

NVIDIA CLOUD END USER LICENSE AGREEMENT
Release Date: November 2, 2016

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

This Cloud End User License Agreement ("EULA"), 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 EULA. If you do not agree to the terms of this EULA, do not download, install, copy or use the NVIDIA software or documentation. IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY TO THIS EULA, 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 EULA, 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 this EULA, NVIDIA hereby grants you a non-exclusive, non-transferable license, without the right to sublicense, during the term of this EULA to access and use the Software for compute purposes and, if applicable, use Documentation provided with the Software as part of a software as a service solution provided to you by an approved NVIDIA cloud service provider. Compute purposes expressly excludes interactive graphics functionality.

1.2 Enterprise and Contractor Usage. You may allow your Enterprise employees and Contractors 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 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 this EULA, 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 EULA by your Enterprise and Contractors. Any act or omission that if committed by you would constitute a breach of this EULA shall be deemed to constitute a breach of this EULA if committed by your Enterprise or Contractors.

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 EULA.

2. LIMITATIONS.

2.1 License Restrictions. Except as expressly authorized in this EULA, you agree that you will not (nor allow third parties to): (i) copy and use Software outside of the authorized software as a service solution; (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 this EULA 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 this EULA.

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 this EULA. In the event of any conflict between the terms in this EULA 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.

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 under this EULA.

3. CONFIDENTIALITY. Neither party will use the other party's Confidential Information, except as necessary for the performance of this EULA, nor will either party disclose such Confidential Information to any third party, except to personnel of NVIDIA or its Affiliates, you, your Enterprise or your Contractors that have a need to know such Confidential Information for the performance of this EULA, 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 EULA 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. The Licensed Software and all modifications, 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 this EULA 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 NVIDIA CONFIDENTIAL INFORMATION (IF ANY PROVIDED) 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 NVIDIA CONFIDENTIAL INFORMATION 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 THIS EULA 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 (INCLUDING, 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 EULA OR THE USE OR PERFORMANCE OF THE LICENSED SOFTWARE AND NVIDIA CONFIDENTIAL INFORMATION (IF ANY PROVIDED), 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 AND WHETHER OR NOT NVIDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NVIDIA'S TOTAL CUMULATIVE LIABILITY UNDER OR ARISING OUT OF THIS EULA EXCEED TEN U.S. DOLLARS (US\$10.00). 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 EULA 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 this EULA form an essential basis of the bargain between the parties, and, absent any such disclaimers, exclusions or limitations of liability, the provisions of this EULA, including, without limitation, the economic terms, would be substantially different.

8. TERM AND TERMINATION. This EULA and your license rights hereunder shall become effective upon the Effective Date and shall remain in effect for the duration of your licenses, unless earlier terminated as provided in this section. This EULA may be terminated upon written notice in the event of breach of any of the terms of this EULA. Termination of this EULA 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 EULA to survive termination. Notwithstanding the foregoing, the party terminating this EULA shall incur no additional liability merely by virtue of such termination. Termination of this EULA 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 EULA (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. Upon written request, you will certify in writing that you have complied with your obligations under this section. Sections 2 through 10 will survive the expiration or termination of this EULA for any reason.

9. CONSENT TO COLLECTION AND USE OF INFORMATION.

You hereby agree and acknowledge that the Software may access, collect non-personally identifiable information about, update, and configure your Enterprise computer systems in order to (a) properly optimize such systems for use with the Software, (b) deliver software and services, or content through the Software, (c) optimize, maintain, repair and/or administer NVIDIA products and services, and/or (d) deliver marketing communications. Information collected by the Software includes, but is not limited to, Customer System's (i) hardware configuration and ID, (ii) operating system and driver configuration, (iii) installed applications, (iv) applications settings, performance, and usage metrics, and (iv) usage metrics of 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 connection with the receipt of the Licensed Software 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. MISCELLANEOUS.

10.1 Compliance with Terms. During the term of this EULA and for a period of three (3) years thereafter, you will maintain all usual and proper books and records of account relating to the Licensed Software provided under this EULA and to cooperate with your cloud service provider or its Affiliates to verify your compliance with the terms of this EULA. You further agree that your cloud service provider or its Affiliates and NVIDIA may exchange information regarding your use of the Licensed Software and your compliance with the terms of this EULA.

10.2 U.S. Government Legend. 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 this EULA 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.

10.3 Export Control. You acknowledge that the Licensed Software described under this EULA 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 EULA, 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.

10.4 General. This EULA 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 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. This EULA 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. NVIDIA may assign, delegate or transfer this EULA 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 this EULA, 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 this EULA (except for any payment obligations) to the extent due to causes beyond its reasonable control for so long as such event of force majeure continues in effect. This EULA 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 this EULA 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 this EULA is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. Unless otherwise specified, remedies are cumulative. Any amendment or waiver under this EULA must be in writing and signed by representatives of both parties. Any notice delivered by NVIDIA to you under this EULA 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 EULA, 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. “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 EULA 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.
- c. “Contractor” means an individual who works primarily for your Enterprise on a contractor basis from your secure network.
- d. “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 this EULA.
- e. “Enterprise” means you or any company or legal entity for which you accepted the terms of this EULA, and their subsidiaries of which your company or legal entity owns more than fifty percent (50%) of the issued and outstanding equity.
- f. “Feedback” means any and all suggestions, feature requests, comments or other feedback regarding the Licensed Software, including possible enhancements or modifications thereto.
- g. “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.
- h. “Licensed Software” means Software, Documentation and all modifications thereto.
- i. “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.
- j. “Software” means the NVIDIA software programs licensed to you under this EULA including, without limitation, libraries, sample code, utility programs and programming code.