**NVIDIA GAMEWORKS END USER LICENSE AGREEMENT**

NVIDIA Corporation ("NVIDIA") is willing to license the NVIDIA GameWorks Licensed Software associated with this download and the accompanying documentation, installation routines and support files, sample art files and assets, and supporting utilities to you (hereinafter referred to as “You”, “Your” or “Licensee”) only on the condition that You accept all the terms in this License Agreement ("Agreement").

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY TO THIS AGREEMENT, IN WHICH CASE “YOU” WILL MEAN THE ENTITY YOU REPRESENT.

IMPORTANT: READ THE FOLLOWING TERMS AND CONDITIONS BEFORE USING THE ACCOMPANYING NVIDIA GAMEWORKS LICENSED SOFTWARE.

BY CLICKING “ACCEPT” OR DOWNLOADING OR USING THIS SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, NVIDIA IS NOT WILLING TO LICENSE THE NVIDIA GAMEWORKS LICENSED SOFTWARE TO YOU.    IF YOU  DO  NOT  AGREE  TO  THESE  TERMS,  DO NOT CLICK “ACCEPT”.

https://developer.nvidia.com/gameworks-source-sdk-eula

Certain words or phrases are defined to have certain meanings when used in this Agreement. Those words and phrases are defined throughout the Agreement and in Section 12.9.

NOW, THEREFORE, in consideration of the obligations made and undertaken, the parties covenant and agree as follows:

**1.    License Grants.**

**1.1 License.**Subject to the terms and conditions of this Agreement, NVIDIA hereby grants to You a limited, worldwide, personal, non-exclusive, non-assignable, non-transferable, terminable, non-sublicensable (except as provided below) paid-up license to:

(a) use, reproduce, display and perform the NVIDIA GameWorks Licensed Software or portions thereof, internally only solely as a reference for understanding the functionality of the NVIDIA GameWorks Licensed Software and for purposes of developing and integrating such NVIDIA GameWorks Licensed Software into Demos, Expansion Packs, Games and/or other applications, for purposes of distribution as set forth in (c) below;

(b) modify those portions of the NVIDIA GameWorks Licensed Software that are provided in Source Code form solely (i) for purposes of compiling or integrating the same or portions thereof as Object Code into Games, Expansion Packs, Demos and other applications related to same, or (ii) to correct any bugs or errors that You may identify in the NVIDIA GameWorks Licensed Software, each as subject to the further source code modification requirements as set forth below;

(c) distribute the NVIDIA GameWorks Licensed Software (including Source Code Modifications that You make thereto) to third parties who are otherwise separately licensed by NVIDIA to use such NVIDIA GameWorks Licensed Software and have rights under its license to the same version of the NVIDIA GameWorks Licensed Software that You are distributing, such licensees having the license rights to such distributed Software as outlined in this Section 1.1 herein and for no other purpose; and

(d) reproduce and distribute the NVIDIA GameWorks Licensed Software, in Object Code form only, solely as integrated into inseparable Games, Expansion Packs, Demos and other applications on the Windows, Linux, OSX, iOS and Android platforms (the “Authorized Platforms”) developed by You that incorporate the NVIDIA GameWorks Licensed Software, subject to certain license procedures for distribution of Games, Demos and other applications (including, for PC-based titles, through use of a end user license agreement which explicitly disclaims any representations, warranties, conditions, and liabilities related to the NVIDIA GameWorks Licensed Software), either by You or through Distributors (subject to and as further detailed in Section 1.2 below). For the avoidance of doubt, Your license rights under this Section 1.1(d) do not extend to platforms other than the Authorized Platforms; use of the NVIDIA GameWorks Licensed Software with platforms other than the Authorized Platforms requires entering into a separate commercial license agreement with NVIDIA.

For the avoidance of doubt, no license is granted under this Agreement to integrate, embed or distribute the Source Code of the NVIDIA GameWorks Licensed Software with Games, Expansion Packs, Demos and other applications, or to distribute any part of the Object Code or Derivative Object Code of NVIDIA GameWorks Licensed Software in stand-alone form (or provide functionality allowing for the creation of standalone products utilizing the NVIDIA GameWorks Licensed Software components).

In order to protect the integrity of the NVIDIA GameWorks Licensed Software,  You agree to the following with respect to modifications to the Source Code of the NVIDIA GameWorks Licensed Software (“Source Code Modifications”): (i) You shall promptly notify NVIDIA of any proposed Source Code Modifications made in order to correct bugs or errors, including a detailed description of the bug or error that necessitated such modifications, and, upon NVIDIA’s request, disclose such Source Code Modifications to NVIDIA; and (ii) You may otherwise make Source Code Modifications to the NVIDIA GameWorks Licensed Software, provided that You must use best commercial efforts to not decrease the performance of the NVIDIA GameWorks Licensed Software as incorporated into Games, Demos, Expansion Packs and other applications as compared to incorporation of such NVIDIA GameWorks Licensed Software in absence of such Source Code Modifications. Any compilation of Source Code Modifications into Object Code form by You is subject to the foregoing requirements.  The Source Code Modifications in Object Code form and Source Code form will be further subject to the licenses granted in Section 1.1(a)-(d), and You may use Source Code Modifications solely as set forth in those licenses.  Any Source Code Modifications will be owned by NVIDIA, and You assign to NVIDIA all right, title and interest in and to same.  You may not allow access to, provide or distribute the NVIDIA GameWorks Licensed Software or Derivative Works thereof (including any Source Code Modifications made by or for You) in Source Code form to any third party except under the license rights set forth in Section 1.1(c) above.

**1.2   Distributors.**You agree that any rights of Distributors to distribute Games, Demos and other applications will only be granted pursuant to a written agreement that (a) is at least as protective as the terms used by You to protect its own proprietary software, and (b) provides no lesser protection for the NVIDIA GameWorks Licensed Software than the terms of this Agreement (including, at minimum, the restrictions set forth in Section 1.3).  You will be fully responsible for the performance of such Distributors in accordance with this Agreement and applicable law.  You will take prompt and commercially reasonable action at its expense to remedy any breach by its Distributors of duties specified in this Agreement or violation of applicable law, including terminating such Distributors' rights with respect to the NVIDIA GameWorks Licensed Software.  You will notify NVIDIA in writing of any action by a Distributor that gives rise to a breach of this Agreement and specify the corrective action taken.  The execution of these duties by You will not preclude NVIDIA from also taking corrective action.

**1.3   Restrictions.**You will reproduce faithfully, and will require Your Distributors to reproduce faithfully, all of NVIDIA's and its licensors' copyright and proprietary notices on any copies You and its Distributors make of the NVIDIA GameWorks Licensed Software, whether in Demos, Games or other applications.  You agree that You will not:  (a) copy, modify, translate or otherwise create any Derivative Works of any of the NVIDIA GameWorks Licensed Software, except as expressly permitted in this Agreement; (b) remove, alter, cover or obscure any proprietary notice that appears on or with the NVIDIA GameWorks Licensed Software or any copies thereof; (c) use the NVIDIA GameWorks Licensed Software or any Derivative Works thereof, or allow its use, transfer, transmission or export in violation of any export control laws or regulations administered by the United States government; (d) distribute, permit access to, or sublicense the NVIDIA GameWorks Licensed Software or any Derivative Works thereof as a stand-alone product or without substantial value-added content or (e) use the NVIDIA GameWorks Licensed Software in any manner that would cause the NVIDIA GameWorks Licensed Software to become subject to an Open Source License.  "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 NVIDIA GameWorks Licensed 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.

**1.4   Third Party Software.**The NVIDIA GameWorks Licensed Software may contain third party software components. If such third party software has separate software license or attribution requirements, the license terms or other attribution requirements for such components can be found in the applicable header files. By entering into this Agreement and using such third party software, you are accepting the terms of such licenses. In such case, the third party software terms will govern your use of the third party software, and will take precedence over the terms of the Agreement for the third party software. You agree that the owners of the third party software are intended third party beneficiaries to this Agreement in relation to your uses of third party software.

**2.    Feedback and Bug Reports.**

If You provide NVIDIA information, suggestions and feedback regarding the design or performance of the NVIDIA GameWorks Licensed Software (including the reporting of bugs or errors through the relevant GitHub site) (collectively, "Feedback"), You agree that NVIDIA is free to use such Feedback however it chooses, including the unrestricted and irrevocable right to use, in NVIDIA's sole discretion, as incorporated into its products, services and business.  If You experience any bugs or failures relating to the NVIDIA GameWorks Licensed Software, You will immediately notify NVIDIA of such bugs or failures through [GitHub PhysX Issues](https://github.com/NVIDIAGameWorks/PhysX/issues).  You hereby assign to NVIDIA all right, title, and interest (including all copyright, patent, and other intellectual property rights) in that Feedback for all current and future methods and forms of exploitation in any country. If any such rights are not effectively assigned under applicable law, You hereby grant NVIDIA a non-exclusive, fully-paid, irrevocable, transferable, sublicensable license to reproduce, distribute, publicly perform, publicly display, make, use, have made, sell, offer to sell, import, modify and make Derivative Works based on, and otherwise exploit that Feedback for all current and future methods and forms of exploitation in any country. If any such rights may not be assigned or licensed under applicable law (such as moral and other personal rights), You hereby waive and agree not to assert all such rights. However, You may continue to freely use any Feedback that you provide to NVIDIA. You understand and agree that NVIDIA is not required to make any use of any Feedback that you provide.

**3.    Support.**

NVIDIA does not have any support or update obligations with respect to the NVIDIA GameWorks Licensed Software under this Agreement.

**4.    Platform Licenses.**

You represent and warrant that You have executed all necessary licenses with console hardware manufacturers or other entities for the platforms for which Games, Demos or other applications are developed.

**5.    Marketing and Promotion.**

**5.1   Marketing Activities.** The parties will engage in marketing activities as follows:

(a).  Identification by You**.**  During the Term, and subject to the terms and conditions of this Agreement, NVIDIA agrees that You may identify NVIDIA on its websites, printed collateral, trade-show displays and other retail packaging materials, as an individual or company that supports the Game, provided that all such references to NVIDIA will be subject to NVIDIA's prior review and written approval, which will not be unreasonably withheld or delayed.

(b).  NVIDIA Trademark Placement in Games, Demos and other applications.  For Games, Demos and other applications that incorporate NVIDIA GameWorks™ or portions thereof, the NVIDIA logo may appear, on splash screens and on the back cover of the instruction manual, if applicable, or similar placement in an electronic file, at least in parity with other technology providers and IHV partners.

 (d). Identification by NVIDIA**.**  Subject to the terms and conditions of this Agreement, You agree that NVIDIA may identify You, on NVIDIA's website, printed collateral, trade-show displays and other retail packaging materials, as an individual or entity that produces products and/or services which incorporate the NVIDIA GameWorks Licensed Software. To the extent that You provide NVIDIA with input or usage requests with regard to the use of Licensee logo or materials, NVIDIA will use commercially reasonable efforts to comply with such requests.  For the avoidance of doubt, NVIDIA’s rights pursuant to this Section 5.1(d) shall survive any cancellation or termination of the Agreement with respect to existing products and/or services which incorporate the NVIDIA GameWorks Licensed Software.

(e). Game/Demo-related Marketing Material**.** You permit NVIDIA to create and display self-promotional demo materials and use screenshot materials that capture game assets from real-time game play, captured video clips and images from the Game, after release of the Game to the public, and Licensee may also provide NVIDIA with screenshots / imagery and video footage of the Game/Demo representative of Licensee’s use of the NVIDIA GameWorks Licensed Software in the Game (collectively, “Assets”). Licensee hereby grants to NVIDIA the right to distribute, sub-license, and use the Assets in order to promote and market the NVIDIA GameWorks Licensed Software.  To the extent that You provide NVIDIA with input or usage requests with regard to the use of Licensee logo or materials, NVIDIA will use commercially reasonable efforts to comply with such requests.  For the avoidance of doubt, NVIDIA’s rights pursuant to this Section 5.1(e) shall survive any cancellation or termination of the Agreement with respect to Games, Demos and other applications which incorporate the NVIDIA GameWorks Licensed Software.

**5.2   Records and Audits.**You agree to keep accurate books and records related to your use of the NVIDIA GameWorks Licensed Software, including the development, manufacture, distribution, and sale of Games, Expansion Packs, Demos, and other applications containing the NVIDIA GameWorks Licensed Software. NVIDIA will have the right, upon reasonable notice, during regular business hours, through one or more legal, accounting, or technical third-party auditors, which auditors will be bound by a confidentiality agreement equally as protective as the confidentiality provisions in this Agreement, to inspect Your records:  (a) to verify that use and distribution of NVIDIA GameWorks Licensed Software by You is consistent with the material terms of this Agreement; and (b) to ensure Your compliance with this Agreement.  You will comply with all reasonable requests made in such inspection, including making the appropriate personnel available to answer questions and provide copies of relevant records.  The expense of such audit will be borne by NVIDIA.

**6.    Intellectual Property Rights.**

**6.1   Ownership by NVIDIA.**NVIDIA and its licensors are the exclusive owners of and hold all right, title and interest in and to the NVIDIA GameWorks Licensed Software, and all portions of any Derivative Works thereof that consist of such NVIDIA GameWorks Licensed Software, and all Confidential Information that NVIDIA provides to You under this Agreement, including all Intellectual Property Rights in same.  In the event that You make any modifications to the Source Code of the NVIDIA GameWorks Licensed Software pursuant to Section 1.1 above, You agree to assign, and hereby do assign to NVIDIA, Your entire right, title, and interest in and to such modifications including all Intellectual Property Rights therein.  You will take all reasonably requested further actions and execute all documents reasonably necessary to perfect NVIDIA's interests.

**6.2   Ownership by You.**Subject to the rights of NVIDIA and its licensors in Section 6.1 above, You are the exclusive owner of and hold all right, title and interest in and to the Games, Demos, other applications and Derivative Works thereof, including all Intellectual Property Rights therein.

**6.3   Reservation of Rights.**NVIDIA and its licensors reserve all rights not expressly granted to You hereunder with respect to the NVIDIA GameWorks Licensed Software and those portions of any Derivative Works thereof that consist of NVIDIA GameWorks Licensed Software, and all Intellectual Property Rights associated therewith.

**7.    Trademarks.**

**7.1   Ownership of Trademarks.**Each party owns the trademarks, logos and trade names (collectively "**Marks**") for their respective products and/or services, including the Games, Demos, other applications and the NVIDIA GameWorks Licensed Software.  Each party agrees to use the Marks and logos of the other only as permitted in this Agreement.

**7.2   Trademark License to NVIDIA.**For the Term, You grant to NVIDIA a non-exclusive, non-sub licensable, non-transferable (except as set forth in Section 12.1), worldwide license to refer to You and Your Demo(s) and Game(s), and to use Your Marks on NVIDIA's marketing materials and on NVIDIA's website (subject to any reasonable conditions of You) solely for NVIDIA’s marketing activities set forth in Section 5.1(d)-(e) above and otherwise in accordance with Section 5 above.  NVIDIA will follow Your specifications for Your Marks as to style, color and typeface as reasonably provided to NVIDIA.

**7.3   Trademark License to You.**For the Term, NVIDIA grants to You a non-exclusive, non-sub licensable, non-transferable (except as set forth in Section 12.1), worldwide license to refer to the NVIDIA Marks listed in the "NVIDIA Trademark and Guidelines" section below, to use such NVIDIA Marks on Your marketing materials and on Your website (subject to any reasonable conditions of NVIDIA) solely for Your marketing activities set forth in Section 5.1(a)-(c) above.  Any such use must be in accordance with Section 5 above and is subject to compliance with the additional trademark use terms set forth in the "NVIDIA Trademark and Guidelines" section below.  For the avoidance of doubt, You will not and will not permit others to use any NVIDIA Mark in a way that tarnishes, degrades, disparages or reflects adversely any of the NVIDIA Marks or NVIDIA’s business or reputation, or that dilutes or otherwise harms the value, reputation or distinctiveness of or NVIDIA’s goodwill in any NVIDIA Mark.  In addition to the termination rights set forth in Section 11, NVIDIA may immediately terminate this trademark license if You or, if applicable, subcontractors, fail to comply with the NVIDIA's trademark terms and conditions or otherwise fail to comply with the NVIDIA's directions about the use of the marks.  You will follow NVIDIA's specifications for NVIDIA's Marks as to style, color and typeface as provided in [/gameworks-logo](https://developer.nvidia.com/gameworks-logos) and submit a sample of each proposed use of NVIDIA's Marks at least a one (1) weeks prior to the desired implementation of such use to obtain NVIDIA's prior written approval (which approval will not be unreasonably withheld or delayed).  If NVIDIA does not respond within ten (10) business days of Your submission of such sample, the sample will be deemed unapproved.

**8.    Confidentiality.**

**8.1   Obligations.**Each party (**"Receiving Party"**) agrees that all Confidential Information (whether oral, written or digital) it obtains from the other party (**"Disclosing Party"**) in connection with this Agreement (whether before or after the Effective Date), is the Confidential Information of the Disclosing Party.   The Receiving Party agrees to (a) keep the Disclosing Party's Confidential Information confidential and not disclose the Disclosing Party's Confidential Information to any third party without the prior written consent of the Disclosing Party; (b) use the Disclosing Party's Confidential Information only as necessary to perform its obligations under this Agreement; (c) use at least the same degree of care in keeping the Disclosing Party's Confidential Information confidential as it uses for its own Confidential Information of a similar nature, but will in no event use less than reasonable care; and (d) limit access to the Disclosing Party's Confidential Information to its employees and contractors who have a need to know for the purposes of this Agreement, subject to such employees being bound in writing by confidentiality obligations that are at least as protective of Discloser's rights as specified in this Agreement.  The Receiving Party agrees to notify the Disclosing Party in writing of any misuse, unauthorized disclosure or misappropriation of the Disclosing Party's Confidential Information immediately after the Receiving Party becomes aware of any such misuse, unauthorized disclosure or misappropriation. Nothing in this Agreement will affect any obligation of either party to maintain the confidentiality of a third party’s confidential information.

**8.2   Exceptions.**The Receiving Party will not be obligated under this Section 8 with respect to any information the Receiving Party can document (a) now or later becomes generally available to the public without fault of the Receiving Party; (b) is rightfully in Receiving Party's possession without obligation of confidentiality prior to its disclosure by the Disclosing Party; (c) is independently developed by Receiving Party without the use of any Confidential Information of Disclosing Party; (d) is obtained by Receiving Party without obligation of confidentiality or restrictions on use from a third party who has the right to so disclose it.  The Receiving Party may use or disclose the Disclosing Party's Confidential Information to the extent such use or disclosure is reasonably necessary to comply with a judicial body or applicable governmental regulations or authority or court order; provided that the Receiving Party provides reasonable advance written notice to the Disclosing Party of any such disclosure and uses its reasonable efforts to cooperate with the Disclosing Party to secure confidential treatment or obtain a protective order in connection with the Disclosing Party's Confidential Information prior to its disclosure (whether through protective orders or otherwise) and discloses only the minimum amount of information necessary to comply with such requirements.

**9.    Warranty and Disclaimer.**

**9.1   DISCLAIMER OF WARRANTIES.**THE NVIDIA GAMEWORKS LICENSED SOFTWARE IS PROVIDED TO YOU BY NVIDIA (AND ITS SUPPLIERS/LICENSORS, IF ANY) “AS IS” WITHOUT WARRANTY OR CONDITION OF ANY KIND.  NVIDIA (AND ITS SUPPLIERS/LICENSORS, IF ANY) EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR CONDITION OF TITLE OR, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (EVEN IF ON NOTICE OF SUCH PURPOSE), NON-INFRINGEMENT, CUSTOM OR USAGE IN THE TRADE.

**10.   Limitation of Liability.**

NVIDIA WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY  (A) INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, (B) LOST PROFITS, LOST BUSINESS OR LOST OR CORRUPTED DATA, OR (C) COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, TECHNOLOGY, GOODS OR SERVICES, EVEN IF THE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF NVIDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL NVIDIA’S AGGREGATE LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT EXCEED ONE HUNDRED DOLLARS ($100).

The parties acknowledge and agree that the exclusions and limitations of liability contained herein reflect the allocations of risk and benefits between the parties and the Fees paid for the NVIDIA GameWorks Licensed Software and associated rights hereunder, and accordingly are reasonable and appropriate in the circumstances.

**11.   Term and Termination.**

**11.1  Term and Termination.**This Agreement will commence on the Effective Date and will remain in full force until earlier terminated as described below (the “**Term**”).This Agreement may be terminated by NVIDIA immediately upon written notice if You breach any material provision of this Agreement and fail to cure such breach within thirty (30) days (after receiving written notice from the non-breaching party describing such breach.  If You commence or participate in any legal proceeding against NVIDIA, then NVIDIA may, in its sole discretion, suspend or terminate this Agreement.

**11.2  Effect of Termination.**Upon termination of this Agreement, the licenses granted herein will terminate, except such licenses will survive indefinitely with respect to Games, Expansion Packs, Demos, and other applications (a) released prior to the effective date of expiration or termination and/or (b) documented as being in development prior to the expiration or termination date, each subject to compliance with all terms and conditions of this Agreement related to such licenses, but for no other purpose.  In the event of a second uncured material breach, all licenses will terminate.  Except for such Confidential Information which must be retained in order to exercise any surviving license rights, each party will return to the other party or destroy, as requested by the Disclosing Party, the original and all copies of any Confidential Information of the Disclosing Party (including, in the case of You, any NVIDIA GameWorks Licensed Software), and any summaries, analyses, studies or notes thereon and, at the Disclosing Party’s request, having the Receiving Party certify in writing that it has complied with these obligations.

**11.3  Survival.**Sections 2, 4, 5.2, 5.3, 6, 8, 9, 10, 11.2, 11.3, and 12 of this Agreement, and any other section which by their nature should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement for the time periods stated therein, and if no period is stated, indefinitely.

**12.   Miscellaneous.**

**12.1  Assignment.**This Agreement and the rights and obligations hereunder may be assigned by You only with the prior written consent of NVIDIA.  NVIDIA may, without Your consent, assign, transfer, charge or subcontract this Agreement and its rights and obligations hereunder.  This Agreement will be binding on, inure to the benefit of, and be enforceable by the parties and their respective heirs, successors and permitted assigns.

**12.2  Amendment and Waiver.**Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived only with the written consent of the parties.  The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

**12.3  Export Law.**The products and technical data delivered under this Agreement may be subject to United States export control laws and may be subject to export or import regulations in other countries.  Each party agrees to comply strictly with all such laws and regulations and acknowledges that it has the responsibility to obtain all applicable licenses for its export, re-export, or import of any products containing the NVIDIA GameWorks Licensed Software.

**12.4  Governing Law.**This Agreement will be governed by and construed under the laws of the State of Delaware and the United States without regard to the conflicts of law provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The parties consent to the personal jurisdiction of the federal and state courts located in Santa Clara County, California.

**12.5  Dispute Resolution.**NVIDIA and You will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and in the spirit of mutual cooperation.

**12.6  Notices.**Where this Agreement calls for notice from NVIDIA, including written notice, NVIDIA may provide such notice to You at the email address that you provided when You registered for the Agreement (or any updated email address you subsequently provide). NVIDIA's notices to you will be effective when they are sent to that email address.

**12.7  Severability.** If any provision of this Agreement is held to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**12.8  Relationship of Parties.**You and NVIDIA are independent contractors and are not the legal representative, agent, joint venturer, partner, or employee of the other. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party.

**12.9  Force Majeure.**Neither party will be liable hereunder for any delay or failure in performance caused by an event of force majeure (that is, circumstances beyond the reasonable control of the affected party, including acts of God, fire, flood, war, earthquake, environmental conditions, governmental action, acts of civil or military authority, riots, wars, sabotage, strikes, compliance with laws or regulations, strikes, lockouts or other serious labor disputes, or shortage of or inability to obtain material or equipment)  for so long as such event of force majeure continues in effect.  In no case will force majeure apply to any duty to make payment hereunder.

**12.10 Definitions.** As used in this Agreement, unless expressly stated otherwise, references to (a) "including" or "includes" means "including, (or "includes") without limitation," and (b) "or" means "either or both."  Unless otherwise specified, all references in this Agreement to "Sections," "Exhibits," or "Appendices" are references to the corresponding sections, exhibits and appendices in this Agreement.  All monetary values set forth in this Agreement refer to United States dollars unless otherwise clearly stated.  The terms "buy," "purchase," "sale," "sell" and other similar terms, when used in connection with the distribution of the NVIDIA GameWorks Licensed Software, mean the granting of a license or sublicense and will not be deemed for any purpose to mean a transfer of title or other rights of ownership in the NVIDIA GameWorks Licensed Software.  Capitalized terms in plural or singular form used in this Agreement and not otherwise defined have the meanings set forth in this Section 12.10.

(a)**"NVIDIA GameWorks Licensed Software"** means collectively the software modules associated with this download, in Source Code and/or Object Code form as applicable, and any accompanying Documentation.  All references to Your use of NVIDIA GameWorks Licensed Software refer to Object Code forms thereof unless Source Code is specifically stated.

 (b)  **"Confidential Information"** means any business, marketing, pricing, research and development, technical, scientific, financial status, proposed new products or other information disclosed by a party 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 includes, without limitation, (a) the NVIDIA GameWorks Licensed Software, whether alone or as contained in Derivative Works thereof, including, without limitation, any associated Source Code; (b) NVIDIA’s technology, ideas, know-how, documentation, processes, algorithms and trade secrets embodied in the NVIDIA GameWorks Licensed Software; and (c) any other information designated as “Confidential Information” elsewhere in this Agreement.

(c)   **“Demo”** means any current or future demonstration excerpt of a Game created to display the functionality of such Game and is not licensed for a fee.

(d)   “**Derivative Work(s)”** means works that are based upon one or more pre-existing works, such as (a) for copyrightable or copyrighted material, any translation, porting, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment, revision or other form in which such material may be recast, transformed, or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material that is protected by trade secret, any new material derived from such existing trade secret material, including new material that may be protected by any of copyright, mask work right, patent, and trade secret.

(e)   **“Distributor(s)”** means retail publishers, OEMs or other distributors or intermediaries who are responsible for distributing Games, at multiple levels and via multiple channels.

(f)   **“Documentation”** means user manuals, reference manuals, instructions and/or installation guides, or portions thereof, in printed or electronic form, which NVIDIA provides to You for use with the NVIDIA GameWorks Licensed Software.

(g)   **“Expansion Pack(s)”**means a modification, upgrade, addition, update, or enhancement to a Game released subsequent to the release of the Game, which expands the Game’s content or interactive capabilities; provided that such modification, upgrade or addition requires the underlying Game to be installed in order for such modification, upgrade or addition to be playable.

(h)   **“Game(s)”** means any current or future interactive software entertainment product developed and marketed or published by or on behalf of and marketed by You and/or Your Distributors that contains NVIDIA GameWorks™ Technology Library or portions thereof and related Expansion Packs, for any console or platform version, whether now known or hereafter devised  (e.g., PC, PlayStation 3 (including PlayStation Home and PlayStation Network), Xbox™ 360) of a software entertainment product (including different versions of the same product for various distribution regions and/or languages) will constitute a separate Game for purposes of License Fees hereunder.  Sequels of existing Games will each constitute separate Games; however, Expansion Packs, compendiums, and collector’s editions are not separate Games.

(i)   **“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.

(j)   **“Object Code”** means computer software code that is executable by a computer system in binary form without further processing by a software compiler, assembler or interpreter.

(k)   “**Source Code”** means computer programming code in human readable form that is not suitable for machine execution without the intervening steps of interpretation and compilation.

(l)   “**Source Code Modifications”** means any modifications to the Source Code for the NVIDIA GameWorks Licensed Software that are developed by You under Section 1.1.

**12.11 Entire Agreement.**This Agreement constitutes the entire agreement with respect to the subject matter hereof and supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom.

**NVIDIA TRADEMARKS AND GUIDELINES**

**NVIDIA Corporation Trademark License Terms**

Terms with initial capitalization not defined herein are defined as set forth in the Agreement.  Each party licensing the other party’s Marks is a “Mark Licensee” hereunder, and each owner of Marks hereunder is an “Owner.”

**1.    Marks.**  The Marks are:

For NVIDIA (“NVIDIA Marks”):

* NVIDIA®
* PhysX®
* NVIDIA® GameWorks™

For Company (“Company Marks”):

To be provided by Company

**2.    Use of Marks.**

2.1   The Company products with which the NVIDIA Marks may be used are those with which the NVIDIA GameWorks Licensed Software may be used, as specified in the Agreement (“Company Products”).  NVIDIA’s use of Company Marks is as specified in the Agreement and Exhibit C (“Game Developer Program”).  Company agrees that it will not make use of NVIDIA Marks in relation to any goods or services other than the Company Products, and advertising and promotional materials in support of such Company Products.  NVIDIA agrees that it will not make use of Company Marks except as permitted in the Agreement.

2.2   Nothing herein will imply ownership of Marks different than that set out in the Agreement.  All goodwill associated with each Mark Licensee’s use of each Owner’s Mark will inure to the sole benefit of the Owner.

2.3   Each Mark Licensee agrees that it will comply with the terms set forth in this Exhibit D and the trademark guidelines found in Appendices D-1 and D-2(which each Owner may amend, upon reasonable written notice to the Mark Licensee) with respect to such Mark Licensee’s use of the Owner’s Marks.

**3.    Business Practices.**  Each party covenants to the other party that it will:

3.1   conduct its business with respect to the other party’s products in a manner that reflects favorably at all times on the good name, goodwill and reputation of such products;

3.2   avoid deceptive, misleading or unethical practices that are detrimental to the other party, its customers, or end users;

3.3   make no false or misleading representations with regard to the other party or its products; and

3.4   not publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising or promotional materials.

**4.    No Combination Marks or Similar Marks.**  Each Mark Licensee agrees not to (a)combine any Owner’s Mark with any other content without the Owner’s prior written approval, or (b) use any other trademark, trade name, or other designation of source which creates a likelihood of confusion with the other party’s Marks.

**5.    No Harm to Marks.**  Each party agrees that it will take such steps as are reasonably necessary to ensure that neither it, nor any person under its control (including its customers), will take or cause to be taken any action that brings the other party or the other party’s Marks into disrepute.  Each party agrees that it will not, directly or indirectly, in any country or governing body, apply to register in its own name, or otherwise attempt to acquire any legal interest in or right in or to, any Mark of the other party.

**6.    Notice Regarding Infringement of Intellectual Property Rights.**  Each party agrees that if it becomes aware of any infringement or threatened infringement of an Owner’s Marks, it will promptly notify the Owner.  Any legal proceedings instituted by an Owner with respect to an infringement or threatened infringement of any of its Marks will be conducted at such Owner’s sole expense, provided that the Mark Licensee, if requested to do so, will cooperate reasonably at the Owner’s expense in the conduct of such proceedings.

**7.    Trademark Unavailability.**  In the event that a party’s Mark ceases to be available for use with respect to the Agreement, the other party, as its sole remedy, will be released (unless such unavailability arises due to the action or inaction of that party) from any obligations to use such Mark unless and until the same becomes available for use.

**8.    Trademark Usage Guidelines.**  Each party agrees that it will not use the other party’s Marks other than as permitted by this Agreement and that it will conform to the requirements of the other party with respect to such Marks (including thorough compliance with the trademark usage guidelines attached hereto at Appendices D-1 and D-2, and as such guidelines may be amended from time to time) in relation to the use of the Marks and on associated advertising, marketing and promotional materials.

**9.    Quality; Audits.**  Each party acknowledges and agrees that the Owner of Marks will have the right to audit any relevant materials of the Mark Licensee that use the Owner’s Marks from time to time to determine (a) whether or not such use of the Owner’s Marks is in compliance with the terms of the Agreement and this Exhibit D and (b) whether the Owner’s Marks are being used in connection with products of sufficient quality such that the Owner’s Marks will not suffer damage.  In the event that the Owner reasonably determines that the Mark Licensee’s use of any of the Owner’s Marks or Combination Marks is not in compliance with the terms of this Agreement, or that due to reasonable quality concerns, damage to the Owner’s Marks may occur, the Owner will provide written notice to the Mark Licensee of same, which notice will describe in reasonable detail the noncompliance.  A Mark Licensee receiving such notice will have 30 days to cure any noncompliance.  If the noncompliance is not cured in such time frame, the Owner may suspend or terminate the Mark Licensee’s right to use the affected Mark.

[**Link and Guidelines for Use of NVIDIA GameWorks Marks**](https://developer.nvidia.com/gameworks-logos)