

**CRAY INC.
SOFTWARE AGREEMENT**

This software agreement (the "Agreement") is made as of the ____ day of _____, 2008, by and between _____, _____, (the "Customer") and Cray Inc., at 411 First Avenue South, #600, Seattle, Washington 98104-2860 ("Cray").

RECITALS:

Whereas, Customer desires to use the software described in **Exhibit A** attached to this Agreement in conjunction with the respective equipment described in **Exhibit A**; and

Whereas, Cray is willing to provide the software described in **Exhibit A** to Customer under the terms and conditions contained herein;

Now, therefore, in consideration of the mutual covenants and promises herein set forth, the parties agree as follows:

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- 4.6 Changes in Operating Systems.** Some communications-related components of the Cray Licensed Software requires changes to the operating system of non-Cray networked computers. At Customer's request, Cray will make reasonable efforts to provide Customer with such information on how to make the required changes. Customer is responsible for making the required changes.
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- 4.8 Maintenance and Support Service.** No support or maintenance services will be provided to Customer under this Agreement. Such services, if any, will be made available under the terms and conditions of a separate agreement.
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- 4.11 Additional Terms and Conditions.** Customer's rights and obligations with respect to the Additionally Restricted Software, if any, will be subject to the provisions of the additional license terms and conditions described in **Exhibit B** to this Agreement. In the event of any conflict

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- 8.2 Customer Use of Confidential Information.** Customer will not use any Confidential Information during the term of this Agreement or thereafter for any purpose other than as permitted or required hereunder. Customer will not disclose or make available to any third party any Cray Licensed Software or other Confidential Information, in any form, except to its employees, users and contractors for purposes specifically related to Customer's use of the Cray Licensed Software in accordance with this license. Customer will take all necessary measures to prevent any such disclosure and shall take appropriate action by instruction or signed agreements with such employees, users and contractors to satisfy customer's obligations.
- 8.3 Software Remains Property of Cray.** Customer understands and agrees that the Cray Licensed Software will remain the property of and proprietary to Cray and its suppliers. At Cray's request, Customer will cooperate fully with Cray in any and all legal actions taken by Cray to protect its rights in the Cray Licensed Software and in the Confidential Information. Cray will bear all costs and expenses reasonably incurred by Customer in the course of cooperating with Cray in such legal action.
- 8.4 Publication.** Parts of the Cray Licensed Software may have been patented or copyrighted by Cray or its third-party provider. To the extent that patent or copyright notices have been included in the Cray Licensed Software for protective purposes, such notices will not be construed as causing publication of the Cray Licensed Software.

9. TERM

- 9.1 Term.** This Agreement will take effect as of the date first written above, and will remain in effect until terminated (i) by Customer with or without cause, upon twenty (20) days written notice to Cray, or (ii) by Cray upon written notice to Customer in the event Customer is in material breach of this Agreement and will have failed to cure such breach within thirty (30) days of receipt of written notice thereof from Cray.
- 9.2 Post Termination Obligations.** Within ten (10) days after termination of this Agreement for any reason Customer will return to Cray any copies in its possession of the Cray Licensed Software and all other Confidential Information. The provisions of Sections 5 and 6 of this Agreement, and Customer's obligations under Section 8 of this Agreement will survive termination or expiration of this Agreement. Customer's rights and obligations with respect to the GNU Public License Software and Open Source License Software will survive the termination or expiration of this Agreement in accordance with the terms and conditions of the applicable Open Source License Terms or version of the GNU Public License.

10. GENERAL

- 10.1 Assignment.** Customer may not assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of Cray, which consent will not be unreasonably withheld.
- 10.2 Notices.** Notices permitted or required to be given hereunder will be deemed sufficient if given by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective addresses of the parties as first above written or at such other addresses as the respective parties may designate by like notice from time to time. Notices will be effective upon

receipt by the party to which notice is given, or on the fifth (5th) day following the date such notice was posted, whichever occurs first.

- 10.3 Waiver.** No failure by either party to take any action or assert any right hereunder will be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
- 10.4 Complete Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous agreements by and between Cray and Customer as well as all proposals, oral or written, and all negotiations, conversations or discussions heretofore had between the parties related to this agreement. Customer acknowledges that it has not been induced to enter into this agreement by any representations or statements, oral or written, not expressly contained herein.
- 10.5 Modifications.** No modification of this Agreement will be binding on either party unless it is in writing and signed by both parties.
- 10.6 Survival and Severability.** In the event that any of the terms of this Agreement are in conflict with any applicable rule of law or statutory provision or are otherwise unenforceable under the applicable laws or regulations of any government or subdivision thereof, such terms will be deemed stricken from this Agreement, but such invalidity or unenforceability will not invalidate any of the other terms of this Agreement and this Agreement will continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.
- 10.7 Cray Suppliers.** Cray's suppliers are third party beneficiaries of the provisions of this Agreement.
- 10.8 Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington, U.S.A., excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 10.9 Dispute Resolution.** Any dispute, claim or controversy arising out of or relating to this Agreement will be finally settled under the Commercial Arbitration Rules of the American Arbitration Association by a panel of three (3) arbitrators appointed in accordance with said Rules. The place of arbitration will be Seattle, Washington, U.S.A. The arbitration will be conducted in the English language.
- 10.10 Force Majeure.** Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control. In the event of the happening of such a cause, the party whose performance is so affected will give prompt, written notice to the other party, stating the period of time the same is expected to continue.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

CRAY INC.

CUSTOMER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

SOFTWARE PRODUCTS AND DESIGNATED EQUIPMENT

<u>SOFTWARE PRODUCT & VERSION</u>	<u>COMPUTER MODEL AND S/N</u>
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EXHIBIT B

ADDITIONALLY RESTRICTED SOFTWARE

As applicable, include:

STMicroelectronics Terms

Qlogic Pathscapes Terms

TotalView Terms

EXHIBIT C

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Version 2, June 1991

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```
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Gnomovision comes with ABSOLUTELY NO WARRANTY; for details type `show w'.
This is free software, and you are welcome to redistribute it
under certain conditions; type `show c' for details.
```

The hypothetical commands `show w' and `show c' should show the appropriate parts of the General Public License. Of course, the commands you use may be called something other than `show w' and `show c'; they could even be mouse-clicks or menu items--whatever suits your program.

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```
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```

```
<signature of Ty Coon>, 1 April 1989
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