



CUDNN

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Software License Agreement



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Chapter 1.

NVIDIA SOFTWARE LICENSE AGREEMENT

Release Date: October 20, 2016



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Chapter 2.

SOFTWARE LICENSE AGREEMENT

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2.1.1. License Grant

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2. 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 the AGREEMENT by your Enterprise and Contractors. Any act or omission that, if

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Except as expressly indicated in an Order, NVIDIA is under no obligation to provide support for the Licensed Software or to provide any patches, maintenance, updates or upgrades under the AGREEMENT. Unless patches, maintenance, updates or upgrades are provided with their separate governing terms and conditions, they constitute Licensed Software licensed to you under the AGREEMENT.

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3. 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
4. modify, translate or otherwise create any derivative works of any Licensed Software
5. remove, alter, cover or obscure any proprietary notice that appears on or with the Licensed Software or any copies thereof
6. use the Licensed Software, or allow its use, transfer, transmission or export in violation of any applicable export control laws, rules or regulations
7. distribute, permit access to, or sublicense the Licensed Software as a stand-alone product
8. 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
9. use the Licensed Software for the purpose of developing competing products or technologies or assisting a third party in such activities

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2. uses reasonable effort to obtain confidential treatment or similar protection to the fullest extent possible to avoid such public disclosure, and
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2.8. TERM AND TERMINATION

2.8.1. AGREEMENT, Licenses and Services

This SLA shall become effective upon the Effective Date, each Supplement upon their acceptance, and both this SLA and Supplements shall continue in effect until your last access or use of the Licensed Software and/or services hereunder, unless earlier terminated as provided in this "Term and Termination" section. Each Licensed Software license ends at the earlier of

1. the expiration of the applicable license term, or
2. termination of such license or the AGREEMENT.

Each service ends at the earlier of (x) the expiration of the applicable service term, (y) termination of such service or the AGREEMENT, or (z) expiration or termination of the associated license and no credit or refund will be provided upon the expiration or termination of the associated license for any service fees paid.

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2. if you become 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 you cease to do business; or
3. 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. If you or your authorized NVIDIA reseller fail to pay license fees or service fees when due then NVIDIA may, in its sole discretion, suspend or terminate your license grants, services and any other rights provided under the AGREEMENT for the affected Licensed Software, in addition to any other remedies NVIDIA may have at law or equity. Upon any expiration or termination of the AGREEMENT, a license or a service provided hereunder,
 - a. any amounts owed to NVIDIA become immediately due and payable,
 - b. you must promptly discontinue use of the affected Licensed Software and/or service, and
 - c. you must promptly destroy or return to NVIDIA all copies of the affected 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. Upon expiration or termination of the AGREEMENT all provisions survive except for the license grant provisions.

2.9. CONSENT TO COLLECTION AND USE OF INFORMATION

You hereby agree and acknowledge that the Software may access, collect non-personally identifiable information about your Enterprise computer systems in order to properly optimize such systems for use with 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

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This SLA, any Supplements incorporated hereto, and Orders constitute the entire agreement of the parties with respect to the subject matter hereto and supersede 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. Any amendment or waiver under the AGREEMENT must be in writing and signed by representatives of both parties.

The AGREEMENT and the rights and obligations thereunder 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 the AGREEMENT 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 the AGREEMENT, 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 the AGREEMENT (except for any payment obligations) to the extent due to causes beyond its reasonable control for so long as such force majeure event continues in effect.

The AGREEMENT will be governed by and construed under the laws of the State of Delaware and the United States without regard to the conflicts of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The parties consent to the personal jurisdiction of the federal and state courts located in Santa Clara County, California. You acknowledge and agree that a

breach of any of your promises or agreements contained in the AGREEMENT may result in irreparable and continuing injury to NVIDIA for which monetary damages may not be an adequate remedy and therefore NVIDIA is entitled to seek injunctive relief as well as such other and further relief as may be appropriate. If any court of competent jurisdiction determines that any provision of the AGREEMENT is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. Unless otherwise specified, remedies are cumulative.

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Any notice delivered by NVIDIA to you under the AGREEMENT 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.

Chapter 3.

SUPPLEMENT TO SOFTWARE LICENSE AGREEMENT

Release date: January 5, 2017

The terms set forth in this cuDNN Supplement (“Supplement”) govern your use of the CUDA Deep Neural Network library (cuDNN) (the “cuDNN Licensed Software”) under the terms of your software license agreement (“SLA”) as modified by this Supplement. This Supplement is an exhibit to the SLA and is hereby incorporated as an integral part thereto. Capitalized terms used but not defined herein shall have the meaning assigned to them in the SLA. In the event of conflict between the terms in this Supplement and the terms in the SLA, this Supplement shall control.

3.1. CUDNN DISTRIBUTION

Subject to the terms of the SLA and this Supplement, NVIDIA hereby grants you a non-exclusive, non-transferable license during the applicable license term unless earlier terminated pursuant to the SLA, to distribute the runtime files (.so, .h) when delivered to you as part of the cuDNN Licensed Software in source code form or binary form (but not when provided to you as part of a hardware product), subject to such distribution being solely in binary form to your licensees (“Customers”) only as a component of your own software products having additional material functionality beyond the redistributable cuDNN Licensed Software (each, a “Licensee Application”). Subject to the terms and conditions of the SLA and this Supplement, you may further authorize Customers to redistribute the cuDNN Licensed Software as incorporated into a Licensee Application, solely in binary form, provided, however, that you shall require in your agreements with your Customers that their distributions be on terms at least as restrictive as those applicable for your use of the cuDNN Licensed Software within a Licensee Application. The expiration or termination of your licenses to the cuDNN Licensed Software under the SLA and this Supplement will not affect your previous cuDNN distributions in compliance with the SLA and this Supplement.

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You are liable for the distribution and use of cuDNN Licensed Software if you failed to comply with the distribution requirements of this Supplement. You agree to notify NVIDIA in writing of any known or suspected distribution or use of the cuDNN Licensed Software not in compliance with the terms of the AGREEMENT, and to enforce the terms of your agreements with respect to cuDNN Licensed Software you distributed.

3.2. LICENSE DURATION

Each cuDNN Licensed Software is licensed to you for an initial duration of one year starting from the date of delivery or download. The licenses granted will automatically renew for successive one year periods, provided that NVIDIA reserves the right to terminate licenses upon ninety days (90) days written notice to you prior to the commencement of a renewal year in addition to the termination rights set forth in the SLA.

3.3. AUDIT

During the term of the AGREEMENT and for three (3) years thereafter, you will maintain all usual and proper books and records of account relating to the cuDNN Licensed Software and services provided under the 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 compliance with the terms of the AGREEMENT. Any such inspection and audit will be conducted during regular business hours and no more frequently 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 accruing (without the requirement of a notice) from the time underpayment began 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 the AGREEMENT, then you will also pay NVIDIA's reasonable costs of conducting the inspection and audit. Further, you agree that the party delivering the cuDNN Licensed Software to you may collect and disclose to NVIDIA information for NVIDIA to verify your compliance with the terms of

the AGREEMENT including (without limitation) information regarding your use of the cuDNN Licensed Software.

3.4. EXPIRATION OF TERMINATION OF THIS SUPPLEMENT

Your failure to comply with the terms of this Supplement is ground for termination for breach by NVIDIA under the SLA. This Supplement will automatically expire or terminate upon the expiration or termination of your rights to cuDNN Licensed Software under the SLA or this Supplement.

Chapter 4.

GLOSSARY OF TERMS

Certain capitalized terms, if not otherwise defined elsewhere in this SLA, shall have the meanings set forth below:

Affiliate

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.

AGREEMENT

AGREEMENT means this SLA and all associated Supplements entered by the parties referencing this SLA.

Authorized Users

Authorized Users means your Enterprise individual employees and any of your Enterprise's Contractors, subject to the terms of the [Enterprise and Contractor Usage](#) section.

Confidential Information

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:

1. is or becomes generally known to the public through no fault of or breach of the AGREEMENT by the receiving party;
2. is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality;
3. is independently developed by the receiving party without use of the disclosing party's Confidential Information; or
4. is rightfully obtained by the receiving party from a third party without restriction on use or disclosure.

Contractor

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