

# SOFTWARE DEVELOPER KITS, SAMPLES AND TOOLS LICENSE AGREEMENT

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1.2 Enterprise and Contractor Usage. Under this Agreement you may allow (i) your Enterprise employees, and (ii) individuals who work primarily for your Enterprise on a contractor basis and from your secure network (each a "Contractor") to access and use the Licensed Software pursuant to the terms in Section 1 solely to perform work on your behalf, provided further that with respect to Contractors: (i) you obtain a written agreement from the Contractor which contains terms and obligations with respect to access to or use of Licensed Software no less protective of NVIDIA than those set forth in this 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 this Agreement by your Enterprise and Contractors. Any act or omission that if committed by you would constitute a breach of this Agreement shall be deemed to constitute a breach of this Agreement if committed by your Enterprise or Contractors. "Enterprise" means you or any company or legal entity for which you accepted the terms of this Agreement, and their subsidiaries of which your company or legal entity owns more than fifty percent (50%) of the issued and outstanding equity.

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2.1 License Restrictions. Except as expressly authorized in this Agreement, you agree that you will not (nor allow third parties to): (i) copy and use software that was licensed to you for use in one or more devices in other unlicensed devices (provided that copies solely for backup purposes are allowed); (ii) reverse engineer, decompile, disassemble (except to the extent applicable laws

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“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 this 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.

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4.1 Ownership of Licensed Software. The Licensed Software, and the respective intellectual property rights therein, is and will remain the sole and exclusive property of NVIDIA and its licensors, whether the Licensed Software is separate from or combined with any other products or materials. You shall not knowingly 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 this Agreement with respect to their Confidential Information and/or intellectual property rights.

4.2 Modifications. You hold all rights, title and interest in and to the modifications to and derivative works of the NVIDIA sample source code software that you create as permitted hereunder, subject to NVIDIA’s underlying intellectual property rights in and to the NVIDIA software; provided, however that you grant NVIDIA and its affiliates an irrevocable, perpetual, nonexclusive, worldwide, royalty-free paid-up license to make, have made, use, have used, reproduce, sell, license, distribute, sublicense, transfer and otherwise commercialize modifications and derivative works including (without limitation) with the Licensed Software or other NVIDIA products, technologies or materials.

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**6. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW NVIDIA SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (SUCH AS, WITHOUT LIMITATION, 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 OR THE USE OR PERFORMANCE OF THE LICENSED SOFTWARE, 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 THIS AGREEMENT EXCEED THE GREATER OF THE NET AMOUNT NVIDIA RECEIVED FOR YOUR USE OF THE LICENSED SOFTWARE ONE HUNDRED U.S. DOLLARS (US \$100). THE NATURE OF THE LIABILITY, THE NUMBER OF CLAIMS OR SUITS OR THE NUMBER OF PARTIES WITHIN YOUR ENTERPRISE THAT ACCEPTED THE TERMS OF THIS AGREEMENT SHALL NOT ENLARGE OR EXTEND THIS LIMIT. THE NVIDIA SDKS, SAMPLES AND TOOLS AGREEMENT (v.07.15.2016)

FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER NVIDIA OR ITS LICENSORS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

**7. TERM AND TERMINATION.** This Agreement and your licenses hereunder shall become effective upon the Effective Date and shall remain in effect unless and until terminated as follows: (i) automatically if you breach any of the terms of this Agreement; or (ii) by either party upon written notice if the other party becomes 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 a party ceases to do business; (iii) by you, upon ceasing to use the Licensed Software provided under this Agreement; or (iv) by NVIDIA upon written notice 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. Termination of this Agreement shall not release the parties from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement to survive termination. Notwithstanding the foregoing, the party terminating this Agreement shall incur no additional liability merely by virtue of such termination. Termination of this Agreement regardless of cause or nature shall be without prejudice to any other rights or remedies of the parties and shall be without liability for any loss or damage occasioned thereby. Upon any expiration or termination of this Agreement (i) you must promptly discontinue use of the Licensed Software, and (ii) you must promptly destroy or return to NVIDIA all copies of the 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, provided that your prior distributions in accordance with this Agreement are not affected by the expiration or termination of this Agreement. Upon written request, you will certify in writing that you have complied with your obligations under this section. Sections 2 through 8 will survive the expiration or termination of this Agreement for any reason.

## **8. MISCELLANEOUS.**

8.1 **NVIDIA Entities.** NVIDIA Corporation and its subsidiaries, including, but not limited to, NVIDIA Singapore Pte Ltd., have agreed to their respective rights and obligations regarding the distribution of the Licensed Software and the performance of obligations related to the Licensed Software. Ordering and delivery shall be with the NVIDIA entity with distribution rights for the geographic region in which the Licensed Software will be used, as communicated by NVIDIA to you.

8.2 **Audit.** During the term of this Agreement and for a period of three (3) years thereafter, you will maintain complete and accurate books and records regarding use of the Licensed Software and your performance and administration of this 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 your compliance with the terms of this Agreement. Any such inspection and audit will be conducted during regular business hours, in a manner that minimizes interference with your normal business activities, and no more frequent 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 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 for the period audited and/or such an inspection and audit reveals a material non-conformance with the terms of this Agreement, then you will also pay NVIDIA's reasonable costs of conducting the inspection and audit. Further, you agree that the party delivering the Licensed Software to you may collect and disclose to NVIDIA (subject to confidentiality obligations) information for NVIDIA to verify your compliance with the terms of this Agreement including (without limitation) information regarding your usage of the Licensed Software.

8.3 **Trademarks.** You are granted no rights to use any of NVIDIA's trademarks under this Agreement. NVIDIA's trademarks include company names, product or service names, marks, logos, designs and trade dress. You may not remove, alter, or add to any of NVIDIA's trademarks that appear in or as part of the Licensed Software.

8.4 **Indemnity.** 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, officers and directors: (i) use of a 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, for example, use in connection with any nuclear, avionics, navigation, military, medical, life support or other life critical application; (ii) violation of any third party right, including without limitation any right of privacy or intellectual property rights; (iii) failure to comply with any applicable export

and import laws, rules or regulations; or (iv) negligence or willful misconduct.

8.5 Injunctive Relief. The parties agree that a breach of any of the promises or agreements contained in this Agreement may result in irreparable and continuing injury for which monetary damages would not be an adequate remedy and therefore the parties are entitled to seek injunctive relief as well as such other and further relief as may be appropriate.

8.6 Waiver. The failure by either party to enforce its rights under this Agreement at any time for any period will not constitute a waiver of future enforcement of that right or any other right. Any waiver will be effective only if in writing and signed by duly authorized representatives of each party.

8.7 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the other provisions of this Agreement will remain in full force and effect.

8.8 U.S. Government Legend. You agree and certify that you will comply with all laws, regulations, rules, and other requirements applicable to transaction(s) with any government(s) occurring pursuant to this Agreement and all related matters. The Licensed Software has been developed entirely at private expense and is "commercial items" consisting of "commercial software" and "commercial 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 this Agreement under which Licensed Software was obtained 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.

8.9 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement to the extent due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, flood, war, earthquake, environmental conditions, governmental action, acts of civil or military authority, riots, wars, sabotage, strikes, compliance with laws or regulations, strikes, lockouts or other serious labor disputes, or shortage of or inability to obtain material or equipment for so long as such event of force majeure continues in effect.

8.10 Export Control. You acknowledge that the Licensed Software, technology and related documentation described under this Agreement are subject to 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). You agree to comply with the EAR and OFAC regulations and all applicable international and national export and import laws. You agree not to export or re-export the Licensed Software, technology and related documentation to any destination requiring an export license or other approval under the EAR or OFAC regulations otherwise without first obtaining such export license or approval and NVIDIA's permission. You will not, without prior governmental authorization, export or re-export NVIDIA Licensed Software, technology and related documentation, directly or indirectly, (i) to any end-user whom you know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; (ii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government; or (iii) to any countries that are subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria and the Region of Crimea).

8.11 General. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereto and supersedes all prior negotiations, conversations, or discussions between the parties relating to the subject matter hereto, oral or written, and all past dealing or industry custom. Any notice delivered by NVIDIA to you under this Agreement will be delivered via mail, email or fax. Any additional and/or conflicting terms and conditions on purchase order(s) or any other documents issued by you are null, void, and invalid. This Agreement and the rights and obligations hereunder 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. Each party acknowledges and agrees that the other is an independent contractor in the performance of this Agreement, and each is solely responsible for all of its employees, agents, contractors, and labor costs and expenses arising in connection therewith. 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. The parties consent to the personal jurisdiction of the federal and state courts located in Santa Clara County, California. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms. Any amendment or

waiver under this Agreement must be in writing and signed by representatives of both parties.