

## Cray System Snapshot Analyzer (SSA) Terms of Use

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Last updated August 21, 2017

These terms govern your use of our service known as the Cray® System Snapshot Analyzer (collectively, “Services”) and software that we include as part of the Services, including any applications, scripts, instruction sets, and any related documentation (collectively “Software”). By using the Services or Software, you agree to these terms. If you have entered into another agreement with us concerning specific Services or Software, then the terms of that agreement controls where it conflicts with these terms. As discussed more in Section 3) below, you retain all rights and ownership you have in your content or data that you make available through the Services.

### 1) How this Agreement Works.

- a) The Services and Software are governed by the law of Washington, U.S.A. You may have additional rights under the law. We do not seek to limit those rights to the extent prohibited by law.
- b) The Privacy Policy at <http://www.cray.com/company/policies-and-practices/privacy-policy> governs any personal information you provide to us. By using the Services or Software you agree to the terms of the Privacy Policy.
- c) Pages describing the Services are accessible worldwide but this does not mean all Services or service features are available in your country, or that user-generated content available via the Services is legal in your country. We may block access to certain Services (or certain service features or content) in certain countries. It is your responsibility to make sure your use of the Services is legal where you use them. Services are not available in all languages.

### 2) Use of Service.

- a) Subject to your compliance with these terms and the law, you may access and use the Services.
- b) We (and our licensors) remain the sole owner of all right, title, and interest in the Services and Software. We reserve all rights not granted under these terms.

### 3) Your Content and Data.

- a) You retain all rights and ownership of your content and data that is exposed or transmitted to Cray by way of the Software or Services (collectively your “content”). We do not claim any ownership rights to your content.
- b) We require certain licenses from you to your content to allow us to operate and enable the Services. When you upload content to the Services, you grant us a non-exclusive, worldwide, royalty-free, sub-licensable, and transferrable license to use, reproduce, distribute, modify, and translate the content, provided such licenses are granted solely as needed for the purpose of operating or improving the Services.
- c) We will not access or view any of your content except as reasonably necessary to perform the Services. Actions reasonably necessary to perform the Services may include (but are not limited to): i) responding to support requests; ii) detecting, preventing, or otherwise addressing fraud, security, unlawful, or technical issues; and iii) enforcing these terms.
- d) You may revoke this license to your content and terminate our rights at any time by notifying Cray Customer Support by entering a new Case on the Cray Customer Portal (CrayPort). After termination, some copies of your content may be retained as part of our routine backups, but Cray will not use that content once you have terminated your use of the Services. Cray will make reasonable attempts to provide you with a copy of your content upon your termination provided you agree to reimburse any of Cray’s costs incurred in doing so.
- e) You have no obligation to provide us with ideas, suggestions, or proposals (“Feedback”). However, if you submit Feedback to us, then you grant us a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferrable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, and modify the Feedback.

#### **4) Your Obligations.**

**a)** You are responsible for all activity that occurs via your account. Please notify Cray Customer Support, by entering a new Case on the Cray Customer Portal (CrayPort), immediately if you become aware of any unauthorized use of your account. You may not: i) share your account information with others; nor ii) use another person's account.

**b)** You must not misuse the Services, Software, or content that we provide to you as part of the Services. For example, you must not:

- i)** copy, modify, host, stream, sublicense, or resell the Services, Software, or content;
- ii)** enable or allow others to use the Service, Software, or content using your account information;
- iii)** access or attempt to access the Services by any means other than the interface we provided or authorized;
- iv)** circumvent any access or use restrictions put into place to prevent certain uses of the Services;
- v)** engage in behavior that violates anyone's Intellectual Property Right ("Intellectual Property Rights" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights.);
- vi)** impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- vii)** attempt to disable, impair, or destroy the Services, software, or hardware;
- viii)** disrupt, interfere with, or inhibit any other user from using the Services,
- ix)** use any data mining or similar data gathering and extraction methods in connection with the Services; or
- x)** violate applicable law.

**c)** By uploading your content to the Services, you agree that you have: i) all necessary licenses and permissions, to use and share your content with Cray; and ii) the rights necessary to grant the licenses in these terms.

**d)** You acknowledge that the Services are not intended to transmit or process any personally identifiable information ("PII") unless and to the extent you and Cray enter into independent agreements respecting the processing of PII on your behalf. In the event you become aware that any PII has been delivered to Cray by way of the Services, you must promptly notify Cray of such transmission and permit Cray to delete from its systems the PII upon such notification.

**e)** You will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees, arising out of or related to your content, your use of the Services or Software, or your violation of these terms. This Section 4)d) shall not be in effect to the extent that in the course of your use of the Services or Software you are representing, acting under the scope of employment of, or acting on behalf of, any agency of the United States Government.

**5) Disclaimer of Warranties.** The Services and Software are provided "AS-IS." AS RESPECTS THE SERVICES AND SOFTWARE PROVIDED UNDER THESE TERMS, WE HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

#### **6) Limitation of Liability.**

**a)** We will not be liable to you or anyone else for: i) any loss of use, data, goodwill, or profits, whether or not foreseeable; and ii) any special, incidental, indirect, consequential, or punitive damages whatsoever (even if we have been advised of the possibility of these damages). Nothing in these terms limits or excludes our liability for gross negligence, for our (or our employees') intentional misconduct, or for death or personal injury.

**b)** Our total liability in any matter arising out of or related to these terms is limited to US \$100 or the aggregate amount that you paid for access to the Service and Software during the three-month period preceding the event giving rise to the liability, whichever is larger. This limitation will apply even if we have been advised of the possibility of the liability exceeding the amount and notwithstanding any failure of essential purpose of any limited remedy.

**c)** The limitations and exclusions in this Section 6) apply to the maximum extent permitted by law.

**7) Termination.**

**a)** You may terminate these terms at any time by following the procedure set forth in Section 3)d) above.

**b)** We may terminate these terms, modify, update, or discontinue the Services, Software (including any of their portions or features) at any time without liability to you or anyone else. However, we will make reasonable effort to notify you before we make the change.

**c)** Upon expiration or termination of these terms or our provision of the Services to you, any perpetual licenses you have been granted, your indemnification obligations, our warranty disclaimers and limitations of liabilities, and the dispute resolution provisions stated in these terms will survive. Upon the expiration or termination of the Services, some or all of the Software may cease to operate without prior notice.

**8) Investigations.** We may access or disclose information about you, or your use of the Services: a) when it is required by law (such as when we receive a valid subpoena or search warrant); b) to respond to your requests for customer service support; or c) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public.

**9) Export Control Laws.** The Software, Services, content, and your use of the Software, Services, and content, are subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Software, Services, and content. You agree to comply with all the laws, restrictions, and regulations.

**10) Dispute Resolution.** For any concern or dispute you may have, you agree to first try to resolve the dispute informally by contacting us. If a dispute is not resolved within 30 days of submission, you or Cray may resolve the dispute through litigation. If you reside in the Americas, the exclusive jurisdiction for any litigation arising out of the enforcement of these terms or your use of the Services or Software, shall be in the appropriate state or federal courts with original jurisdiction over King County, Washington, USA. We both agree to and submit to the personal jurisdiction of such courts. Otherwise, the London Court of International Arbitration (LCIA) will administer the resolution of any such dispute under arbitration in London under the LCIA Arbitration Rules. In the event of arbitration, there will be one arbitrator that you and Cray both select. The arbitration will be conducted in the English language, but any witness whose native language is not English may give testimony in the witness' native language, with simultaneous translation into English (at the expense of the party presenting the witness). Judgment upon any award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the parties. You may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Notwithstanding the foregoing, in the event of your or others' unauthorized access to or use of the Services or content in violation of these terms you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

**11) Modification.** We may modify these terms or any additional terms that apply to a Service or Software to, for example, reflect changes to the law or changes to our Services or Software. By continuing to use or access the Services or Software after we give you reasonable notice of the changes to these terms or the additional terms, you have agreed to be bound by the revised terms.

**12) Miscellaneous.**

**a)** You may send notices to us to at the following address: Cray Inc., 901 Fifth Avenue, Suite 1000, Seattle, WA 98164, USA, Attention: General Counsel. We may notify you by email, postal mail, postings within the Services, or other legally acceptable means. You agree to keep us notified of your proper contact information.

- b)** These terms constitute the entire agreement between you and us regarding your use of the Services and Software and supersede any prior agreements between you and us relating to the Services.
- c)** You may not assign or otherwise transfer these terms or your rights and obligations under these terms, in whole or in part, without our written consent and any such attempt will be void. We may transfer our rights under these terms to a third party.
- d)** If a particular term is not enforceable, the unenforceability of that term will not affect any other terms.
- e)** Our failure to enforce or exercise any of these terms is not a waiver of that section.
- f)** We respect the Intellectual Property Rights of others and we expect our users to do the same. We will respond to clear notices of copyright infringement consistent with the Digital Millennium Copyright Act. Notices should be addressed to Cray Inc., 901 Fifth Avenue, Suite 1000, Seattle, WA 98164, attention General Counsel.