



ATTACHMENT A

ADDITIONAL TERMS APPLICABLE TO VSM AND VERSITY SOFTWARE

In addition to the terms and conditions of [the Cray License] the provisions of this Attachment A (“VSM EULA”) apply to the Versity Storage Manager software proposed by Cray (defined below as the “Software”). To the extent there is any conflict between this VSM EULA and the Cray License, the terms of this VSM EULA shall govern and apply. This VSM EULA shall be part of the final agreement between Cray and Customer and is hereby incorporated into the Cray License, and by entering into the Cray License, the Customer is agreeing to be bound by the terms set forth below. The foregoing notwithstanding, this VSM EULA is expressly intended to survive termination or cancellation of the Cray License, in accordance with the provisions set forth herein. Versity Software, Inc., a Delaware corporation (“Versity”) is a direct and intended beneficiary of this VSM EULA, with all power to take necessary action to enforce its terms.

ARTICLE 1 DEFINITIONS

“Documentation” means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software that are generally provided by Versity in connection with the Software.

“Software” means the Versity Storage Manager computer software program provided to Customer pursuant to this Agreement, together with any Updates that may be provided by Versity hereunder.

“Term” has the meaning set forth in Section 11.1.

“Third-Party Dependencies” means the open source software and other third-party software listed in Exhibit B hereto.

“Update” means a release or version of the Software containing functional enhancements, extensions, error corrections or fixes, which release or version is generally made available free of charge to licensees of the Software.

ARTICLE 2 GRANT OF LICENSE

Section 2.1. Grant. Subject to the payment of fees and the restrictions on Customer’s use of the Software as set forth in Article 2 and Article 3, Versity hereby grants to Customer a nonexclusive, nonsublicensable, nontransferable license during the Term to (a) use the Software on a single host server (the “Master Server”) for Customer’s own internal information processing and computing needs, and to make copies as necessary for such use, and (b) use the Documentation in connection with use of the Software. Customer acknowledges and



agrees that Versity will retain title to, and is the exclusive owner of all right, title and interest, including without limitation all intellectual property rights, in and to, the Software and Documentation. Versity hereby reserves all rights to the Software, Documentation, and any copyrights, patents, or trademarks, embodied or used in connection therewith, except for the rights expressly granted herein.

Section 2.2. Perpetual Read Right. Customer's right to use the Software to read data that is written by the Software as run by the Customer during the Term, as licensed in Section 2.1, shall be perpetual and irrevocable. Subject only to the foregoing provision of this Section 2.2, Customer shall have no right to, and shall not, make any use of the Software, including without limitation writing or processing data with the Software, following any expiration or termination of this VSM User Agreement, or the Cray License. In the case of an expiration or termination of the Cray License, Versity may agree to extent the term of this VSM User Agreement.

Section 2.3. High Availability. The license granted in Section 2.1 includes the right to use the Software in a high-availability configuration on a single fail-over host server (the "High Availability Server") that is normally idle except in the case of a failure of the Master Server. In no event may such fail-over host server and the Master Server run the Software simultaneously.

Section 2.4. Mirroring. The license granted in Section 2.1 does not include the right to use the Software in a mirrored configuration in which the data stored by the Software is duplicated in a second location. Such use must be licensed separately from Versity.

Section 2.5. Delivery. Versity shall make the Software and the Documentation available to Customer not later than three business days after the Effective Date. Customer acknowledges that no source code of the Software will be provided to Customer.

Section 2.6. Copies. Customer may make a reasonable number of machine-readable copies of the Software for backup or archival purposes. Customer shall not copy the Software, except as permitted by this VSM User Agreement. Customer shall maintain accurate and up-to-date records of the number and location of all copies of the Software and, upon Versity's request, inform Versity in writing of such location. All copies of the Software will be subject to all terms and conditions of this VSM User Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software, Customer shall reproduce and not efface any and all titles, trademark symbols, copyright symbols and legends, and other proprietary markings on the Software.

Section 2.7. Third-Party Dependencies. Customer hereby acknowledges that the Software will not function unless Customer downloads, installs and runs the Third-Party Dependencies on the Master Server (and, as applicable, the High Availability Server), and Versity's obligations hereunder are conditioned on Customer's doing so. **THE THIRD PARTY DEPENDENCIES ARE NOT PROVIDED BY VERSITY AND VERSITY MAKES NO WARRANTY OF ANY KIND WITH RESPECT THERETO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, VERSITY HEREBY DISCLAIMS ANY IMPLIED**



WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

Section 2.8. Statutory Changes; Changes to Customer Requirements. Versity shall not be obliged to modify the Software under this VSM User Agreement or the Cray License in response to (i) changes of statutory law, directives etc. or (ii) Customer's changed requirements. Any such modification of the Software shall be subject to a separate agreement and separate terms and conditions.

Section 2.9. Customer Feedback. Customer may, from time to time, provide Versity with feedback, suggestions or other ideas relating to the Software, Versity, or its market, whether orally, in writing or by other means ("Feedback"). Customer shall and does hereby grant to Versity the irrevocable right, without payment of any kind to Customer, in perpetuity and throughout the world, to make any and all use of the Feedback, including in the modification of the Software, development of new products, or otherwise.

ARTICLE 3 LICENSE RESTRICTIONS

Section 3.1. Types of Licenses. Customer shall abide by the following applicable restrictions.

(a) Evaluation License. If an "Evaluation License" is indicated on Exhibit A, Customer's license key may prohibit use of the Software after the time indicated on Exhibit A. Customer may use the Software solely for internal use, in accordance with the restriction of the "Enterprise License" in Section 3.1(b), solely during the evaluation period indicated on Exhibit A. If an "Evaluation License" is indicated on Exhibit A, notwithstanding anything to the contrary in this Agreement, (i) all Software subject to such evaluation license is delivered "AS-IS," without any express or implied warranties, and no warranties or maintenance obligations will apply to Versity except in case of Versity's willful misconduct or gross negligence; and (ii) **VERSITY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO SUCH SOFTWARE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

(b) Enterprise License. If an "Enterprise License" is indicated on Exhibit A, Customer shall (i) use the Software solely for its own computing needs, and not on behalf of any other entity or affiliate (except to the extent such entities may be listed specifically on Exhibit A); and (ii) use the Software solely at the premises indicated on Exhibit A and allow use of the Software solely by persons located at such site.

Section 3.2. Additional Restrictions. Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party:

- (a) sell, lease, license or sublicense the Software or the Documentation;
- (b) modify the Software;



- (c) allow access to the Software by anyone other than Customer's employees;
- (d) write or develop any derivative software or any other software program based upon the Software or any Confidential Information;
- (e) use the Software to provide processing services to third parties, or otherwise use the Software on a cloud computing basis¹;
- (f) develop, use, sell, import, distribute, market, or promote any software tools for use with the Software or extensions to the Software without Versity's prior written consent; or
- (g) provide, disclose, divulge or make available to, or permit use of the Software by, any third party without Versity's prior written consent.

Section 3.3. Decompilation/Reengineering. If Customer requires any information to achieve interoperability of the Software with other independently created software programs, Customer shall request the relevant information from Versity in writing (first through the support obligations of Cray under the Cray License, if applicable). Versity shall be entitled to reasonable remuneration for disclosing the requested information. The reverse translation of the object code provided into other code forms (decompilation) or other forms of reverse engineering of the various manufacturing stages of the Software (reverse engineering) shall not be permitted.

ARTICLE 4 SUBSCRIPTION FEE

Section 4.1. Payment of Fees. Customer shall pay to Cray Inc., the license and support fees indicated in the Cray License. Upon termination of the Cray License, to the extent this VSM User Agreement continues, Customer shall pay all license and support fees for the Software for period after the termination of the Cray License, as applicable, directly to Versity.

ARTICLE 5 MAINTENANCE AND SUPPORT

Section 5.1. Technical Support.

(a) During the Term of the Cray License, all support and maintenance will be provided under the terms of the Cray License. If upon termination of the Cray License, the Customer desires to engage Versity for additional technical support, any such support of the Software shall be subject to a separate agreement and separate terms and conditions

¹ Discuss appropriate carve-out for data processing services.



ARTICLE 6 WARRANTY

Section 6.1. Performance. Versity warrants that the Software will perform substantially in accordance with the Documentation during the Term and does not infringe third-party rights. If the Software does not perform as warranted and Customer gives written notice of such non-performance within thirty (30) days of its occurrence, Versity shall correct the Software (provided that Customer first comply with the support protocol under the Cray License, if applicable). In the event of a defect of title, Article 6 shall apply. The warranty set forth above is made to and for the benefit of Customer only. The warranty will apply only if:

- (a) the Software has been properly installed and used at all times and in accordance with the Documentation; and
- (b) no modification, alteration or addition has been made to the Software by any person other than Versity or Versity's authorized representative.

Section 6.2. Disclaimer. Except as set forth above, Versity makes no warranties, whether express, implied, or statutory regarding or relating to the Software or the Documentation, or any materials or services furnished or provided to Customer under this Agreement, including maintenance and support. Other than remedies provided under the Cray License (if any), the foregoing is Customer's sole and exclusive remedy for breach of warranty with respect to the Software.

ARTICLE 7 LIMITATION OF LIABILITY

Section 7.1. Limitation of Liability. In all cases of contractual or non-contractual liability, Versity shall only be liable for damages subject to the following provisions:

- (a) Versity shall exercise the degree of diligence customarily used in the industry. In determining whether Versity is at fault, it shall be kept in mind that at the present state of software technology it is not possible to create defect-free software.
- (b) Versity's liability for damages caused by intent, for damages from injury to life, body, or health or for damages caused by a breach of a written guarantee shall be unlimited.
- (c) In all cases, Versity shall only be liable for breach of a material contractual duty whose fulfillment is a prerequisite for the proper performance of the Agreement and on whose fulfillment Customer was entitled to rely but in any case only up to the amount of the typically foreseeable damages.
- (d) The parties assume and agree that the typically foreseeable damages will not exceed, per incident, 20% of the net Monthly Fee payable in the respective contract year for the Software and will amount in aggregate to less than 50% of the total net Monthly Fee to be paid for the Software in the respective contract year.



(e) Except in cases for willful misconduct, liability for indirect and consequential damages, including loss of profits, shall be excluded.

(f) Customer shall be responsible for making regular backups of its data (see Section 5.4 (d)). In the event of any loss of data due to the fault of Versity, Versity shall only be liable for the cost necessarily incurred for recovering the lost data from proper data backups made by Customer.

(g) The limitations of liability shall apply to the benefit of Versity's subcontractors, agents, legal representatives and employees.

Section 7.2. Risk and Pricing. The provisions of this Article 5 allocate risks under this Agreement between Customer and Versity. Versity's pricing of the Software license and support reflects this allocation of risks and limitation of liability.

ARTICLE 8 LIABILITY FOR DEFECTS OF TITLE

Section 8.1. Indemnity. Versity shall, at its expense, defend or settle any claim, action or proceeding brought against Customer to the extent that it alleges that the Software infringes any proprietary right of any third party, and Versity shall pay any final judgments awarded or settlements entered into in connection therewith; provided that Customer gives prompt written notice to Versity of any such claim, action or allegation of infringement and gives Versity the authority to proceed as contemplated herein. Versity will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such claim, action or allegation, except with prior written consent of Versity. Customer shall give such assistance and information as Versity may reasonably require to settle or to oppose such claims.

Section 8.2. Options. In the event (i) any such infringement has finally been determined, (ii) Versity is responsible for the infringement, and (iii) Customer has fulfilled its obligations under the preceding Section 6.1, Versity may, at its sole option and expense:

(a) procure for Customer the right to continue use of the Software or infringing part thereof; or

(b) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities.

Section 8.3. Exclusions. The foregoing obligations will not apply to the extent the infringement arises as a result of modifications to the Software made by any party other than Versity or Versity's authorized representative, as a result of the combination of the Software with any materials or products not provided by Versity, if such infringement would not arise but for such combination, or as a result of the use of the Software other than in compliance with the terms of this Agreement.



Section 8.4. Right to Terminate. Should Versity fail to remove the infringement within reasonable time and such failure materially impacts Customer's use of the Software, Customer shall be entitled to terminate this Agreement for cause upon written notice to Versity.

Section 8.5. Liability Limitations. The general limitations of liability according to Article 7 above apply.

Section 8.6. Sole Remedy. This Article 6 states the entire liability of Versity with respect to infringement of any patent, copyright, trade secret or other proprietary right.

ARTICLE 9 CONFIDENTIAL INFORMATION

Section 9.1. Confidential Information. "Confidential Information" means any information in written, graphic, machine-readable or other tangible form that is marked or otherwise designated as confidential. Confidential Information shall exclude information that Customer can demonstrate: (i) was independently developed by Customer without any use of the Confidential Information or by Customer's employees or other agents (or independent contractors hired by Customer) who have not been exposed to the Confidential Information; (ii) becomes known to Customer, without restriction, from a source other than Versity that had a right to disclose it; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of Customer; or (iv) was rightfully known to Customer, without restriction, at the time of disclosure. The Software and Documentation shall be Confidential Information.

Section 9.2. Non-Use and Non-Disclosure. Customer agrees not to use any Confidential Information for any purpose except to exercise its rights and perform its obligations under this Agreement. Customer agrees not to disclose any Confidential Information to third parties or to Customer's employees, except to those employees of the Customer with a need to know. The foregoing shall not apply to the extent otherwise provided for by law or ordered by a governmental body.

Section 9.3. Maintenance of Confidentiality. Customer shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Customer shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Customer shall not make any copies of the Confidential Information unless previously approved in writing by Versity. Customer shall reproduce the proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.



Section 9.4. Return of Materials. Upon the termination of this Agreement, Customer shall deliver to Versity all Confidential Information that Customer may have in its possession or control. Statutory obligations regarding the retention of data and documents shall not be affected.

ARTICLE 10 DATA PROTECTION

Section 10.1. Statutory Provisions. The parties shall comply with statutory data privacy provisions. To the extent required by law, the parties shall enter into a separate data processing agreement.

Section 10.2. Required Consents. Customer shall ensure (i) that any required consents of data subjects regarding the processing of personal data are obtained and (ii) that Versity does not get access to personal data where no consent of the data subject has been obtained and access to personal data is not covered by a legal permission.

Section 10.3. Encryption. Customer shall not make available or transmit to Versity personal data unless necessary under this VSM User Agreement. Customer shall take adequate precautions to prevent unnecessary access by or transmission of personal data to Versity, in particular by encrypting personal data.

ARTICLE 11 TERM AND TERMINATION

Section 11.1. Term. This VSM User Agreement will take effect pursuant to the terms of the Cray License and will remain in force until terminated in accordance with this VSM User Agreement (such period, the “Term”).

Section 11.2. Ordinary Termination by Customer. This VSM User Agreement may be terminated by Customer upon written notice to Versity, without cause, or during the term of the Cray License, by any other method provided under that agreement, provided that no such termination will entitle Customer to a refund of any portion of any fees paid hereunder.

Section 11.3. Termination for Cause. The right for termination for cause shall remain unaffected. Versity may, by written notice to Customer, terminate this VSM User Agreement, in particular, if any of the following events (“Termination Events”) occur, whether or not such events create a right of termination under the Cray License and independent of whether or not Cray exercises its rights to terminate the Cray License:

(a) Customer has failed to make at least two payments for more than 60 days after the relevant due dates; or

(b) Customer is in material breach of any nonmonetary term, condition or provision of this VSM User Agreement, which breach, if capable of being cured, is not cured within 30 days after Versity gives Customer written notice of such breach; or



(c) Customer (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

Section 11.4. Effect of Termination. If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding (i) Customer's or Versity's treatment of Confidential Information, (ii) the Feedback, (iii) payment of amounts due, (iv) limits or disclaimers of Versity's liability, or (v) warranty disclaimers, which provisions will survive termination of this VSM User Agreement.

Section 11.5. Return. No later than 30 days after the date of termination or discontinuance of this VSM User Agreement for any reason whatsoever, Customer shall return the Software and all copies, in whole or in part, all Documentation relating thereto, and any other Confidential Information in its possession that is in tangible form. Section 9.4 shall remain unaffected. Customer shall furnish Versity with a certificate signed by an executive officer of Customer verifying that the same has been done.

ARTICLE 12 MISCELLANEOUS

Section 12.1. Non-assignment/Binding Agreement. Neither this VSM User Agreement nor any rights under this agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, pursuant to the Cray License, otherwise, including without limitation, by way of sale of assets, merger or consolidation, without the prior written consent of Versity.

Section 12.2. Notices. Any notice required or permitted under the terms of this VSM User Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth above; provided however, that during the term of the Cray License, notices shall be delivered pursuant to the terms set forth therein. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

Section 12.3. Limitation on Claims. No action arising out of any breach or claimed breach of this VSM User Agreement or transactions contemplated by this agreement may be brought by either party more than one year after the cause of action has accrued.

Section 12.4. Limitation of Set off Rights. Customer may only set off claims of its own against the claims of Versity, if such counterclaims are undisputed or recognized by declaratory judgment.



Section 12.5. Limitation of Retention Rights. Customer shall have no right of retention unless its counterclaim is based on the same contractual relationship and is undisputed or has been acknowledged in writing or recognized by declaratory judgment.

Section 12.6. No Warranties. No employee, agent, representative or affiliate of Versity has authority to bind Versity to any oral representations or warranty concerning the Software. Any written representation or warranty not expressly contained in this VSM User Agreement will not be enforceable.

Section 12.7. Force Majeure. Except with respect to the payment of money, neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this VSM User Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

Section 12.8. Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. The same applies for a waiver of this Section 9.8. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

Section 12.9. Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

Section 12.10. Integration. This Agreement (including the Exhibits and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.

Section 12.11. No Customer Terms. Non-Applicability of Customer's Terms and Conditions. Customer's terms and conditions shall not apply, regardless of whether or not Versity expressly objects to such terms and conditions.



Section 12.12. Purchase Orders. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Customer may use in connection with the acquisition or licensing of the Software will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this VSM User Agreement, regardless of any failure of Versity to object to such terms, provisions or conditions.

Section 12.13. Export. Customer may not export or re-export the Software without the prior written consent of Versity and without the appropriate United States and foreign government licenses.

Section 12.14. Construction. Titles, article headings and section headings are for reference only and shall not affect the interpretation of this VSM User Agreement. The word “including” when used herein is illustrative rather than exclusive, and means “including, without limitation.” No rule of construction interpreting this VSM User Agreement in favor of the non-drafting party shall be applied hereto.

Section 12.15. Publicity. Customer acknowledges that, in compliance with and only as provided for under the terms of the Cray License, Versity intends to use its name in press releases, and on its web site indicating that Customer is a customer of Versity, and Customer hereby agrees that Versity may use its name in such manner, subject to Customer’s brand usage guidelines.

Section 12.16. Counterparts. This VSM User Agreement may be executed in counter-parts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

Section 12.17. Governing Law. This VSM User Agreement will be interpreted and construed in accordance with the laws of the State of California, without regard to conflict of law principles. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in San Francisco County, CA with the exception of payment claims of Versity, which Versity may bring in such courts and any other court having jurisdiction thereover, for resolution of any disputes arising out of this VSM User Agreement.