting, submissions, or otherwise transmission of Content or its contents will (i) be fraudulent, false, misleading or deceptive, (ii) be defamatory, obscene, pornographic, vulgar or offensive, (iii) promote discrimination, bigotry, racism, hatred, harassment or harm against any individual or group, (iv) be violent or threatening or promote violence or actions that are threatening to any other person, (v) promote illegal activities, or (vi) interfere with or disrupt the security, integrity or performance of NGC, attempt

to probe, scan or test the vulnerability of NGC, or collect or store any personally identifiable information from NGC from other users of NGC.

5.3 EXCEPT AS PROVIDED ABOVE IN SECTION 5, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE PARTIES EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

6. **INDEMNIFICATION.** You shall defend or settle, at your option and expense, any allegation, claim, or action brought against NVIDIA, its officers, directors, parents, subsidiaries, affiliates, employees, suppliers, or NGC users (“Indemnitees”) arising out of or related to any (i) breach of any of your representation or warranties set forth in this Agreement; or (ii) claims related to the use of the Content, including (without limitation) claims that Content infringe or misappropriate any third party’s IPR. Each such allegation, claim, or action is referred to as a “Claim” in this section. You shall indemnify and hold harmless all Indemnitees from all losses, liabilities, costs, fees (including without limitation legal fees and expenses), damages, penalties, expenses, and settlements incurred as a result of any Claim. Your obligations set forth in this section include, without limitation, retention and payment of attorneys and settlement at your expense, payment of judgments, or both. Notwithstanding the foregoing, to the extent that a claim or action arises out of NVIDIA’s breach of this Agreement, it does not constitute a Claim. NVIDIA will have the right to approve the terms of any settlement or compromise of a Claim that restricts Indemnitees’ rights or subjects Indemnities to any ongoing obligations. The terms in this section do not apply to software components governed by open source software licenses.

7. **LIMITATION OF LIABILITY.** EXCEPT FOR OBLIGATIONS UNDER SECTIONS 5 OR 6 OR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF EITHER PARTY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE PARTIES ARE NOT LIABLE FOR ANY INDIRECT, 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 THIS AGREEMENT, WHETHER IN BREACH OF CONTRACT, BREACH OF WARRANTY, IN TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL OR EQUITABLE THEORY. NVIDIA’S TOTAL AGGREGATE LIABILITY (INCLUDING IN RESPECT OF ALL LOSSES, DAMAGES, COSTS, EXPENSES, AND INTERESTS SUFFERED OR INCURRED) FOR ANY CLAIM OR CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO USD \$1,000, AND IN NO EVENT SHALL NVIDIA HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY ARISING FROM OR RELATING TO THE USE OF CONTENT. The limitations set forth in this Section 7 apply even if the party has been advised of the possibility of such damages. Further, liability for damages is limited and excluded as set forth in this Section 7 even if any exclusive remedy provided in this Agreement fails of its essential purpose.

8. **GOVERNING LAW AND YOUR RIGHTS.** This Agreement gives you specific legal rights. You may also have other rights which vary from state to state and jurisdiction to jurisdiction. You hereby agree to all terms of this Agreement in the English language. This 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.

9. **BINDING ARBITRATION.** In the event of any claim against or dispute or controversy with NVIDIA relating to this Agreement or that may arise from or relate to the Content (collectively, “Disputes”), you agree to first contact NVIDIA by U.S. Mail at NVIDIA Corporation, ATTN: Legal, 2788 San Tomas Expressway, Santa Clara, California, 95051 and attempt to resolve the Dispute with NVIDIA informally. Your notice shall indicate that this is a notice under the NGC Publishing Agreement and indicate the Content the notice relates to. In the unlikely event that NVIDIA has not been able to resolve such Dispute it has with you within 60 days of your original informal claim

(or sooner if, in NVIDIA's opinion, a Dispute is not likely to be resolved within 60 days), you and NVIDIA each agree to resolve any such Dispute (excluding any NVIDIA claims for injunctive or other equitable relief) by binding arbitration before an arbitrator from Judicial Mediation and Arbitration Services ("JAMS") located in Santa Clara County, California under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at [www.jamsadr.com](http://www.jamsadr.com). The arbitration will be conducted in Santa Clara County, California (or the nearest JAMS Office to Santa Clara County), unless you request an in-person hearing in your hometown or you and NVIDIA agree otherwise. Nothing in this section shall prevent either party from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of that party's data security, intellectual property rights, confidentiality rights, or other proprietary rights. If for any reason this agreement to arbitrate is found not to apply to a Dispute and as a result a Dispute proceeds in court rather than in arbitration, the dispute shall be exclusively brought in state or federal court in Santa Clara County, California.

**Class Action & Jury Trial Waiver.** ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION UNLESS SUCH ARBITRATION IS NECESSARY TO EFFECTUATE THE ENFORCEMENT OF THE COURT CLASS ACTION WAIVER OR IN THE EVENT THAT CLASS ARBITRATION IS EXPRESSLY AGREED TO BY NVIDIA. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND NVIDIA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

**Right to Opt Out.** YOU MAY OPT OUT OF THE FOREGOING ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION OF THIS AGREEMENT BY NOTIFYING NVIDIA IN WRITING WITHIN 30 DAYS OF AVAILABILITY OF THE INITIAL DL CONTAINER ON NGC UNDER THIS AGREEMENT. SUCH WRITTEN NOTIFICATION MUST BE SENT TO ATTN: LEGAL, 2788 SAN TOMAS EXPRESSWAY, SANTA CLARA, CALIFORNIA, 95051 AND MUST INCLUDE (1) YOUR NAME, (2) YOUR ADDRESS, (3) THE REFERENCE TO CONTENT ON NGC AS THE PRODUCT THE NOTICE RELATES TO, AND (4) A CLEAR STATEMENT INDICATING THAT YOU DO NOT WISH TO RESOLVE DISPUTES THROUGH ARBITRATION AND DEMONSTRATING COMPLIANCE WITH THE 30 DAY TIME LIMIT TO OPT OUT.

## 10. GENERAL.

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by NVIDIA without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

If NVIDIA needs to contact you about this Agreement or Content, you consent to receive the notices by email. You agree that any such notices that NVIDIA sends you electronically will satisfy any legal communication requirements.

You agree to comply with all domestic and international export laws and regulations that apply to Content, including without limitation, U.S. export administration regulations. These laws include restrictions on destinations, users, and end use. You shall provide NVIDIA and NGC users with all accurate information needed to comply with all applicable export control laws related to the use of Content.

NVIDIA will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond its reasonable control, including acts of God, labor disputes or other industrial disturbances, pandemic, systemic, electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

This Agreement constitutes the entire agreement between you and NVIDIA concerning Content. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and NVIDIA's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

NVIDIA may make changes to this Agreement from time to time. The updated Agreement terms will be effective when published. Your publication of Content after the Agreement is updated shall constitute your agreement to the updated terms. If you do not agree with the updated terms, you must not further publish Content, and you may terminate this Agreement as provided herein.

(v. September 3, 2020)

