

# SOFTWARE DEVELOPER KITS, SAMPLES AND TOOLS LICENSE AGREEMENT

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## 1. LICENSE.

1.1 License Grant. Subject to the terms of this Agreement, NVIDIA hereby grants you a nonexclusive, non-transferable, worldwide, revocable, limited, royalty-free, fully paid-up license to during the term of this Agreement:

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(ii) sub-license and distribute in binary format the API library software and header files as delivered by NVIDIA and sample source code as delivered by NVIDIA or as modified by you, all as incorporated into a Customer Product for use by your recipients only in the supported NVIDIA GPU hardware products separately obtained, provided that: (a) all such distributions by you or your distribution channels are consistent with the terms of this Agreement; and (b) you must enter into enforceable agreements with your recipients that binds them to terms that are consistent with the terms set forth in this Agreement for their use of the software binaries, 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 software you distributed. You are liable for the distribution and the use of distributed software if you failed to comply or enforce the distribution requirements of this Agreement. You agree to notify NVIDIA in writing of any known or suspected use or distribution of the Licensed Software that are not in compliance with the terms of this Agreement.

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.

1.3 No Support. NVIDIA is under no obligation to provide support for the Licensed Software or to provide any error corrections or updates to the Licensed Software under this Agreement.

## 2. LIMITATIONS.

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 specifically requires 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 modifications or derivative works of any of the 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 export control laws or regulations administered by the United States government; (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) disclose the results of any benchmarking or other competitive analysis relating to the Licensed Software without the prior written permission from NVIDIA; (xi) distribute any modification you make to software under or by reference to the same name as used by NVIDIA; (xii) use the Licensed Software in any manner that would cause the Licensed Software to become subject to an Open Source License. Nothing in this 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. “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 (x) disclosed or distributed in source code form; (y) be licensed for the purpose of making derivative works; or (z) be redistributable at no charge.

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**Audio/Video Encoders and Decoders.** You acknowledge and agree that it is your sole responsibility to obtain any additional third 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 this Agreement any necessary patent 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 in Section 1 and no other licenses are granted whether by implication, estoppel or otherwise. NVIDIA reserves all other rights, title and interest in and to the Licensed Software not expressly granted to you under this Agreement.

**3. CONFIDENTIALITY.** Each party will not use the other party’s Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to NVIDIA personnel, you, your Enterprise and your Enterprise Contractors that have a need to know such Confidential Information for the performance of this 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 this 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 a 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 public disclosure, and (iii) discloses only the minimum amount of information necessary to comply with such requirements.

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#### **4. OWNERSHIP AND FEEDBACK.**

**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.

**4.3 Feedback.** You have no obligation to provide Feedback to NVIDIA. However, NVIDIA and 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 its affiliates may at their option, and may permit its licensees, to make, have made, use, have used, reproduce, sell, license, distribute, sublicense, transfer and otherwise commercialize the Feedback in the Licensed Software or in other 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. "Feedback" means any and all suggestions, feature requests, comments or other feedback relating to the Licensed Software, including possible enhancements or modifications thereto.

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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 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/manufacture 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.