

TERMS FOR SALE, LICENSE, AND SUPPORT

These Terms for Sale, License, and Support (the “**Terms**”), together with any Accepted Quote associated with it and all attachments referenced in either the Accepted Quote or these Terms (collectively the “**Agreement**”), made between you (“**you**” or “**Customer**”) and Cray, govern your purchase from Cray, and/or use of, the Hardware, Software, Services, and Maintenance & Support that are described in the Accepted Quote. “**Cray**” means Cray Inc., a State of Washington, USA corporation, or the Cray Affiliate identified on the Accepted Quote. “**Cray Affiliate**” means a direct or indirect subsidiary of Cray Inc.

The Agreement as provided to you by Cray, including the Accepted Quote and these Terms, comprises Cray’s offer to sell (or license, as applicable) to you the Hardware, Software, Services, and Maintenance & Support described in the Accepted Quote. This offer is expressly limited to your acceptance of the entire Agreement, including these Terms, and Cray specifically rejects any additional or contrary terms and conditions you may propose to these Terms unless agreed in writing by an authorized representative of Cray.

1) DEFINITIONS.

“**Accepted Quote**” means any relevant quote submitted by Cray and accepted by the Customer. For purposes of this definition, “Accepted Quote” includes a Cray quotation or a customer purchase order that incorporates this Agreement and does not contain any terms in addition to, or that otherwise conflict with the terms of the Agreement.

“**Deliverables**” means the tangible materials, including reports, studies, drawings, software, manuals or written procedures and recommendations that Cray delivers to you under a Statement of Work.

“**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.

“**Effective Date**” means, the date on which: (i) Customer uses the System or receives the Maintenance & Support, or allows others to do so; (ii) Customer makes any payment for the System or Maintenance & Support; or (iii) Customer returns an Accepted Quote to Cray. In the event that (i), (ii), or (iii), as applicable, occur on different dates, the Effective Date shall be the date on which (i), (ii), or (iii) first occurs.

“**Hardware**” means computer hardware, related devices and other accessories including all embedded components (excluding Software).

“**Maintenance & Support**” means the services performed by Cray to support and maintain the System or Hardware, as applicable, you have purchased pursuant to the Cray Maintenance & Support Addendum.

“**Services**” means services and Deliverables provided by Cray pursuant to the Cray Services Addendum.

“**Software**” means the combination of Cray Software, Open Source Software, and Third-Party Software delivered by Cray pursuant to Accepted Quote, as each such term is defined in the Cray Software End User License Agreement (“EULA”).

“**Statement of Work**” means a written description of work to be done by Cray, regarding the installation and implementation of a System within your designated facility.

“**System**” means the Hardware and the Software.

2) HARDWARE PURCHASE.

a) New Hardware

b) The Hardware will be newly manufactured unless otherwise specified. Cray may include used components in newly manufactured Hardware and may use such equipment in its testing and development programs, provided that such components and equipment are warranted to perform as new.

c) Site Preparation and Shipment

i) **Site Preparation.** Customer, at its sole expense, will have the site timely prepared to receive the System in accordance with Cray’s site preparation instructions.

ii) **Shipment.** Cray will prepay and Customer will reimburse Cray for transportation and transportation insurance charges for or with respect to the System.

d) **Risk of Loss & Title.** Cray assumes all risk of loss of or damage to the System until the System is

placed at Customer's disposal on the arriving means of transport, ready for unloading, at the Customer location identified in the Accepted Quote, except for loss or damage to the System resulting from Customer's negligence. Customer will be responsible for loss or damage to the System caused by its negligence. Customer will assume all responsibility for loss or damage to the System upon delivery. Title to the Hardware will pass to Customer upon delivery to the location specified in the Accepted Quote. Customer shall not sell the Hardware or System or otherwise encumber its title until the purchase price has been paid in full to Cray.

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

f) Relocation. Except for temporary, emergency relocation of any System to prevent its damage or destruction, any relocation of the System without Cray's prior written consent voids the warranty effective the date of relocation.

3) SOFTWARE LICENSE.

a) Customer's rights to use and otherwise exploit the Cray Software that may be delivered to Customer in connection with these Terms are described in the Cray Software End User License Agreement ('EULA') set forth at: <http://www.cray.com/company/policies-and-practices/software-license-agreements>. All Software provided is subject to, and Customer agrees to, the EULA.

4) MAINTENANCE AND SUPPORT.

a) Maintenance & Support. Cray shall provide Maintenance and Support to Customer as set forth in an Accepted Quote and the Cray Maintenance & Support Addendum.

5. CUSTOMER REQUIREMENTS.

a) Environmental Conditions. Customer will ensure that each System is 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 Hardware or Software.

b) Limit Access to Technical Information. Customer will limit access to Cray's technical information and Cray Software in Customer's

possession solely to Customer's employees for purposes specifically related to Customer's use of the System in accordance with this Agreement.

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

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

e) Notification of Problems. Customer will promptly notify Cray of any failures or bugs in the System or any part or component thereof, and give Cray any reasonable assistance requested by Cray in performing its obligations hereunder, including cooperation with Cray's support personnel in performing reasonable System testing, and allowing access to the System and information relating to any problem Customer reports to Cray.

6. PRICING, PAYMENT & TAXES.

a) Pricing. To the extent the Accepted Quote describes any prices for the Hardware, Software, Services, Deliverables, or Maintenance & Support, or any payment terms regarding invoices, you agree to pay the prices set forth in the Accepted Quote and these Terms.

b) Payment. Invoices are due and payable within 30 days from the invoice date. Payment must be made in the method and currency identified by Cray. 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. Any assignment of your payment obligations to a third-party financing company must be approved in advance in writing by Cray, such approval not to be unreasonably withheld; any such assignment does

not excuse you from your obligations under the Agreement. Cray, without waiving any other rights or remedies and without liability to Customer, may suspend or terminate any or all Maintenance & Support, Services and refuse additional orders for any Hardware, Software, Maintenance & Support, Services until all overdue amounts are paid in full.

c) Taxes. You are responsible for sales tax and any other taxes or governmental fees associated with the Agreement. If you qualify for a tax exemption, you must provide Cray with a valid certificate of exemption or other appropriate proof of exemption. The charges stated on each line item of the invoice shall include all duties, levies or any similar charges and exclude VAT or equivalent sales or use tax. Customer shall also pay all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes) unless stated otherwise on the Accepted Quote. Cray's invoice shall be in accordance with applicable law. If Customer is required by law to make a withholding or deduction from payment, Customer will make payments to Cray net of the required withholding or deduction. Customer will supply to Cray satisfactory evidence (e.g. official withholding tax receipts) that Customer has accounted to the relevant authority for the sum withheld or deducted.

7. WARRANTY, LIMITATION OF LIABILITY & INDEMNIFICATION.

a) Warranty.

i) Warranty and Remedy. Cray warrants to Customer that at the time of delivery of the Hardware and Deliverables, such Hardware and Deliverables will: (I) be in good working order and free of error or defect that materially impairs use in the manner described in the Documentation; and (II) conform in all material respects to Cray's published specifications for such Hardware and Deliverables. If any Hardware or Deliverable does not conform to this warranty at the time of delivery, Cray shall, as Customer's sole and exclusive remedy, promptly repair or replace the nonconforming Hardware or Deliverable. Notwithstanding anything to the contrary, Customer agrees that it must notify Cray of any breach of warranty claims within thirty (30) days of delivery of the Hardware or Deliverables to Customer. Cray warrants that the Services and Maintenance & Support will be provided in a workmanlike manner. If any Services or Maintenance & Support do not conform to the

above warranty, Cray shall, as Customer's sole and exclusive remedy, promptly reperform the Services or Maintenance & Support.

ii) Warranty Exclusions. THE ABOVE WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, MISUSE, PROBLEMS WITH ELECTRICAL POWER, OPERATION OUTSIDE CRAY'S ENVIRONMENTAL AND SITE SPECIFICATIONS FOR THE SYSTEM, SERVICES NOT PERFORMED OR AUTHORIZED BY CRAY (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH SYSTEM INSTRUCTIONS, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE SYSTEM.

iii) Limitation of Warranty. Except as otherwise documented in the Agreement, Cray does not warrant that the Hardware, Software, Deliverables, Services or Maintenance & Support 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 THE AGREEMENT: a. THE HARDWARE, SOFTWARE, DELIVERABLES, SERVICES, AND MAINTENANCE & SUPPORT ARE PROVIDED TO CUSTOMER AS IS; AND b. CRAY EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE HARDWARE, SOFTWARE, SERVICES, DELIVERABLES AND MAINTENANCE & SUPPORT INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS, AND ANY WARRANTY THAT MAY ARISE BY REASON OF CUSTOM, USAGE OF TRADE, OR COURSE OF DEALING. CUSTOMER IS RESPONSIBLE FOR THE SELECTION OF ANY HARDWARE, SYSTEM, AND SOFTWARE TO ACHIEVE THEIR INTENDED RESULTS.

b) Limitation of Liability. Cray will not be liable for any special, incidental, consequential, or indirect damages arising out of or related to the Agreement or use of any System, Hardware, Software, Deliverables, or Services delivered hereunder, including, without limitation, loss of data, unauthorized access, business or profits or other economic advantage arising out of or in connection with any System, or for the performance or use of the System. You agree that Cray's liability arising out of the Agreement is limited to your direct damages and in any event can be no greater than the lesser of the amounts actually paid by you to Cray for the System as set forth in the Approved Quote, or \$2,000,000.

c. Indemnity by Cray.

(i) Subject to Section 7(c)(iii) of these Terms, Cray will, at its own expense, defend any suit instituted against Customer to the extent that such suit derives from an allegation that any Hardware or any part thereof 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 Hardware or any part thereof 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 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.

(ii) **Remedy.** Should any Hardware 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 Hardware; (b) replace or modify such Hardware so that it becomes non-infringing; or (c) terminate Customer's right to use such Hardware upon which termination Customer agrees to promptly return the Hardware to Cray. Upon receipt of the returned Hardware Cray will refund payments made by Customer applicable to such Hardware, reduced for depreciation determined on a straight-line five (5) year basis.

(iii) **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 Hardware 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 Hardware; (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 Hardware in a manner not in conformance with Cray published specifications.

8) TERM & TERMINATION.

a) Term. The Agreement shall be effective as of the Effective Date.

b) Termination. Either Party may terminate the Agreement on written notice: (1) following expiration or termination of the terminating party's obligations under the Agreement; provided, however, that Customer may not terminate the Agreement with respect to an Accepted Quote submitted to Cray; or (2) if the other Party is in material breach of the Agreement and does not cure such material breach within thirty (30) days of receiving notice of such material breach.

9) MISCELLANEOUS.

a) 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 writing by either of the Parties to the other in accordance with this Section. 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 (4) days following deposit in the mail in accordance with this paragraph.

b) 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 Agreement on one occasion will not be deemed a waiver of any other

provision or of such provision on any other occasion.

c) 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, catastrophic failures, communication line failures, power failures, and delays in Cray obtaining requisite components from its suppliers. For added certainty, this Section shall not operate to change, delete, or modify any of the Parties' obligations under this Agreement, rather, it only provides for excuse of a delay in performance of such obligations.

d) 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.

e) Entire Agreement. The terms and conditions stated in this Agreement, including the Cray EULA, any Exhibits thereto, Addenda hereto and Accepted Quotes constitute the final, 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.

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

g) Relationship of the Parties. Cray is an independent contractor in all respects with regard to these Terms. 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.

h) Disclosure of Customer Status. Cray may include Customer in its listing of customers and announce Customer's selection of Cray in its marketing communications.

i) Confidential Information.

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 otherwise tangible documentation that directly derives out of any such Confidential Information. Confidential Information also includes, but is not limited to, the terms of this Agreement, computer software, methodologies, algorithms, business, 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, technical data and know-how, pre-released parts, and information related to such pre-released parts such as features, performance, capabilities, errata, any problems encountered, and feedback (comments, suggestions, corrections, etc.). Notwithstanding the foregoing, Confidential Information shall not include information: (a) that at the time of disclosure is in the public domain or is otherwise available to the Recipient other than on a confidential basis; (b) that, after disclosure, becomes a part of the public domain by publication or otherwise through no fault of the Recipient; (c) that 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 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.

Each Recipient acknowledges that the Discloser considers the Discloser's disclosed Confidential Information to be valuable, confidential and if so designated a trade secret. Each Party agrees to hold the Discloser's Confidential Information in trust and

confidence, using its commercially reasonable, diligent efforts to keep secret and confidential that 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 to use the other Party's Confidential Information solely for the purposes of performing its obligations under the Agreement. Each Party agrees that it shall not copy, reproduce, or disclose the Discloser's Confidential Information to any third party, except that a Recipient may, subject to the following restrictions, disclose such information for the purpose of performing under this Agreement or as required to comply with applicable legal or regulatory requirements.

Notwithstanding anything to the contrary, in the event 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 of the Discloser of such receipt. If requested by the Discloser, the Recipient shall cooperate (at the expense of the Discloser) in the defense of the request of demand.

Confidential Information disclosed hereunder shall at all times remain, as between the Parties, the property of the Discloser or its suppliers. The Discloser does not make any representation of warranty regarding Confidential Information in this Agreement. No license under any trade secret rights, copyrights, patents, or other rights is granted by either Party to the other under this Agreement, either expressly, by operation of any disclosure of Confidential Information, or otherwise.

The rights and obligations of the Parties, other than any right to make use of the other Party's Confidential Information, under this 'Confidential Information' Section, shall survive termination or expiration of the Agreement for a period of five years following the date of such termination or expiration.

At any time upon the request of a Discloser, the Recipient shall, without delay, and at the Discloser's discretion either: (i) return to the Discloser; or (2) destroy, all copies in the Recipient's control or possession of the Discloser's Confidential Information, in all forms and including all copies thereof then in the possession or control of

Recipient or its Representatives except that (i) the Recipient shall not be obligated to return Confidential Information that the Discloser is then obligated to permit Recipient to possess under any separate agreement between the Parties not superseded by this Agreement or (ii) a copy may be maintained for archival purposes provided such archival record is used for no purpose other than proof of what was disclosed by Recipient under the Agreement. Notwithstanding the foregoing, it is acknowledged that copies that reside on computer system backups will not be destroyed. Retention of Confidential Information on a backup computer system shall not relieve the Recipient of its non-disclosure and non-use obligations.

j) Export Compliance. Customer acknowledges that the System is subject to the export control laws, rules, regulations, and restrictions of the United States of America including, without limitation, the United States Export Administration Regulation (EAR), as well as other applicable foreign agencies (the "Export Controls") and agrees to abide by the Export Controls. Customer hereby agrees to use the System and any Documentation related thereto in accordance with the Export Controls, and shall not export, re-export, sell, lease or otherwise transfer the System or any Documentation related thereto 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 System or Documentation and for ensuring compliance with the requirements of such licenses or authorizations. Customer hereby agrees that it shall not export, re-export or otherwise transfer the System or Documentation to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of System or Documentation is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to a prohibited use as such may be defined in the Export Controls.

k) Governing Law and Venue. The Agreement 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 Agreement 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, Customer agrees to waive any requests for a trial by jury. Nothing herein restricts the right of either Party to apply for injunctive relief at any time as may be available under applicable law. Any legal action in connection with this Agreement must be filed within two (2) years after the cause for such action has accrued.

l) Assignment. Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this Agreement, the licenses granted under this Agreement 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 such consent not to be unreasonably withheld. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

m) Severability. If any provision of this Agreement shall be 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 Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement 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 Agreement in determining whether to enter into it.

n) 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.

o) Conflicting Provisions. The Terms, the Cray EULA, any Exhibits thereto, Accepted Quote(s), any Addendums hereto and all documents

incorporated in any of the foregoing by reference, are intended to be read and construed in harmony with each other. In the event of a conflict between the Terms, the Cray EULA, Exhibits, any Addenda hereto and Accepted Quotes, the order of precedence shall be: the Terms, the Cray EULA, the Exhibits, Addenda, and the Accepted Quote.

