CONTRACT FOR SALE, LICENSE AND SUPPORT OF CRAY INC. PRODUCTS
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This agreement is entered into this _____day of , 20__  (the "Effective Date"), by and between Cray Inc., with its principal office located at 901 Fifth Ave., Suite 1000, Seattle, WA 98164 (“Cray”), and (Customer Name), with its principal office located at (Customer Address) (“Customer”).

1.   GENERAL

1.1   Transaction Description

Cray agrees to: (i) sell the Equipment in accordance with the provisions of Article 2; (ii) license the Licensed Software in accordance with the provisions of Article 3; and (iii) provide maintenance and support in accordance with Article 4. Customer agrees to purchase the Equipment, license the Licensed Software and accept the maintenance and support according to the terms and conditions of this Agreement and, if applicable, the Accepted Proposal.

1.2   Definitions

The following definitions apply to this Agreement:

1.2.1  “Accepted Proposal” means any relevant proposal submitted by Cray and accepted by the Customer.

1.2.2  “Agreement” means, collectively, this contract and all Exhibits.

1.2.3  “Equipment” means any Cray provided computer hardware and/or accessories accepted for Support by Cray and listed in Exhibit B or the Accepted Proposal.
1.2.4 “GNU Public License Software” means the software incorporated in the Software Products that is designated in the Software Products, or associated electronic or hard copy documentation, as governed by the GNU Public License.

1.2.5 “Licensed Software” means Cray operating system(s), software tools and applications software that are not GNU Public License Software or open source software licensed to the Customer hereunder.

1.2.6 “Party” means the Customer or Cray and “Parties” should be construed accordingly.

1.2.7 “Products” means Equipment and/or Software Products.

1.2.8 “Software Products” means the computer software products described in Exhibit B to this Agreement or the Accepted Proposal.

1.2.9 “Support” means Cray support services provided under this Agreement as described in Article 4 of this Agreement.

1.3 Patents and Copyrights

1.3.1 Indemnity by Cray

Subject to Section 1.3.3 of this Agreement, Cray will, at its own expense, defend any suit instituted against Customer that is based on an allegation that any Equipment or Licensed Software or any part of either provided to Customer hereunder constitutes an infringement of any United States patent or copyright or violation or misappropriation of any third party trade secret and will indemnify Customer against any award of damage and costs made against Customer by a final judgment of a court of last resort if it is determined therein that any such Equipment or Licensed Software or any part of either constitutes an infringement of any patent or copyright or violation or misappropriation of any third party trade secret, provided that Customer gives Cray prompt notice in writing of any claims of infringement, violation or misappropriation, and permits Cray through Cray’s counsel to defend the same and gives Cray all available information, assistance and authority as reasonably requested by Cray, and with costs of such assistance reimbursed by Cray, to enable Cray to assume such defense. Cray will have control of the defense of any such suit, including appeals from any judgment therein and any negotiations for the settlement or compromise thereof, with full authority to enter into a binding settlement or compromise so long as such settlement does not include an admission of wrong-doing on the part of Customer or the waiver or release of any right of Customer except the settlement of the claim in issue. Cray will not be responsible for any compromise or settlement made or expense incurred without its consent.

1.3.2 Remedy

Should any Equipment or Licensed Software become, or in Cray’s reasonable opinion be likely to become, the subject of any claim of infringement of any United States copyright or violation or misappropriation of any third party trade secret, Cray will, at Cray’s option and expense, (a) procure for Customer the right to continue using the Equipment or Licensed Software; (b) replace or modify such Equipment or Licensed Software so that it becomes non-infringing; or (c) terminate Customer’s right to use such Equipment or Licensed Software upon which termination Customer agrees to promptly return the Equipment or Licensed Software to Cray. Upon receipt of the returned Equipment or Licensed Software Cray will refund payments made by Customer applicable to such Equipment and Licensed Software, reduced for depreciation determined on a straight-line five (5) year basis.

1.3.3 Exceptions

Cray will have no obligation or liability to Customer with respect to any claim of infringement which results from: (a) the combination or use of Equipment or Licensed Software with any other product, program or device not provided by Cray if such infringement would not have arisen but for such use or combination; (b) any modification by Customer or any third party of any Equipment or Licensed Software; (c) any specifications, designs or instructions provided to Cray
by or on behalf of Customer; (d) the failure to promptly install an update or revision provided by Cray, if such infringement could have been avoided by the use of such update or revision; or (e) use of the Equipment or Licensed Software in a manner not in conformance with Cray published specifications.

1.4 Limitation of Warranty and Remedy; Limitation of Damages

Except as otherwise documented in this Agreement, Cray does not warrant that the Products or Support delivered hereunder will operate uninterrupted, be error free, conform to any reliability or performance standards or will meet Customer’s needs or requirements. **EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, ALL PRODUCTS AND SUPPORT ARE PROVIDED “AS IS” AND “WITHOUT WARRANTY” OF ANY KIND. CRAY HEREBY EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES OR THE DELIVERABLES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM OF THE SOFTWARE FROM INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS, ANY WARRANTY OR GUARANTY OF ABSENCE OF HIDDEN DEFECTS, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY THAT MAY ARISE BY REASON OF CUSTOM, USAGE OF TRADE OR COURSE OF DEALING.** Customer is responsible for the selection of Products to achieve their intended results. Cray will not be liable in any event for any special, incidental, consequential, or indirect damages, including, without limitation, loss of business or profits arising out of or in connection with any Products, or for the performance or use of the Products. In any case, the liability of Cray under this Agreement will be limited to the lesser of direct damages in the amount of the purchase price, license fees, and maintenance and support charges paid by Customer to Cray under this Agreement during the twelve (12) month period preceding the event that created the liability, or $2,000,000.

1.5 Pricing

The price for the purchase of Equipment, the license of Licensed Software, and Support for the Products is listed in either Exhibit A or the Accepted Proposal.

1.6 Taxes

All taxes (except income taxes and Washington Business and Occupation Tax) and other Governmental charges based on or measured by the charges set forth in this Agreement, or based on the sale or use of the Equipment, the license of software, or any Support provided hereunder, now or hereafter imposed by any government authority, including but not limited to sales, use, gross receipts, GST, import duties and personal property taxes will be paid by Customer or, if paid by Cray on Customer’s behalf, will be repaid by Customer immediately upon receipt of an invoice from Cray specifying the charges to be reimbursed. If Customer claims exemption from any taxes resulting from this Agreement Customer will provide Cray with documentation required by the taxing authority to support the exemption being claimed.

1.7 Invoices and Payment

1.7.1 Invoices

Unless otherwise agreed (in writing), invoices for the Equipment, Licensed Software and Support will be issued upon delivery. Other invoices will be issued as the charges are incurred. Payment shall be made by Customer to Cray no later than thirty (30) days after the date of Cray’s invoice. Payment shall be via wire transfer in accordance with Cray’s payment directions specified in Cray’s invoice.

1.7.2 Payment Receipt

Payment is considered made when good funds are received in the account specified on the invoice. Customer will incur a delayed payment charge of one and one half percent (1 1/2%) percent per month on any overdue balance.

1.8 Assignments
Customer may not assign its rights or obligations under this Agreement without the advance written authorization of Cray.

1.9 Applicable Law

This Agreement is governed by the laws of the State of Washington, USA, excluding the UN Convention on International Sale of Goods. Any legal action in connection with this Agreement must be filed within two (2) years after the cause for such action has accrued.

1.10 Notices

Notices will be effective when received in writing and shall be sent to the person and address designated on the signature page of this Agreement or such other person or address as may have been furnished to Customer or Cray by advance written notice.

1.11 Confidential Information

1.11.1 Definition

“Confidential Information” shall mean all communications, documents and other information, whether in written, electronic, oral or other form, which either Party through any of its Representatives (the “Discloser”) furnishes, causes to be furnished or otherwise discloses to the other Party (the “Recipient), or which the Recipient obtains, has access to, or otherwise learns from the Discloser in connection with the discussions and interactions between the Parties. Confidential Information includes, but is not limited to, any written or tangible documentation created by Recipient or its Representatives to the extent such writing or tangible documentation directly derives from Confidential Information. Confidential Information also includes, but is not limited to, the terms of this Agreement, computer software, methodologies, algorithms, services or product plans, designs, market research and analysis, costs, pricing, customer and supplier lists, customer and supplier information, employee lists, employee information, strategies, forecasts, and technical data and know-how.

1.11.2 Non-disclosure

Each Party agrees to hold the Confidential Information with respect to which it is the Recipient in trust and confidence, using its commercially reasonable, diligent efforts to keep secret and confidential that Confidential Information. Such efforts shall include refraining from discussions and review of Confidential Information in the presence of persons who are not authorized to receive such Confidential Information. Such efforts shall, in all events, be at least equivalent to the efforts the Recipient takes to preserve the confidential nature of its own similar information. Each Party agrees that it and its Representatives shall not attempt to gain or allow access to any data, files or programs or other information of the other Party which they are not entitled or authorized to receive under this Agreement. If such unauthorized access is obtained, that Party shall immediately return all materials in its possession or control containing such information to the other Party and shall safeguard the same as Confidential Information of that other Party.

Each Party agrees to use Confidential Information with respect to which it is the Recipient solely for the purposes of assessing whether to enter into a commercial arrangement with the Discloser and performing its responsibilities under this Agreement and any resulting agreement between the Parties. Each Party further agrees that it shall not copy, reproduce, or disclose Confidential Information with respect to which it is the Recipient to any third party, except that a Recipient may, subject to the following restrictions, disclose such Confidential Information or portions thereof to those of its Representatives who need to know such information for the purpose of performing under this Agreement or as required to comply with applicable legal or regulatory requirements. Prior to disclosing any Confidential Information to any Representative the Recipient shall inform such Representative of the proprietary nature of the Confidential Information and shall require such Representative to agree to be bound by this Agreement or an agreement with equivalent protections applicable to that Confidential Information.
1.11.3 Exclusions
Neither party will be obligated to maintain any information in confidence or to refrain from using it if:
(a) at the time of disclosure the information is in the public domain or is otherwise available to the Recipient other than on a confidential basis; (b) after disclosure, the information becomes a part of the public domain by publication or otherwise through no fault of the Recipient; (c) the information is disclosed to the Recipient by a third party not under an obligation of confidentiality to the party who owns the information; or (d) that the information is or has been developed by the Recipient (as evidenced by the Recipient’s written records) independently of disclosures by the Discloser and without use of Confidential Information otherwise learned in connection with discussions and interactions with the Discloser.

1.11.4 Court Order
Notwithstanding any provision in this Agreement to the contrary, if the Recipient receives a subpoena or other validly issued administrative or judicial process requesting or demanding the disclosure of Confidential Information of the other Party, the Recipient shall, unless prohibited by law, provide prompt notice to the Discloser of such receipt. Unless the request or demand shall have been timely limited, quashed or extended, the Recipient shall thereafter be entitled to comply with such subpoena or other process, but only to the extent required thereby. If requested by the Discloser, the Recipient shall cooperate (at the expense of the Discloser) in the defense of the request or demand.

1.12 Relocation of Equipment and Export Compliance
Except for temporary, emergency relocation of the Equipment and/or Licensed Software to prevent its damage or destruction, any relocation of the Equipment, Licensed Software or other Cray intellectual property out of the United States (or the country where Cray initially installed the Equipment, Licensed Software or other Cray intellectual property) without Cray's prior written consent voids the warranty effective the date of relocation. Customer agrees (and agrees to cause any subsequent buyer of the Equipment and/or licensee or user of the Licensed Software to agree) to comply with the U.S. Export Administration Regulations and any other U.S. export requirements on export and re-export of any, Equipment, Licensed Software, or any other item delivered or transferred by Cray.

1.13 Survival and Severability
Notwithstanding the termination or completion of this Agreement, all agreements, covenants, indemnities, and warranties made in this Agreement will continue in full force and effect to the extent required for their full observance and performance. If any of the provisions of these terms and conditions are in conflict with any rule of law or statutory provision in a jurisdiction, such provision shall be stricken, but such provision shall not invalidate any other terms, which shall survive.

1.14 Force Majeure
"Force Majeure" shall mean any event or condition, not existing as of the date of signature of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part the performance by one of the parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Neither party shall be liable for failure to perform any of its obligations due to Force Majeure. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of state or governmental action, riots, war, strikes, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning, explosion and delay of critical vendor supplied components.

1.15 Dispute Resolution
In the event of a dispute or alleged breach of this Agreement by either party, the parties will work together in good faith to resolve the matter by escalating it to higher levels of management prior to resorting to litigation, provided such escalation does not result in the loss of legal rights due to the expiration of the
statute of limitations, waiver or similar effect. Nothing in this Article restricts the right of either party to apply for injunctive relief at any time.

1.16 Complete Agreement
The terms and conditions stated in this Agreement and the Exhibits constitute the complete and exclusive statement of the agreement between Customer and Cray, and supersede all prior oral and written statements of any kind whatsoever made by either party or their representatives. Any order form used by Customer in connection with this Agreement will be considered to have its pre-printed clauses and statements deleted and such terms are expressly rejected by Cray. Any waivers or amendments, to be effective, must be in writing, signed by both parties.

1.17 Manuals and Documentation
Manuals and documentation for the Products will be provided online. A copy may be printed and duplicated for Customer’s internal use only so long as all copies clearly include all proprietary notices included in the online manual and documentation.

1.18 Subcontracts
Cray may subcontract any work or services to be performed hereunder without the prior written approval of Customer.

1.19 Relationship of the Parties
Cray is an independent contractor in all respects with regard to this Agreement. Nothing contained herein shall be deemed or construed to create a partnership, joint venture, agency, or other relationship other than that of contractor and customer.

1.20 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.

1.21 Conflicting Provisions
This Agreement and all of the Exhibits, including all documents incorporated by reference or web-link, are intended to be read and construed in harmony with each other, but if any provision in any attachment or incorporated document conflicts with any provision of this Agreement, then this Agreement shall be deemed to control, and such conflicting provision shall be deemed removed and replaced with the governing provision herein.

1.22 Headings
The headings used in this Agreement are solely for the convenience of the Parties, and shall not be used in the interpretation of the text of this Agreement. Each Party has read and agreed to the specific language of this Agreement; therefore no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

1.23 Multiple Copies or Counterparts of the Agreement
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

2. EQUIPMENT PURCHASE

2.1 Sale of Equipment
Cray agrees to sell and Customer agrees to purchase the Equipment listed on Exhibit B at the payment terms specified in Exhibit A in accordance with the terms of this Agreement.
2.2 New Equipment
The Equipment will be newly manufactured unless otherwise specified. Cray may include used components in newly manufactured equipment and may use such equipment in its testing and development programs, provided that such components and equipment are warranted to perform as new.

2.3 Site Preparation and Shipment
2.3.1 Site Preparation
Customer, at its sole expense, will have the site timely prepared to receive the Equipment in accordance with Cray’s site preparation instructions.

2.3.2 Shipment
Cray will prepay and Customer will reimburse Cray for transportation and transportation insurance charges.

2.4 Risk of Loss or Damage
Cray assumes all risk of loss of or damage to the Equipment until the Equipment is delivered, except for loss or damage to the Equipment resulting from Customer’s negligence. Customer will be responsible for loss or damage to the Equipment caused by its negligence. Customer will assume all responsibility for loss or damage to the Equipment upon delivery.

2.5 Title
Title to the Equipment will pass to Customer upon delivery. Customer shall not sell the Equipment or otherwise encumber its title until the purchase price has been paid in full to Cray.

2.6 Installation
Customer shall promptly email Cray upon delivery (or partial delivery) of the Products. Unless otherwise agreed, Customer shall install the Products in accordance with the terms and conditions of this Agreement.

2.7 Equipment Warranty and Remedy
Cray warrants to Customer that upon delivery the Equipment will: (i) be in good working order and free of error or defect that materially impairs use; and (ii) conform in all material respects to Cray’s published specifications for such Equipment. If the Equipment does not conform to this warranty, Cray will, as Customer’s sole and exclusive remedy, deliver a replacement for the nonconforming Equipment within thirty (30) business days from Cray’s receipt of notification from Customer of the non-conformance. If Cray cannot with commercially reasonable efforts deliver the replacement Equipment within such thirty (30) business day period, Cray shall, prior to the expiration of such period, deliver to Customer a written schedule for delivery of the replacement and use its commercially reasonable, diligent efforts to comply with such schedule.

2.8 Warranty Exclusions
The Equipment warranty provided in this Agreement does not apply to defects resulting from: (i) improper or inadequate maintenance by Customer; (ii) modification of the Equipment in a manner which is not expressly authorized in writing by Cray; (iii) damage caused by misuse of the Equipment; (iv) use of Customer supplied parts, software or interfacing with Equipment provided such use was not consistent with Cray’s published specifications or otherwise authorized in writing by Cray; or (v) operation outside the environmental specification for the Equipment.

3. SOFTWARE LICENSE
Cray hereby licenses to the Customer the Software subject to the Cray Inc. Software license Terms and conditions (Form 1002) found at: http://www.cray.com/About/Legal/LegalAgreements.aspx
The terms and conditions in the web link include Cray software products and a selection of third party software products licensed by Cray as well as the GNU GPL open source software license. Open Source Software is licensed upon applicable open source license terms.

4. MAINTENANCE AND SUPPORT

4.1 General
The description of the Support being provided, its price and payment schedule are set out in Exhibit A or the Accepted Proposal.

4.2 Support Description
4.2.1 Specific Support Agreement
The agreed level of Support is set out in Exhibit A or the Accepted Proposal and the various levels of Support are described therein.

4.2.2 Telephone Support
Customer will have access to Cray’s toll-free Support number during the agreed cover hours pursuant to Exhibit A.

4.2.3 Remote Diagnosis
Cray may require system administrator capabilities to perform command line functions when connected to customers’ systems. Cray is able to provide remote diagnosis using common teleconferencing tools.

4.2.4 Software Support
If, during the diagnosis and troubleshooting process, the Cray Support engineer working on the case concludes that the issue is related to third-party software, the Customer may be requested to consult with the software vendor directly.

4.3 Customer Obligations
4.3.1 Facility Environment
Customer will ensure that Products are installed at all times at a location meeting the environmental conditions specified in Cray’s User’s Guide. The User’s Guide will be made available to Customer prior to the installation of any Equipment or Licensed Software. Cray reserves the right to periodically modify, update or correct the User’s Guide as the need to do so occurs.

4.3.2 Limit Access to Technical Information
Customer will limit access to Cray’s technical information and Licensed Software in Customer’s possession solely to Customer’s employees for purposes specifically related to Customer’s use of the technical information or Licensed Software in accordance with this Agreement.

4.3.3 Notification of Failures
Customer is required to promptly notify Cray of all Product interrupts, failures, alarms, or any other event indicative of non-standard operation, and grant Cray full and free access to the Equipment (subject to Customer’s reasonable security rules), reasonable working and storage space, heat, cooling, light, electric power, and telephone services for business use.

4.3.4 User Maintenance Operations
Customer will perform any user maintenance operations on Equipment authorized by Cray, including, but not limited to, cleaning Equipment, performing operating checks and diagnostics, and other tasks described in Cray’s User’s Guide or other Cray manuals provided with the Product and Customer will maintain at least one (1) current backup copy of all Licensed Software.

4.3.5 Notification of Problems
Customer will promptly notify Cray of any failures or bugs in any of the Products, and give Cray any reasonable assistance requested by Cray in performing its obligations hereunder, including cooperation with Cray’s support personnel in performing reasonable Product testing, and allowing access to the Products and information relating to any problem Customer reports to Cray.

4.4 Restriction on Relocation

Customer will not move Products supported by Cray without providing prior written notice to Cray. All Product relocations must occur in accordance with Cray’s written instructions. If there is an approved Product relocation, the Support prices for Products that have been relocated will be Cray’s then-current prices for Support at the new location, including any applicable location surcharges. If Customer does not purchase Cray’s de-installation/reinstallation services, Customer agrees that Cray will not be required to resume Support on the relocated Products until Cray has completed an inspection on such Products and any remedial or other work that Cray reasonably deems necessary to return such Products to operating condition, at Customer’s expense.

4.5 Restriction on Modification

Customer will not change the configuration of the Equipment without the prior written permission of Cray.

4.6 Term and Termination

4.6.1 Term

The initial term of Support is set out in Exhibit A. Support may be extended subject to written agreement between Parties at least one (1) month prior to the commencement of the new term.

4.6.2 Termination

The Support agreement may be terminated upon written notice by either Party in the event that either Party 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 the non-defaulting Party. In the event of termination Customer will be responsible for payment for any services provided by Cray prior to the effective date of termination.

4.7 Support Exclusions and Limitations

4.7.1 Products Not Supplied by Cray

Except by separate, express written agreement, Cray will not provide Support for hardware or software not supplied by Cray and Cray will not be liable or responsible for the performance or nonperformance of such hardware or software, the support services provided by the suppliers thereof, or incompatibility between Cray Products and such hardware and software.

4.7.2 Special Exceptions

Unless otherwise agreed in writing, Cray will not: (i) change, modify or alter the Equipment other than as Cray reasonably determines is appropriate to keep the Equipment in operating condition under normal use; (ii) furnish accessories or supplies for or, paint or refinish, or provide any electrical work external to, the Equipment; or (iii) reinstall or deinstall Product.

CRAY INC.:  
By: ____________________  By: ____________________  
Name: ___________________  Name: __________________ _  
Title: ____________________  Title: ______________ ______  
Date:  ____________________  Date: ________________ ____

CUSTOMER:  
By: ____________________  
Name: ___________________  
Title: ____________________  
Date:  ____________________
EXHIBIT A
PRICING, PAYMENT, TERM AND SUPPORT LEVEL

Pricing and Invoice Schedule:

Support Start date: Upon installation unless otherwise agreed

Term of Support:

The Support Level to be provided by Cray under this contract is denoted by the checked box(es) below.

- Depot
- Depot +
- Premium
- Premium +

☐ Includes Advance Replacement Option
☐ (Advance Replacement is Included)

Further terms and conditions concerning the above Support Levels (Form 1003) are available at the following web-link:

www.cray.com/Assets/PDF/about/legal/CCSSupportLevels1003.pdf

- Silver
- Gold
- Platinum
- Diamond

Further terms and conditions concerning the above Support Levels (Form 1004) are available at the following web-link:

www.cray.com/Assets/PDF/about/legal/HPCSSupportLevels1004.pdf
EXHIBIT B
EQUIPMENT AND SOFTWARE
EXHIBIT C
ADDITIONAL ATTACHMENTS AS APPLICABLE