

NVIDIA CLOUD AGREEMENT

IMPORTANT NOTICE – PLEASE READ AND AGREE BEFORE USING NVIDIA CLOUD SERVICE.

This NVIDIA Cloud Agreement is entered into between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually (“Customer”), and NVIDIA Corporation (“NVIDIA”) and governs the use of the Cloud Service. This NVIDIA Cloud Agreement consists of the terms and conditions below and all documents attached to, or referenced in, this NVIDIA Cloud Agreement (together, the “Agreement”). Key terms are defined in Section 18. Customer and NVIDIA are each a “party” and collectively the “parties.”

By registering to use or using the Cloud Service, Customer is affirming that Customer has read the Agreement and agrees to its terms. If Customer does not have the required authority to enter into the Agreement or if Customer does not accept all Agreement terms and conditions, do not register to use or use the Cloud Service.

1. PROVISION OF THE CLOUD SERVICE.

- 1.1 Access. NVIDIA will provide the Cloud Service in accordance with the Agreement and as specified in an Order Form, license key or the offering description (as applicable). Subject to the terms of this Agreement, Customer and its Authorized Users may access and use the Cloud Service.
- 1.2 Authorized Users. Only Customer Personnel may access and use the Cloud Service, unless otherwise explicitly stated in Service-Specific Terms. Customer is responsible for the compliance with the terms of the Agreement by Customer’s Authorized Users. Any act or omission that if committed by Customer would constitute a breach of the Agreement will be deemed to constitute a breach of the Agreement if committed by Customer’s Authorized Users.
- 1.3 Subscription Types. Customer’s Order Form, license key or the offering description will indicate the parameters of Customer’s Subscription.
- 1.4 Customer Testing. Customer may perform limited vulnerability or penetration testing of the Cloud Offerings with NVIDIA’s prior written approval and only in coordination with the NVIDIA security team. Customer must not violate or attempt to violate the security, confidentiality, integrity or availability of any data, and NVIDIA may require Customer to cease any testing, or may take appropriate actions to secure the Cloud Offerings. Without NVIDIA’s advanced written approval, Customer is not authorized to disclose the results of any security testing related to the Cloud Offerings.
- 1.5 Promotional Offerings. NVIDIA may, from time to time, offer free or discounted pricing programs covering certain uses of Cloud Services, for example having different license parameters or fees for evaluation or academic use. NVIDIA may stop accepting new sign-ups or discontinue a promotional offering at any time. Standard charges will apply after a promotional offering ends or if Customer exceeds the promotional offering use terms. Customer must comply with any additional terms, restrictions, or limitations (e.g., limitations on the total amount or duration of use) for a promotional offering as described in the corresponding offer terms.
- 1.6 Customer Access. If requested by NVIDIA, Customer must assign a single point of contact to manage access to the Cloud Service.

2 USER CONTENT.

- 2.1 Customer User Content. For User Content that Customer uploads, stores or shares, Customer represents that Customer either owns the User Content it provides to other Authorized Users, or Customer has all rights, licenses, consents, and releases that are necessary to grant the rights for other Authorized Users to use the User Content Customer shares in connection with the Agreement. Customer is solely responsible for any User Content that Customer uploads, stores or shares, including (i) any personal information relating to an identifiable individual, financial, health or governmental information, or any

other information which may be subject to data privacy or data security laws, rules, or regulations; and (ii) any security vulnerabilities of User Content and related consequences.

- 2.2 **DPA.** The DPA is hereby incorporated by reference into the Agreement. If stated in the Service-Specific Terms for a Cloud Service, NVIDIA will process Customer's User Content uploaded, stored or shared for that Cloud Service in accordance with the DPA.
- 2.3 **Providing User Content.** Customer may be able to provide User Content in repositories for use by multiple Authorized Users who are granted access to the repository. It is Customer's responsibility to have in place terms for use of User Content Customer uploads, stores or shares with other Authorized Users. Any User Content is shared at Customer's sole risk and Customer understands that others with access may read, collect, organize, use and modify the User Content.
- 2.4 **User Content Transmission.** Customer acknowledges and agrees that NVIDIA does not manage or control User Content that Customer or other Authorized Users upload, store, share or access through the Cloud Service. **NVIDIA accepts no responsibility or liability for User Content including, without limitation, privacy rights, proprietary rights, or legal and regulatory compliance and regardless of whether such User Content was transmitted to or by Customer in breach of the Agreement.**
- 2.5 **User Content Grant to NVIDIA.** For User Content that Customer uploads, stores or shares, Customer hereby grants NVIDIA, its Affiliates, their personnel, and NVIDIA subcontractors a non-exclusive, worldwide, limited license to access, use, copy, display, and transmit User Content for the sole purpose of providing the Cloud Service to Customer and Customer's Authorized Users. Except as expressly provided in this Section 2 or otherwise explicitly stated in Service-Specific Terms, NVIDIA will not access, use, copy, display, transmit, or download User Content for any other purpose.

3 PRE-RELEASE AND FREE FEATURES AND OFFERINGS.

- 3.1 **Pre-Release.** NVIDIA will clearly designate features and Cloud Offerings that are in Pre-Release. Pre-Release versions may not be fully functional, may contain errors or design flaws, and may have reduced or different security, privacy, accessibility, availability, and reliability standards relative to commercially provided NVIDIA software, materials and services. Use of a Pre-Release version may result in unexpected results, such as loss of use or loss of content. Customer may use a Pre-Release version at Customer's risk, understanding that such versions are not intended for use in business-critical systems and Customer may stop at Customer's convenience. NVIDIA has no obligation to update or maintain in any manner Pre-Release or free Cloud Offerings, and NVIDIA may choose to abandon development and terminate the availability of a Pre-Release version at any time without liability.
- 3.2 **Additional Terms.** Customer agrees to comply with any additional terms, restrictions, or limitations (e.g., limitations on the total amount of use or duration) applicable to Pre-Release and free offerings as communicated by NVIDIA to Customer. NVIDIA may stop accepting new sign-ups or discontinue a Pre-Release, early access or free offering at any time. Standard charges may apply after an early access program ends or if Customer exceeds the offering use terms.
- 3.3 **Pre-Release and Free Offerings Are "AS-IS". Pre-release and free features and Cloud Offerings are provided "AS-IS," "WITH ALL FAULTS," and "AS-AVAILABLE," and are excluded from Enterprise Support, the SLA, and all limited warranties provided in the Agreement.**

4 UPDATES AND MAINTENANCE.

- 4.1 **Updates.** NVIDIA may change, discontinue or deprecate any part, or all, of the Cloud Service, or change or remove features, functionality or content available as further detailed in the documentation. For Customers that have a paid Subscription, NVIDIA will strive to provide substantially similar service or functionality and to notify Customers in advance if NVIDIA discontinues or makes material changes to existing functionality.

4.2 **Maintenance.** The Cloud Service may be temporarily unavailable, inaccessible or slow when NVIDIA is performing maintenance or upgrades or at other times for reasons not within NVIDIA's reasonable control.

5 **SLA AND ENTERPRISE SUPPORT.** The Cloud Services under a paid Subscription are provided in accordance with the SLA and include Enterprise Support, unless otherwise indicated in the Service-Specific Terms or an Order Form. Any Pre-Release or free Cloud Offerings (i) are not subject to the SLA, and (ii) Enterprise Support, if any, will be provided at NVIDIA's discretion.

6 **SECURITY CREDENTIALS.** If Customer log-in or authentication and authorization is required for Customer access to the Cloud Service, Customer is responsible for securely maintaining any security credentials and log-in information for Customer Authorized Users' use, and for all activities under Customer's account(s). Customer agrees to notify NVIDIA at enterprisesupport@nvidia.com immediately of any known or suspected security incidents or unauthorized use of Customer's account(s) or the Cloud Service.

7 **PAYMENT TERMS AND TAXES.** These terms apply when Customer purchases a Subscription.

7.1 **Ordering.** Customer may be able to purchase a Subscription from NVIDIA or via an NVIDIA-authorized reseller (in some cases a cloud marketplace reseller), as available. Each Order Form will be effective when entered into by the Customer and NVIDIA. Each order placed by Customer through an Order Form is a separate transaction of the parties under the Agreement.

7.2 **Fees.** When purchasing directly from NVIDIA, the following terms apply: Fees for the Subscription are set forth in the Order Form and are payable pursuant to the terms of such Order Form. Unless otherwise expressly indicated in an Order Form, fees are expressed in U.S. Dollars. Each Order Form placed is non-cancellable and fees received are non-refundable.

7.3 **Taxes.** If Customer is not billed the applicable tax under the Order Form, then it is Customer's responsibility to properly remit the tax directly to the applicable tax jurisdiction. Further, Customer acknowledges that the payments to NVIDIA under the Agreement will be made in full without reduction for withholding taxes, if applicable.

7.4 **Overdue Payment.** If any payment is overdue from Customer or a reseller, NVIDIA reserves the right to suspend or terminate 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.

7.5 **Price Changes.** Any price change will only apply to purchases after the price change.

8 **LIMITATIONS.** The following limitations and restrictions apply to the Cloud Service use, and Customer is responsible for the consequences of non-conformance with these limitations:

8.1 Customer will use the Cloud Service and User Content exclusively for authorized purposes, consistent with the Agreement's terms and all applicable laws, regulations and the rights of others, including, without limitation, Intellectual Property Rights, confidentiality, publicity, export and import, security and data privacy, including health information privacy, laws, rules and regulations, and further Customer will not promote or encourage conduct that can lead to illegal activities or give rise to legal liability.

8.2 Customer's use of the Cloud Service and User Content will not (i) be fraudulent, false, misleading, deceptive, defamatory, obscene, pornographic, vulgar, or offensive; or (ii) engage, facilitate or promote violence, discrimination, bigotry, racism, hatred, harassment, or harm against any individual or group.

8.3 Customer may not access or use the Cloud Service, or combine paid and unpaid offerings, in a way intended to avoid incurring fees or exceeding use limits or quotas.

8.4 Customer may not reverse engineer, decompile, disassemble, or remove copyright or other proprietary notices from any portion of the Cloud Service.

8.5 Except as expressly permitted in the Agreement, Customer may not modify, translate, or otherwise create derivative works of any part of the Cloud Service.

- 8.6 Except as expressly granted in the Agreement, Customer may not copy, sell, resell, rent, sublicense, transfer, assign, timeshare, distribute, modify, or create derivative works of any portion of the Cloud Service.
- 8.7 Customer may not violate the security, confidentiality, integrity and availability of the Cloud Service, or violate the security, confidentiality, integrity and availability of any user, network or system.
- 8.8 Customer may not perform security testing of the Cloud Service (including probe, scan or vulnerability tests) except as expressly authorized under the Agreement.
- 8.9 Customer may not use the Cloud Service for crypto mining, or operating a coin service, exchange or other service for the purposes of generating, distributing, or transacting in digital currencies.
- 8.10 Customer must refrain from unsolicited automated bulk communication activities, including unsolicited mass mailings or other form of "spam." Generated messages must not spoof or falsify e-mail addresses, routing information or seek to impersonate any person, entity, or otherwise mislead as to the origin of the content.
- 8.11 Customer may not distribute malware or facilitate the distribution and propagation of malware.
- 8.12 Customer may not indicate that User Content or a product or service developed with the Cloud Service is sponsored or endorsed by NVIDIA without prior written permission from NVIDIA.
- 8.13 Customer may not bypass, disable, or circumvent any technical aspect of the Cloud Service, including, but not limited to, encryption, security, digital rights management, authorization or authentication mechanism.
- 8.14 Customer may not distribute or disclose to third parties results of benchmarking, competitive analysis, regression or performance data relating to the Cloud Service or NVIDIA GPUs without prior written permission from NVIDIA.
- 8.15 Customer may not use the Cloud Service for the purpose of developing or providing competing products or technologies or assisting a third party with such activities.
- 8.16 Unless Customer has an agreement with NVIDIA for this purpose, Customer may not use the Cloud Service with any Critical Application. Customer acknowledges that NVIDIA does not design, test, manufacture or certify the Cloud Service for use in the context of a Critical Application. Beyond NVIDIA delivering the Cloud Service in accordance with the Agreement, NVIDIA will not be liable to Customer or any third party, in whole or in part, for any claims or damages arising from such uses.

9 CONFIDENTIALITY.

- 9.1 Right to Use Confidential Information. The receiving party may use the disclosing party's Confidential Information only to exercise its rights and perform its obligations under the Agreement. The receiving party may disclose the disclosing party's Confidential Information to its Affiliates, directors, officers, employees, contractors, independent external auditors, and advisors (including legal and accounting) who have a need to know that information in their work for the receiving party under the Agreement and who are bound to protect that information under obligations of confidentiality at least as restrictive as those described in the Agreement. The receiving party will not disclose the disclosing party's Confidential Information to any third party, except as expressly authorized in the Agreement, without first having written approval of the disclosing party. The receiving party will protect the Confidential Information of the disclosing party with at least the same degree of care that the receiving party uses to protect its own similar confidential and proprietary information, but no less than a reasonable degree of care. Irrespective of any expiration or termination of the Agreement, the receiving party's duty to protect the disclosing party's Confidential Information expires five (5) years after the date Confidential Information was disclosed. If the disclosing party sends a written request, the receiving party will promptly return or

destroy all Confidential Information received from the disclosing party, together with copies, except that a party may retain archival copies in accordance with its document retention policy or as required by law.

9.2 **Exceptions.** Confidential Information does not and will not include information that: (i) was in the public domain at the time it was communicated to the receiving party by the disclosing party, or later entered the public domain other than by a breach of the Agreement by the receiving party, (ii) is or was rightfully received or known by the receiving party without restriction on disclosure or any obligation of confidentiality, (iii) is or was independently developed by or for the receiving party without using any of the disclosing party's Confidential Information, or (iv) is or was generally made available by the disclosing party without restriction on disclosure. The receiving party will not be liable for disclosure of Confidential Information required to be disclosed in response to a valid order by a court or other governmental body of competent jurisdiction. The receiving party will (unless restricted) provide the disclosing party with prior written notice of the required disclosure to permit the disclosing party to seek confidential treatment of such information and disclose only the information necessary to comply with the requirements.

10 SUSPENSION AND TERMINATION.

10.1 **Automatic Termination.** Customer's access to the Cloud Service terminates automatically without notice from NVIDIA upon expiration of Customer's Subscription. Customer's access to Pre-Release and free Cloud Offerings terminates automatically without notice from NVIDIA upon expiration of the applicable Pre-Release or free trial period.

10.2 **Early Termination.** NVIDIA may at any time with advance written notice terminate the Agreement or an Order Form, in whole or in part, (i) if use of the Cloud Service or User Content materially breaches the terms of the Agreement, (ii) if Customer commences or participates in any legal proceeding against NVIDIA with respect to the Cloud Service or User Content, or (iii) as needed, in NVIDIA's reasonable judgment, to comply with laws and regulations or to comply with its service provider agreements. For example, NVIDIA may modify or terminate an offering in connection with a government requirement that would cause NVIDIA to be regulated as a telecommunications provider. Additionally, NVIDIA may at any time for any reason terminate the availability or a Customer's use of a Pre-Release or free Cloud Offering. Customer may terminate at any time the Agreement or an Order Form if NVIDIA does not timely cure a material breach of the Agreement. If the termination basis is breach and the breach is curable, the other party will have thirty (30) days from the date of notification to cure the breach, or five (5) days to cure if the breach is of a payment obligation.

10.3 **Suspension.** NVIDIA may at any time suspend or restrict Customer or any of Customer's Authorized Users' access to the Cloud Service for the reasons that may lead to termination as described in Section 10.2, or to perform maintenance (whether planned or unplanned). NVIDIA will strive to provide advance notice of suspension, although in some cases the notice may follow suspension. Additionally, NVIDIA may at any time for any reason suspend the availability or a Customer's use of a Pre-Release or free Cloud Offering.

10.4 **Effects of Suspension or Termination.** Upon the suspension or termination of the Agreement or an Order Form, Customer will cease using the Cloud Service and any fees owed to NVIDIA will become immediately due and payable even if longer terms have been agreed earlier. NVIDIA or an NVIDIA reseller will also bill Customer for any outstanding payment obligations during a Subscription period in the event of early termination for any reason other than for NVIDIA's uncured material breach. No credit or refund will be provided for Subscription fees paid to NVIDIA or NVIDIA reseller. It is highly recommended that Customer maintains its full data backup, as NVIDIA will not retain Customer's data for Customer's retrieval. Upon Customer's request, NVIDIA will suggest data practices and options to help establish Customer's data backup protocols.

10.5 **Enterprise Support Termination.** Enterprise Support ends at the earlier of the expiration or termination of the Cloud Service Subscription, and no credit or refund will be provided.

10.6 Investigation and Reporting. NVIDIA may investigate violations of the Agreement or misuse of the Cloud Service, and subject to the terms in the Agreement, may report activities to law enforcement, regulators or other authorities.

10.7 Survival. All provisions of the Agreement which by their nature should survive termination will survive termination, including, without limitation, the terms in Section 7 through Section 18.

11 DATA COLLECTION.

11.1 Collection Purposes. Unless otherwise stated in Service-Specific Terms, the following applies: Customer hereby acknowledges that the Cloud Service may collect the following data for the following purposes: (i) configuration and operating system data to properly configure and optimize systems for use with the Cloud Service; (ii) metrics, logs, settings, configurations, installed applications and drivers used with the Cloud Service, application settings, performance and usage data of the Cloud Service to operate and improve the Cloud Service, and (iii) error logs relating to the Cloud Service for diagnostics and troubleshooting purposes. Customer acknowledges that NVIDIA may not be able to offer certain support services without such data.

11.2 Personal Information. NVIDIA may require certain personal information such as name and/or email address, or entitlement information to deliver or provide the Cloud Services to Customer and its Authorized Users.

11.3 Consents and Notices. Customer is responsible for making any necessary disclosures and obtaining any consents as appropriate to permit NVIDIA's accessing, storing, and processing of data of Customer or Customer's Authorized Users as described in the Agreement. Customer will assign a single point of contact to manage any data subject requests by its Authorized Users.

11.4 Third Party Privacy Practices. The Cloud Service may contain links to third party websites and services, and Customer's use of third-party products and services may be subject to such third-party privacy statements or practices. NVIDIA is not responsible for the privacy statements or practices of third parties.

11.5 Privacy Policy. Please review the NVIDIA Privacy Policy, located at <https://www.nvidia.com/en-us/agreements/nvidia-privacy-policy/privacy-policy/>, which explains NVIDIA's policy for collecting and using data, as well as visit the NVIDIA Privacy Center, located at <https://www.nvidia.com/en-us/privacy-center>, to manage Customer's consent and privacy preferences.

11.6 Privacy Requests. Unless otherwise stated in Service-Specific Terms, Customer can contact enterprisesupport@nvidia.com to manage Customer's Cloud Service privacy requests.

12 OWNERSHIP AND FEEDBACK.

12.1 Ownership of Cloud Service. As between the parties, the Cloud Service, including all Intellectual Property Rights, are and will remain the sole and exclusive property of NVIDIA or its licensors. Except as expressly granted in the Agreement, (i) NVIDIA reserves all rights, interests, and remedies in connection with the Cloud Service, and (ii) no other license or right is granted to Customer by implication, estoppel or otherwise.

12.2 Ownership of User Content. As between the parties, Customer owns Customer's User Content (exclusive of any NVIDIA intellectual property that may be included).

12.3 Feedback. Customer may, but is not obligated to, provide Feedback for the Cloud Service, such as ideas, bug reports and suggested enhancements. Feedback, even if designated as confidential by Customer, will not create any confidentiality obligation for NVIDIA or its Affiliates. If Customer provides Feedback, Customer hereby grants NVIDIA, its Affiliates and its designees a non-exclusive, perpetual, irrevocable, sublicensable, worldwide, royalty-free, fully paid-up, and transferable license, under Customer's Intellectual Property Rights, to publicly perform, publicly display, reproduce, use, make, have made, sell, offer for sale, distribute (through multiple tiers of distribution), import, create derivative works of, and

otherwise commercialize and exploit the Feedback for any purpose at NVIDIA's discretion. NVIDIA agrees that: (i) Customer Feedback is provided "as-is" without a warranty of any kind; and (ii) NVIDIA will not identify Customer as the source of the Feedback.

13 REPRESENTATIONS AND WARRANTIES, DISCLAIMERS.

13.1 Mutual Representations and Warranties. Each party represents and warrants:

13.1.1 It has the authority and any necessary approvals to enter the Agreement, and

13.1.2 Its execution, delivery and performance under the Agreement does not conflict with any agreement, instrument or understanding to which it is a party or by which it may be bound.

13.2 Customer Representations and Warranties. Customer represents and warrants that use of the Cloud Service and User Content will be consistent with the Agreement's terms and all applicable laws, regulations and the rights of others.

13.3 WARRANTY DISCLAIMER. **The above warranties are the only warranties made by the parties under the Agreement. To the maximum extent permitted by applicable law, both parties disclaim all other warranties and representations of any kind, whether express, implied or statutory, relating to or arising under the Agreement, including, without limitation, the warranties of title, noninfringement, merchantability, fitness for a particular purpose, usage of trade and course of dealing. No information or advice given by either party will in any way increase the scope of any warranty expressly provided in the Agreement.**

14 INDEMNITY.

14.1 NVIDIA Indemnification Obligations. Subject to the limitation of liability described in Section 15, NVIDIA will defend at its own expense any Claim against Customer, Customer's Affiliates, and their respective employees, directors and agents ("Customer Indemnitees") brought by a third party that any third party Intellectual Property Right is infringed by a component of the Cloud Offerings used in accordance with the Agreement which is: (a) designed by NVIDIA, (b) is not licensed-in by NVIDIA, and (c) is not required for compatibility with an industry standard or to execute software not provided by NVIDIA, and NVIDIA will pay Indemnifiable Costs. However, NVIDIA will have no obligation to indemnify Customer Indemnitees with respect to any Pre-Release or free Cloud Offerings or any Claim relating to, based on, or arising out of: (i) any modification made to the Cloud Offerings (other than by NVIDIA); (ii) the combination, integration, application, operation or use of the Cloud Offerings with any equipment, device, apparatus, program, code or data that is not manufactured or supplied by NVIDIA where such combination, integration, application, operation or use is the object of the Claim; (iii) any use not intended by NVIDIA; (iv) implementation of an industry standard or specification; (v) NVIDIA's compliance with specifications, requirements or instructions of any Customer Indemnitee; and (vi) a Customer Indemnitee failure to use materials or instructions provided by NVIDIA which would have rendered the Cloud Offerings non-infringing.

14.2 Customer Indemnification Obligations. Subject to the limitation of liability described in Section 15, Customer will defend at its own expense any Claim against NVIDIA, NVIDIA's Affiliates, and their respective employees, directors and agents ("NVIDIA Indemnitees") brought by a third party to the extent arising from (a) an allegation that Customer Data, Customer Product, or User Content violate the rights of others or violate laws or regulations, or (b) Customer's or an Authorized User's use of Cloud Offerings in breach of Section 8 (Limitations), and Customer will pay Indemnifiable Costs.

14.3 Indemnity Conditions. The obligations of the indemnifying party in this Section 14 are subject to the conditions that:

14.3.1 the indemnifying party is notified promptly in writing by the indemnified party of any Claim and the indemnified party will reasonably cooperate with the indemnifying party in the defense of the Claim,

at the indemnifying party's cost. If breach of this Section 14.3 prejudices the defense of the Claim, the indemnifying party's obligations under Section 14.1 (NVIDIA Indemnification Obligations) or 14.2 (Customer Indemnification Obligations) (as applicable) will be reduced in proportion to the prejudice; and

14.3.2 the indemnifying party has sole control of the defense and all negotiation for any settlement or compromise of the Claim; subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

14.4 Remedies. Should the Cloud Offerings become (or in NVIDIA's opinion be likely to become) the subject of any Claim, NVIDIA will have the option, at its sole discretion and expense: (i) to procure for Customer Indemnitees the right to continue using the Cloud Offerings; (ii) to replace or modify the Cloud Offerings so that it becomes non-infringing while providing substantially similar functional performance for the Cloud Offerings as a whole; or (iii) if NVIDIA determines in its sole discretion that it cannot reasonably do (i) or (ii), NVIDIA may terminate an Order Form and will refund to Customer any unused prepaid fees that Customer paid for use of the terminated Order Form.

14.5 Sole Rights and Obligations. Section 14 states each indemnifying party's entire liability, and the indemnified party's sole and exclusive remedy for third party Claims relating to or arising out of the NVIDIA Cloud Offerings or User Content.

15 LIMITATION OF LIABILITY.

15.1 Disclaimers. Except as provided in Section 15.3, to the maximum extent permitted by law, in no event will either party be liable for any (i) indirect, special, incidental, punitive or consequential damages, or (ii) damages for the (a) cost of procuring substitute goods, or (b) lost profits, revenue, use, data or goodwill arising out of or in connection with the Agreement or the use or the performance of the Cloud Service whether based on breach of contract, tort (including negligence), strict liability, or otherwise, and even if a party has been advised of the possibility of such damages and even if a party's remedies fail their essential purpose.

15.2 Damages Capped. Except as provided in Section 15.3, to the maximum extent permitted by applicable law, each party's total cumulative aggregate liability for any and all liabilities, obligations or claims arising out of or related to the Agreement will not exceed the greater of (a) the net amounts paid for the affected Cloud Service Subscriptions during the twelve (12) months before the event giving rise to the liability, or (b) one hundred US dollars (\$100USD). The foregoing limitations apply even if the above stated remedies fail of their essential purpose.

15.3 Uncapped Liability. The limitations set forth in Section 15.1 and Section 15.2 will not limit either party's liability for:

- 15.3.1 fraud or fraudulent misrepresentation;
- 15.3.2 confidentiality obligations, except for all liabilities related to Customer's User Content which will remain subject to the limitations and exclusions above;
- 15.3.3 violation of the obligations in Section 8, or violation of the other party's Intellectual Property Rights;
- 15.3.4 payment obligations under the Agreement; or
- 15.3.5 matters for which liability cannot be excluded or limited under applicable law.

16 GOVERNING LAW. The Agreement will be governed in all respects by the laws of the United States and the laws of the State of Delaware, without regard to conflict of laws principles or the United Nations Convention on Contracts for the International Sale of Goods. The state and federal courts residing in Santa Clara County,

California will have exclusive jurisdiction over any dispute or claim arising out of or related to the Agreement, and the parties irrevocably consent to personal jurisdiction and venue in those courts; except that either party may apply for injunctive remedies or an equivalent type of urgent legal relief in any jurisdiction.

17 GENERAL.

- 17.1 Assignment. NVIDIA may assign, delegate or transfer its rights or obligations under the Agreement by any means or operation of law. Customer agrees that Customer will not transfer or assign the Agreement or Customer's rights and obligations by any means or operation of law without NVIDIA's permission. Any attempted assignment not approved by NVIDIA in a signed writing will be void and of no effect.
- 17.2 Subcontracting. NVIDIA may subcontract obligations under the Agreement but will remain liable to Customer for any subcontracted obligations.
- 17.3 Notices. If NVIDIA needs to contact Customer about the Cloud Service, Customer consents to receive notices electronically. Customer is responsible for keeping Customer's notification email current. The parties agree that electronic notice will satisfy any legal communication requirements, and that email notices will be treated as received when the email is sent. Customer is required to send legal notices to NVIDIA Corporation, 2788 San Tomas Expressway, Santa Clara, California 95051, United States of America, Attention: Legal Department, with an emailed copy to legalnotices@nvidia.com.
- 17.4 Trade and Compliance. Customer agrees to comply with all applicable export, import, trade and economic sanctions laws and regulations, as amended, including without limitation U.S. Export Administration Regulations and Office of Foreign Assets Control regulations. Any violation of such laws by the Customer will void any warranty for the associated products and technologies. In the event of a download or technology transfer, Customer confirms that it will not export or re-export any products or technology, directly or indirectly, without first obtaining any required license or other approval from appropriate authorities. For cloud services, Customer will not provide service to (i) any countries or regions that are subject to any U.S. embargo; (ii) any end-user who it knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, missiles, rocket systems, unmanned air vehicles capable of a maximum range of at least 300 kilometers, regardless of payload, or intended for military end-use, or any weapons of mass destruction; (iii) any end-user who has been prohibited from participating in the U.S. or local export transactions by any governing authority; or (iv) to any known military or military-intelligence end-user or for any known military or military-intelligence end-use in accordance with U.S. trade compliance laws and regulations.
- 17.5 Government Rights. The Cloud Service software, documentation and technology ("Protected Items") are "Commercial products" as this term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in, respectively, 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 & 252.227-7014(a)(1). Before any Protected Items are supplied to the U.S. Government, Customer will (i) inform the U.S. Government in writing that the Protected Items are and must be treated as commercial computer software and commercial computer software documentation developed at private expense; (ii) inform the U.S. Government that the Protected Items are provided subject to the terms of the Agreement; and (iii) mark the Protected Items as commercial computer software and commercial computer software documentation developed at private expense. In no event will Customer permit the U.S. Government to acquire rights in Protected Items beyond those specified in 48 C.F.R. 52.227-19(b)(1)-(2) or 252.227-7013(c) except as expressly approved by NVIDIA in writing.
- 17.6 Force Majeure. Except for payment of fees or taxes, neither party will be liable during an instance of Force Majeure.
- 17.7 Entire Agreement. Regarding the subject matter of the Agreement, the parties agree that (i) the Agreement constitutes the entire and exclusive agreement between the parties and supersedes all prior

and contemporaneous communications and (ii) any additional or different terms or conditions, whether contained in purchase orders, order acknowledgments, invoices or otherwise, will not be binding and are null and void.

17.8 **Severability**. If any provision of the Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of the Agreement, which will remain in full force and effect.

17.9 **No Waiver**. No waiver of any term of the Agreement will 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 the Agreement will not constitute a waiver of such right or provision.

17.10 **Independent Contractors**. The parties are independent contractors, and this Agreement does not create a partnership, joint venture, joint employment, agency or other form of business association between the parties or their respective employees, or authorize either party to make or enter into any commitments for or on behalf of the other party. Neither party will have the power to bind the other party or incur any obligation on its behalf without the other party's prior written consent. Neither party, or their respective employees, is entitled to receive or make a claim for any benefits that the other party or its Affiliates may make available to its respective employees, such as health insurance, retirement plan contributions, equity awards or sick or vacation pay.

17.11 **Independent Development**. Nothing in the Agreement will be construed to limit or restrict either party from independently developing, providing, or acquiring any materials, services, products or technology that are similar to the subject of the Agreement, provided that the party does not breach its obligations under the Agreement in doing so.

17.12 **Order of Precedence**. If there is a conflict between the documents that make up the Agreement, the documents will control in the following order (starting with the highest order of precedence): the NVIDIA privacy policy, the DPA, the remainder of the Agreement (excluding the Service-Specific Terms), the Service-Specific Terms, the SLA, and the Order Form.

17.13 **Construction**. The parties and their respective counsel have reviewed the Agreement and it will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. The headings in the Agreement are included solely for convenience and are not intended to affect the meaning or interpretation of the Agreement. As required by the context of the Agreement, the singular of a term includes the plural and vice versa.

18 Definitions.

18.1 **"Affiliate"** means an entity that owns or controls, is owned or controlled by, or is under common ownership or control with a party, where "control" is the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

18.2 **"Authorized Users"** means Customer Personnel and Persons (as applicable).

18.3 **"Claim"** means any formal suits or other legal actions filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

18.4 **"Cloud Offerings"** means NVIDIA-offered platform-as-a-service, APIs and materials (such as NVIDIA DGX Cloud and NVIDIA Omniverse Cloud), all of which are available for cloud access.

18.5 **"Cloud Service"** means a Cloud Offering together with the SLA and Enterprise Support, as applicable.

18.6 **"Confidential Information"** means any non-public information provided, including the terms of this Agreement and the Order Form, in any format by one party to the other party under the Agreement during the term, that was designated or identified by the disclosing party as confidential or should be known by

the receiving party when exercising reasonable business judgment to be confidential given the nature or circumstances of its disclosure.

18.7 “Critical Application” means any system or application where the use or failure of such system or application could result in injury, death, or catastrophic damage. Examples of Critical Applications include, without limitation, use in avionics, navigation, military, medical, or life support or other life or mission critical application.

18.8 “Customer Data” has the meaning assigned to it in the DPA.

18.9 “Customer Infrastructure” means Customer owned or leased infrastructure.

18.10 “Customer Personnel” means employees and contractors of Customer and its subsidiaries, and for educational institutions include enrolled students, who may access or use the Cloud Service from Customer Infrastructure to perform work authorized by the Agreement on Customer’s behalf.

18.11 “Customer Product” means a service hosted by Customer that includes additional material functionality such as Customer or third-party application or content.

18.12 “DPA” means the then-current NVIDIA data processing addendum at <https://www.nvidia.com/en-us/agreements/data-processing-addendum/nvidia-cloud-services-data-processing-addendum/>.

18.13 “Enterprise Support” means Customer’s access to the then-current support offerings for the Cloud Offerings described at <https://www.nvidia.com/en-us/agreements/enterprise-services/nvidia-enterprise-support-policy/>.

18.14 “Feedback” means (i) suggestions, enhancement requests, bug reports or other feedback to NVIDIA or an NVIDIA Affiliate, whether oral or in writing, for the Cloud Service, and (ii) information regarding generated content when a Cloud Service includes features for Customers to rate and report generated content.

18.15 “Force Majeure” means an event or circumstance that prevents or delays a party from performing its obligations under the Agreement and that event or circumstance: (i) is not within the reasonable control of that party and is not the result of that party’s negligence (including, without limitation, acts of God, natural disaster, acts of government, power failure, flood, fire, earthquakes, pandemics, civil unrest, war, acts of terror or general labor or delivery chain disturbances such as strikes), and (ii) cannot be overcome or avoided by that party using reasonably diligent efforts.

18.16 “GPU” means the number of GPUs associated with the compute used to run the Cloud Service.

18.17 “Indemnifiable Costs” mean all (i) damages or costs finally awarded against the indemnified party by a court or authority of competent jurisdiction in any action, (ii) damages agreed to in a monetary settlement of such action, (iii) reasonable litigation fees, costs and expenses, incurred by the indemnified party in each of case (i)-(ii) that is specifically attributable to an indemnified Claim.

18.18 “Intellectual Property Rights” means all intellectual property rights, including all patents, trademarks, trade dress, copyrights, database rights, trade secrets, know-how, mask works, and any other similar protected rights in any country including all related applications for and registrations of these rights.

18.19 “Node” means the number of compute instances on which the Cloud Offerings run.

18.20 “Order Form” means the order that Customer places with: (i) NVIDIA, or (ii) a cloud marketplace, in each case including all applicable sales terms and conditions issued by NVIDIA (such as a public listing or private offer) and that are accepted by Customer for the purchase of Subscriptions.

18.21 “Persons” means any person that receives access from Customer or its subsidiaries to the Cloud Offerings as needed to interact with Customer’s Product.

18.22 “Pre-Release” means a Cloud Offering or version or feature of the Cloud Offerings that is identified by NVIDIA as beta, developer preview, early access or otherwise as pre-release.

18.23 “Service-Specific Terms” means the then-current terms that apply to a particular Cloud Offering, including the Cloud Offering SLA, which are incorporated into this Agreement by reference.

18.24 “SLA” means the then-current service level agreement for Cloud Offerings.

18.25 “Subscription” means Customer’s access to the Cloud Service subject to the parameters indicated by NVIDIA, including as applicable the SLA and Enterprise Support if indicated in the Service-Specific Terms or an Order Form, for a fixed duration.

18.26 “User Content” means any content that Customer or its Authorized Users, may upload, store or share, including but not limited to Customer Data and expressly excluding Feedback.

(v. June 13, 2024)