

## NVIDIA SOFTWARE LICENSE AGREEMENT

Release Date: October 20, 2016

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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.

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- b. "AGREEMENT" means this SLA and all associated Supplements entered by the parties referencing this SLA.
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- n. "Supplement" means the additional terms and conditions beyond those stated in this SLA that apply to certain Licensed Software licensed hereunder.

**SOFTWARE SERVICES SUPPLEMENT**  
**Release date: November 9, 2016**

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**Support Issue Response and Resolution:** A Designated User identified as a site manager shall prioritize Support Issues by ranking them in a queue order (the "Support Issue Ranking"). For potential Support Issues filed by a Designated User, NVIDIA will use commercially reasonable efforts to analyze each such potential Support Issue to determine if it qualifies as a Support Issue. NVIDIA shall issue a Response to all potential Support Issues filed within the Response time indicated for your Technical Support plan, provided no commitment is made with respect to the specific resolution. Such Response will indicate one or more of the following: (a) acceptance of the request as a Support Issue; (b) request for further information; and/or (c) notification that such potential Support Issue does not qualify as a Support Issue receiving service coverage under this Supplement.

**Support Issue Prioritization:** During the Service Term, for the Support Issue currently ranked highest in the Support Issue Ranking (the "Active Support Issue"), NVIDIA shall use commercially reasonable efforts to address and provide resolution for such Active Support Issue, until the earlier of: (a) resolution of such Active Support Issue; or (b) reprioritization of the Support Issue Ranking (by reordering Support Issues on the Support Issue Ranking). The Support Issue Ranking order may be changed by a Designated User identified as a site manager up to once every seven (7) days.

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**2.3 Updates.** If your Service Subscription for a Supported Software includes Updates, subject to payment of applicable Service Fees NVIDIA will make available to you the Updates associated with such Supported Software during the Service Term.

**2.4 Upgrades.** If your Service Subscription for a Supported Software includes Upgrades, subject to payment of applicable Service Fees NVIDIA will make available to you the Upgrades associated with such Supported Software during the Service Term.

**2.5 Service Subscription Reinstatement.** If you elect not to renew certain Service Subscriptions and later you desire to re-enroll to receive such services, you must pay with respect to the services being reinstated at the then-current rates: (a) Service Fees for the period between the last expiration of the Service Subscription and until commencement of the new Services Subscription, (b) Service Fees for the new Services Subscription, for the Service Term, and (c) the applicable reinstatement fees in addition to Service 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 a Supported Software only for the most current generally available version of the Supported Software, and (b) initially purchase and renew Service Subscriptions for all of your licenses of a Supported Software. The Service Subscription plans will indicate the types of services (from the above) that are available for Supported Software during the General Support Period and the Extended Support Period. NVIDIA may, at its sole discretion, decide that a Supported Software version has reached the end of the Extended Support Period. NVIDIA is not obligated to provide any services under this Supplement for a Supported Software version after the end of the Extended Support Period. NVIDIA is not obligated to initiate or renew any Service Subscription if such Service Subscription is no longer made generally available by NVIDIA to its customers.

**3. EXCLUSIONS.** You shall not request, and NVIDIA shall not provide services under this Supplement related to:

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

Further, services under this Supplement do not include any enhancement(s) or addition(s) to the Supported Software beyond Maintenance, Updates and Upgrades.

**4. YOUR SERVICE 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 the Supported Software;
- (b) your failure to deploy a Maintenance, Update or Upgrade available to you as promptly as possible may render the applicable Supported Software non-operable or non-conforming to the later Documentation provided by NVIDIA and you assume all risks and liability arising therefrom;
- (c) you shall further provide through Designated Users such information, and/or access to your resources as NVIDIA may reasonably require in order to provide services, including access to, and assistance of, your personnel who possess information required by NVIDIA for purposes of performing its obligations hereunder. As examples, as reasonably requested by NVIDIA you shall (i) identify the correct version(s) of Supported Software to which a potential Support Issue relates, (ii) provide the documentation and assistance necessary to demonstrate and diagnose each potential 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 associated with the Supported Software;
- (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 the Supported Software 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 any of the Designated Users at any time during a Service Term upon written 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 obligations under this section.

**5. SERVICE FEES; PAYMENT TERMS.** When you purchase Service Subscriptions directly from NVIDIA the following applies: Service 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, Service Fees will be invoiced upon your purchase, are payable net thirty (30) days of the invoice date, and are expressed in U.S. Dollars. All Service Fees are non-refundable. The Service Fees do not 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 in the AGREEMENT 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 AGREEMENT 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 of any Service Fee 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 AGREEMENT and upon expiration or termination of the AGREEMENT any amounts owed to NVIDIA will be due and payable immediately on the effective date of expiration or termination, even if longer terms had been provided previously.

## 6. DEFINITIONS

- 6.1 "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.
- 6.2 "Day(s)" (only when capitalized) means 8:00 AM - 5:00 PM, Pacific Time, Monday through Friday, excluding U.S. public holidays. All other usage of "day" or "days" means calendar days.
- 6.3 "Designated User" means the individual(s) designated by you as the technical contact(s) who may file and engage with NVIDIA on Technical Support.
- 6.4 "Error(s)" means a reproducible defect, problem, logical error or bug in the Supported Software that constitutes a failure to comply substantially with the applicable Documentation and is reported using standard NVIDIA procedures.
- 6.5 "Error Correction(s)" means adapting, re-configuring, or reprogramming the Supported Software to correct the Error(s).
- 6.6 "Extended Support Period" means the period of time starting upon general availability of the next Upgrade version of a Supported Software product, and until the product reaches the product cycle milestone when Service Subscriptions are no longer made generally available for customers of the product (also referred to as the "end of life" milestone), which milestone is at NVIDIA's sole discretion.
- 6.7 "General Support Period" means the period of time between general availability of one Upgrade version of a Supported Software product, and until the immediately following general availability of the next Upgrade version of the same product.
- 6.8 "Maintenance" means security patch(es), Error Correction(s) and Workaround(s) to the Supported Software 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 Software who have the same Supported Software version under a Service Subscription contract with NVIDIA that specifically includes "Maintenance". Maintenance may include revisions to Documentation.
- 6.9 "Response" means NVIDIA's initial acknowledgment of a Technical Support request filed by a Designated User.
- 6.10 "Service Fee(s)" means the fees for the purchased Service Subscriptions, as applicable for each Order.
- 6.11 "Service Subscription" means the particular services described in this Supplement that you purchased from NVIDIA or a NVIDIA authorized reseller, which will be some combination of the following: (i) Technical Support, (ii) Maintenance, (iii) Updates, and/or (iv) Upgrades.
- 6.12 "Support Issue(s)" means the Technical Support requests filed by Designated Users hereunder that relate to the Supported Software.
- 6.13 "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.
- 6.14 "Supported Software" means the Software installed on your premises 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 Software made by NVIDIA pursuant to a consulting services agreement or any portion of the Software not developed by NVIDIA.
- 6.15 "Service Term" means the duration of the Service Subscription, as set forth in an Order.
- 6.16 "Technical Support" means the provision of telephone or web-based technical assistance by qualified NVIDIA personnel to questions from Designated Users related to the installation, use and operation of the Supported Software, including basic instruction or assistance related to functional Errors in the Supported Software.
- 6.17 "Updates" means those modifications to the Supported Software 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 Software who have the same Supported Software 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). Updates may include revisions to Documentation.
- 6.18 "Upgrades" means those modifications to the Supported Software 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 Software who have the same Supported Software 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). Upgrades may include revisions to Documentation.

6.19 “Workarounds” means procedures and routines, for use by you, which, when employed in the regular operation of, or access to, the Supported Software, will avoid or substantially diminish the practical adverse effects of the relevant Error.

**7. 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 the SLA.