

NVIDIA Corporation

Software License Agreement for the NVIDIA® OptiX™ ray tracing engine

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Do not use or load this software and any associated materials (collectively the “Software”) until You have carefully read the following terms and conditions. By loading or using the Software, You agree to fully comply with the terms and conditions of this Software License Agreement (“Agreement”) by and between NVIDIA Corporation, a Delaware corporation with its principal place of business at 2701 San Tomas Expressway, Santa Clara, California 95050 U.S.A. (“NVIDIA”), and You. If You do not wish to so agree, do not install or use the Software.

For the purposes of this Agreement:

“Licensee,” “You” and/or “Your” shall mean, collectively and individually, Original Equipment Manufacturers, Independent Hardware Vendors, Independent Software Vendors, and End-Users of the Software pursuant to the terms and conditions of this Agreement.

“Derivative Works” shall mean derivatives of the Software created by You or a third party on Your behalf, which term shall include: (a) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (b) for work protected by topography or mask right, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (c) for patentable or patented material, any Improvement; and (d) for material protected by trade secret, any new material derived from or employing such existing trade secret.

“Intellectual Property Rights” shall mean all proprietary rights, including all patents, trademarks, copyrights, know-how, trade secrets, mask works, including all applications and registrations thereto, and any other similar protected rights in any country.

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- i. they will maintain a valid copyright on the end-user application;
- ii. they are prohibited from modifying, adapting, translating, reverse engineering, de-compiling, disassembling, or creating derivative works, in whole or in part, based on the Software, nor may they attempt in any manner to obtain the source code;
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- v. they agree not to export the Software, directly or indirectly, in violation of U.S. export control laws or any export or import regulations in other countries; and
- vi. they will, without limitation, indemnify, hold harmless, and defend NVIDIA and other applicable licensors and their respective affiliates and suppliers from and against any and all claims, lawsuits, costs, and expenses, including attorney's fees, that arise or result from their use or distribution of the end-user application.

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SECTION 2 - CONFIDENTIALITY.

If applicable, any exchange of Confidential Information (as defined in the NDA) shall be made pursuant to the terms and conditions of a separately signed Non-Disclosure Agreement ("NDA") by and between NVIDIA and You. For the sake of clarity, You agree that the Software is considered Confidential Information of NVIDIA.

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SECTION 5 - LIMITATION OF LIABILITY.

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SECTION 6 - TERM.

This Agreement and the licenses granted hereunder shall be effective as of the date You install the Software ("Effective Date") and continue for a period of five (5) years, unless terminated earlier in accordance with the "Termination" provision of this Agreement.

SECTION 7 - TERMINATION.

NVIDIA may terminate this Agreement at any time if You violate its terms. Upon termination, You will immediately destroy the Software or return all copies of the Software to NVIDIA, and certify to NVIDIA in writing that such actions have been completed.

SECTION 8 - MISCELLANEOUS.

SECTION 8.1 - SURVIVAL.

Those provisions in this Agreement, which by their nature need to survive the termination or expiration of this Agreement, shall survive termination or expiration of the Agreement, including but not limited to Sections 2, 3, 4, 5, 7, and 8.

SECTION 8.2 - APPLICABLE LAWS.

Claims arising under this Agreement shall be governed by the laws of Delaware, excluding its principles of conflict of laws and the United Nations Convention on Contracts for the Sale of Goods. The state and/or federal courts residing in Santa Clara County, California shall have exclusive jurisdiction over any dispute or claim arising out of this Agreement. You may not export the Software in violation of applicable export laws and regulations.

SECTION 8.3 - AMENDMENT.

The Agreement shall not be modified except by a written agreement that names this Agreement and any provision to be modified, is dated subsequent to the Effective Date, and is signed by duly authorized representatives of both parties.

SECTION 8.4 - NO WAIVER.

No failure or delay on the part of either party in the exercise of any right, power or remedy under this Agreement or under law, or to insist upon or enforce performance by the other party of any of the provisions of this Agreement or under law, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy; rather the provision, right, or remedy shall be and remain in full force and effect.

SECTION 8.5 - NO ASSIGNMENT.

This Agreement and Licensee's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by Licensee without NVIDIA's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon Licensee's assignees.

SECTION 8.6 - GOVERNMENT RESTRICTED RIGHTS.

The parties acknowledge that the Software is subject to U.S. export control laws and regulations. The parties agree to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

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SECTION 8.7 - INDEPENDENT CONTRACTORS.

Licensee's relationship to NVIDIA is that of an independent contractor, and neither party is an agent or partner of the other. Licensee will not have, and will not represent to any third party that it has, any authority to act on behalf of NVIDIA.

SECTION 8.8 - SEVERABILITY.

If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

SECTION 8.9 - ENTIRE AGREEMENT.

This Agreement (and NDA if applicable) constitute the entire agreement between the parties with respect to the subject matter contemplated herein, and merges all prior and contemporaneous communications.

ATTACHMENT A - SOFTWARE

1. NVIDIA OptiX ray tracing engine binary libraries
2. NVIDIA OptiX ray tracing engine software development kit (SDK)
3. NVIDIA OptiX SDK source code examples