Cray Inc.

Software End User License Agreement

This Software End User License Agreement (the *"EULA"*) is made between Customer, as indicated on the Order, and Cray Inc. with its principal office located at 901 Fifth Ave., Suite 1000, Seattle, WA 98164 ("Cray")

1)   Definitions. Capitalized terms not defined in context shall have the meanings assigned to them below:

a)   "Cray Software" means the object code version of the software that is provided or made available to Customer pursuant to an Order as well as any corrections, enhancements, and upgrades to such software that are made available to Customer from time to time, and all copies of the foregoing, with the exclusion of Open Source Software and Third-Party Software.

b)   "Documentation" means the user manuals and documentation that Cray makes available for the Cray Software, Open Source Software, Third-Party Software, and all copies of the foregoing.

c)   "License Type" means the metric by which the Software is licensed (e.g., by system, by user, etc.) as indicated in the applicable Order.

d)   "Open Source Software" means software components provided by Cray that are subject to various open source software license terms as may be described in the software's Documentation, within the provided source code of the software, or in an attribution or licensing file provided to Customer with the software.

e)   "Order" means the document(s) by which Customer orders, purchases, procures, or otherwise obtains a right to use the Software as well as any accompany System. Any conflicting or additional terms in or accompanying an Order will not be binding on Cray unless Cray specifically accepts and acknowledges such terms in writing.

f)   "Software" means the combination of Cray Software, Open Source Software, and Third-Party Software delivered by Cray under an applicable Order.

g)   "System" means a particular system of Cray-branded computer hardware that may be described in an Order. The System does not include hardware that is not branded as CRAY hardware even if provided in connection with an Order.

h)   "Third-Party Software" means proprietary software delivered by Cray as part of the Software that is licensed by and subject to separate license terms provided by a third-party.

2)   Software Licenses.

a)   General. Subject to the terms of this EULA, Cray grants to Customer, and Customer accepts from Cray, for so long as this EULA remains in effect, and unless terminated in accordance with Section 4), a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to access and use the quantities of each item of Cray Software identified in the applicable Order within the parameters of the Documentation associated with the applicable Cray Software and License Type (the *"Cray Proprietary License"*) solely for use within the System or such other purpose stated in the Order. Unless described otherwise in the Order, Customer shall only use the Software to support its internal business operations and may not operate the Software as a hosted service, shared implementation, or as part of a software as a service solution. Unless otherwise specified in an Order, the Cray Proprietary License shall also include the rights to: i) make reasonable additional copies of the Cray Software to be used solely for non-production archival or passive disaster recovery purposes,, and ii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their use of the Software.

b)   Open Source Software. To the extent the Software is comprised of Open Source Software, Customer's license to use, copy, distribute, or otherwise exploit each such item of the Open Source Software will be governed exclusively by the applicable Open Source Software license associated with such Open Source Software (each an *"OSS*

License"). Notwithstanding anything otherwise set forth in this EULA, Customer understands and agrees that the only warranties and representations respecting the Open Source Software are those provided in the applicable OSS Licenses, and the terms of **Section 9)** (Infringement Indemnity) do not apply to any claims to the extent they arise out of the Open Source Software. Customer's sole remedies respecting any allegations or losses arising out of the Open Source Software are those set forth in the applicable OSS Licenses.

c)   Restrictions. Except and only to the extent that the exclusions and limits of this Section are prohibited by applicable law or, for Open Source Software when expressly permitted under terms of its OSS License, Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Software, or any part thereof. In addition, other than as permitted for any Open Source Software under terms of its OSS License, Customer may not: i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Software, Documentation or any part thereof; ii) resell, sublicense or distribute the Software or Documentation; iii) provide, make available to, or permit use of the Software or Documentation, in whole or in part, by any third party (except as expressly set forth herein) without the Software's licensor's prior written consent; iv) use the Software or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Cray; v) remove Software that was delivered on a System from the System on which it was delivered and load such Software onto a different system or hardware component without Cray's prior written consent; or vi) perform or fail to perform any act which would result in a misappropriation or infringement of Cray's or its suppliers' intellectual property rights in the Software or Documentation. Each permitted copy of the Software and Documentation made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Software may work in conjunction with third party products and Customer agrees to be solely responsible for ensuring that it is properly licensed by such third parties to use the Software with such products.

3)   Proprietary Rights.

a)   Cray reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this EULA.

b)   To the extent the Software is comprised of Third Party Software, Customer's license to use, copy, distribute, or otherwise exploit each such item of Third Party Software will be governed exclusively by the applicable software license associated with the Third Party Software (each a *"Third Party License"*). Cray shall provide copies of each such Third Party License to Customer with the delivery of the Software. Customer is advised that copies of all Third Party Licenses are also available at http://www.cray.com/company/policies-and-practices/software-license-agreements. Notwithstanding anything otherwise set forth in this EULA, Customer understands and agrees that the only warranties and representations respecting the Third Party Software are those provided in the applicable Third Party Licenses, and the terms of Section 9) (Infringement Indemnity) of this EULA do not apply to any claims to the extent they arise out of the Third Party Software. Customer's sole remedies respecting any allegations or losses arising out of the Third Party Software are those set forth in the applicable Third Party Licenses.

c)   Cray reserves the right to request, on a reasonable basis, and Customer shall provide, evidence demonstrating compliance by Customer with the terms of this EULA.

4)   Termination.

a)   This EULA, Cray Proprietary License, OSS Licenses, or Third-Party License terms granted hereunder may be terminated: i) by mutual written agreement of Cray and Customer; or ii) by either party for reasons arising out of a material uncured breach of this EULA by the other party, that the breaching party fails to cure to the non-breaching party's reasonable satisfaction within 30 days following its receipt of notice of the breach.

b)   Upon termination of this EULA or expiration or termination of a license for any reason, all rights granted to Customer for the applicable Software shall immediately cease and Customer shall immediately: i) cease using the applicable Software and Documentation; ii) remove all copies, installations, and instances of the applicable Software from all Customer computers and any other devices on which the Software was installed; iii) return the applicable Software to Cray together

with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items; and iv) upon Cray's request give Cray written certification made by an officer or other authorized official of Customer, within ten days, that Customer has complied with all of the foregoing obligations.

5)   Survival. Any provision of this EULA that requires or contemplates execution after termination of this EULA or after termination or expiration of any of the licenses granted hereunder, is enforceable against the other party and their respective successors and assignees, notwithstanding such termination. Termination of this EULA or a license shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this EULA.

6)   Export. Customer acknowledges that the Software and Documentation are subject to the export control laws, rules, regulations, and restrictions including, without limitation, the United States Export Administration Regulation, and laws of other applicable foreign agencies (the **"Export Controls"**). Customer shall abide by the Export Controls. Customer hereby agrees to use the Software and Documentation in accordance with the Export Controls, and shall not export, re-export, sell, lease or otherwise transfer the Software or Documentation or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the export, re-export, sale, lease or transfer of the Software or Documentation and for ensuring compliance with the requirements of such licenses or authorizations.

7)   Warranties and Remedies.

a)   Software Warranties- Cray Software. Cray warrants that, for a period of thirty (30) days (the "**Warranty Period"**) following delivery of an item of Cray Software,

   i)   the operation of the Cray Software will substantially conform to the description of operation stated in its Documentation (the **"Use Warranty"**); and

   ii)   the Cray Software will not contain any viruses, worms, trojan horses, or other malicious or destructive code designed by Cray to allow unauthorized intrusion upon,

disabling of, or erasure of the Cray Software (the "**Virus Warranty**"). Nothing in this paragraph; however, will prevent or prohibit the use of a software key or similar device to manage or authorize appropriate use of the software.

b)   System Warranties Excluded. Systems are warranted in accordance with the warranty terms contained in the separate agreement or Order for such System and are excluded from the warranty provisions of this EULA.

c)   Remedies. Any breach of the foregoing warranties must be reported by Customer to Cray during the applicable Warranty Period. Customer's sole and exclusive remedy and Cray's sole obligation for any such breach shall be as follows:

   i)   For a breach of the *Use Warranty* that impacts the use of the impacted Software, Cray will use commercially reasonable efforts to provide such patches, modifications, or other remedies as are reasonably necessary to resolve the nonconformity.

   ii)   For a breach of the *Virus Warranty*, Cray shall replace the Software with a copy that is in conformance with the Virus Warranty.

d)   Warranty Exclusions. The warranties set forth in this Section shall not apply to any nonconformity: i) that Cray cannot recreate after exercising commercially reasonable efforts to attempt to do so; ii) caused by misuse of the applicable Software or by using the Software in a manner that is inconsistent with this EULA or the Documentation; or iii) arising from the modification of the Software by anyone other than Cray.

e)   Warranty Disclaimer. THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY CRAY HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. CRAY DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SOFTWARE. THE SOFTWARE IS

LICENSED TO CUSTOMER ON AN "AS-IS" BASIS AND CRAY HAS NO RESPONSIBILITY OR LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RELATED TO THE USE, MAINTENANCE, OR PERFORMANCE OF THE SOFTWARE (INCLUDING LIABILITY FOR NEGLIGENCE) EXCEPT LOSS OR DAMAGE ATTRIBUTABLE SOLELY TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CRAY. EXCEPT AS MAY BE PROVIDED IN THIS AGREEMENT, IN NO EVENT WILL CRAY'S LIABILITY INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA EVEN IF CRAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE AND WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE.

8)   High-Risk Disclaimer. Customer understands and acknowledges that the Software is not fault-tolerant and is not designed or intended for use in any high-risk or hazardous environment, including without limitation, the operation of nuclear power facilities, aircraft navigation, air traffic control, life support machines, weapons systems, or any other application where the failure or malfunction of any product can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm. Accordingly: a) Customer should not use the Software in any such environment; b) any use of the Software by Customer in any such environment is at Customer's own risk; c) Cray and its suppliers shall not be liable to Customer in any way for use of the Software in any such environment; and d) Cray makes no warranties or assurances, express or implied, regarding use of the Software in any such environment.

9)   Infringement Indemnity.

a)   Subject to the provisions of Section 7), Cray shall, at its own expense, defend any suit instituted against Customer to the extent that such claim is derived from an allegation that any Cray Software licensed to Customer hereunder constitutes an infringement of any patent issued by the United States, Canada, any EU state, or Japan, 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 Cray Software 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. To the extent not prohibited by applicable and controlling law, 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 wrongdoing 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. Should any Cray 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 have the right, at Cray's option and expense, to i) procure for Customer the right to continue using the Cray Software; ii) replace or modify the infringing Cray Software so that it becomes non-infringing; or iii) terminate Customer's right to use the infringing Cray Software upon which termination Customer agrees to promptly return the infringing Cray Software to Cray. Upon receipt of the returned Cray Software Cray will refund Customer's fees applicable to such Cray Software, reduced for depreciation determined on a straight-line five year basis.

b)   Cray will have no obligation or liability to Customer with respect to any claim of infringement which results from: i) the combination or use of Cray 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; ii) any modification by Customer or any third party of any Cray Software; iii) any specifications, designs or instructions provided to Cray by or on behalf of Customer; iv) 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 v) use of the Software in a manner not in conformance with Cray published specifications.

10) **Governing Law and Venue.** This EULA shall be governed by and construed in accordance with the laws of the State of Washington, without regard to the conflict of laws provisions thereof. Any action seeking enforcement of this EULA or any provision hereof shall be brought exclusively in the state or federal courts located in King County, Washington. Each party hereby agrees to submit to the jurisdiction of such courts and, to the extent permitted under applicable law, waives any objection to such jurisdiction including, without limitation, claims relating to lack of personal or subject matter jurisdiction and *forum non conveniens*. Further, each party agrees to waive any requests for a trial by jury.

11) **Assignment.** Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this EULA, the licenses granted under this EULA or any other rights, interest or obligations hereunder, whether voluntarily, by contract, by operation of law or otherwise without the prior written consent of Cray. Any attempted transfer or assignment by Customer that is not permitted by this EULA shall be null and void.

12) **Severability.** If any provision of this EULA is ever held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to effect the intent of the parties and the remaining provisions of this EULA will remain in full force and effect. Notwithstanding the foregoing, the terms of this EULA that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this EULA in determining whether to enter into it.

13) **United States Government Rights.** The Software is a "commercial item" as that term is defined at FAR 2.101. If Customer or user is the US Federal Government or any party acting on behalf of the US Federal Government (collectively "US Government"), Cray provides the Software, technology, technical data, and/or any related services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software specifically defined in this EULA. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (*Rights in commercial computer software or commercial computer software documentation*), only those rights in technical data and software customarily provided in this EULA. In addition, DFARS 252.227-7015 (*Technical Data – Commercial Items*) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this EULA. W

14) **Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this Section. Any notice to Cray that asserts any default by Cray under this EULA must be delivered to the attention of the Office of the General Counsel, Cray Inc., at 901 Fifth Avenue, Suite 1000, Seattle, WA 98164, USA. Except as may be expressly permitted herein, notices may be delivered personally, sent via a nationally recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid. All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four days following deposit in the mail in accordance with this paragraph.

15) **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this EULA on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

16) **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God,

strikes, lockouts, riots, acts of war, epidemics, communication line failures, power failures, and delays in Cray obtaining components from its suppliers. For added certainty, this Section shall not operate to change, delete, or modify any of the parties' obligations under this EULA, rather, it only provides for excuse of a delay in performance of such obligations.

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

18)   Entire Agreement. The terms and conditions stated in this EULA 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 EULA 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.