

MUTUAL NONDISCLOSURE AGREEMENT

This agreement is entered into by and between Cray Inc., a Washington corporation, having a place of business at 901 Fifth Avenue, Suite 1000, Seattle WA 98164, (“Cray”) and:

(full legal name of other party)

a business entity formed under the laws of the State of _____

(cross out if for individual)

having a place of business at:

(address)

(hereinafter “**Company**”) effective as of the date last signed below (“**Effective Date**”).

The above described parties intend to enter into discussions regarding possible business or commercial arrangements between them. During the course of discussions and interaction between them it is expected that each party will disclose to the other information that is confidential in nature. The parties are now agreeing regarding the use of such information and the protection of its confidential nature. Therefore the parties hereby agree as follows:

1) The term “**Confidential Information**” means 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 or any of its Representatives (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 created by Recipient or its Representatives to the extent such writing or tangible documentation 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, and technical data and know-how. 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.

2) Either party may, by written designation included within or directly attached to any disclosure, designate such disclosure as the “**Trade Secret**” of the Discloser, provided that the Discloser has a good faith basis to declare that such information derives economic value from not being known by other persons who can obtain economic value from its disclosure, and that Discloser intends to make reasonable efforts to maintain the secrecy of such information for longer than the five year survival of obligations applicable to Confidential Information as described in Section 10).

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

4) Each party agrees to use Confidential Information with respect to which it is the Recipient solely for the purposes of

assessing whether to enter into a business or commercial arrangement with the Discloser and performing its responsibilities under this agreement and any resulting agreement between the parties. Each party further agrees that it shall not copy, reproduce, or disclose Confidential Information with respect to which it is the Recipient to any third party, except that a Recipient may, subject to the following restrictions, disclose such Confidential Information or portions thereof to those of its Representatives who need to know such information for the purpose of performing under this agreement or as required to comply with applicable legal or regulatory requirements. Prior to disclosing any Confidential Information to any Representative the Recipient shall inform such Representative of the confidential nature of the Confidential Information and shall require such Representative to agree to be bound by this agreement or an agreement with equivalent protections applicable to that Confidential Information.

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

6) If Recipient has access to any element of Discloser's information systems, electronic or otherwise, containing personal data (e.g. employee identification numbers, compensation records, health records, credit card information) of Discloser's employees, customers, suppliers and/or distributors (in this Section, "**Personal Data**"), Recipient: a) may not, and may not authorize any third party to process the Personal Data for any purpose other than the benefit of Discloser or those employees, agents and subcontractors, and b) shall take adequate technical and organizational security measures to safeguard Personal Data against unauthorized access, destruction, disclosure, transfer, or other improper use.

7) Recipient shall provide Discloser with all reasonable assistance: a) in complying, within statutory time limits, with requests by individuals for access to their Personal Data; b) in investigating any breach or alleged breach of applicable privacy or data protection laws; and c) in responding to and complying with any request or demand made by any national privacy or data protection authority. Individuals whose Personal Data are the subject of disclosure by Discloser to Recipient may enforce the terms of Section 6) directly against Recipient, however the consent of such individuals shall not

be required for any variation or termination of this agreement.

8) The Discloser does not make any representation or warranty regarding Confidential Information in this agreement. No license under, or transfer of, 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. Nothing contained herein shall be construed to obligate either party to enter into any commercial arrangements with the other party beyond this agreement. Except as required in order to comply with this agreement or as otherwise provided in a separate agreement between the parties not superseded by this agreement, either party may elect to terminate any discussions or interaction with the other party in its sole discretion.

9) Either party may terminate this agreement at any time by giving no less than five business days' prior written notice to the other party. This agreement shall remain in effect until such time as notice is given.

10) The rights and obligations of the parties under this agreement, other than any right to make use of the other party's Confidential Information, shall survive its expiration or termination and continue to apply to all Confidential Information for a period of five years following the effective date of its expiration or termination. However, for any individuals that are the subject of Personal Data, the obligations owed to such individuals respecting their Personal Data as described in Section 6) and Section 7) shall survive in perpetuity.

11) Notwithstanding the survival obligations stated in Section 10), with respect to Trade Secrets the rights and obligations of the parties under this agreement, other than any right to make use of the other party's Trade Secrets, shall survive its expiration or termination and continue to apply to all Trade Secrets following the effective date of this agreement's expiration or termination for so long as such items continue to constitute trade secrets under applicable laws.

12) At any time upon the request of a Discloser, the Recipient shall, without delay, return to the Discloser or destroy all copies 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: a) 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 b) a copy may be maintained for archival purposes provided such archival record is used for no purpose other than proof of what was disclosed to Recipient under this 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.

13) Any notice or other communication required or permitted to be made or given by either party pursuant to this agreement shall be in writing, in English, and shall be deemed to have been duly given: a) five business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; b) when delivered if delivered personally or sent by an express courier service with delivery receipt provided. All notices shall be sent to the other party at its address as set forth in the opening paragraph above or at such other address as such party shall have specified in a notice given in accordance with this section.

14) Neither party may assign or otherwise transfer any right or obligation set forth in this agreement except to an Affiliate or a purchaser of all or substantially all of its assets without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any purported assignment in violation of the preceding sentence shall be void and of no effect. This agreement shall be binding upon the parties' respective successors and permitted assigns.

15) This agreement constitutes the entire agreement between the parties, and supersedes all other prior or contemporaneous communications between the parties (whether written or oral) relating to the subject matter of this agreement. This agreement may be modified or amended solely in a writing signed by both parties.

16) No proceeding, regardless of form, arising out of or related to this agreement may be brought by either party more than two years after the accrual of the cause of action.

17) Each party, in its role as Recipient, agrees that if a court of competent jurisdiction determines that Recipient has breached, or attempted or threatened to breach, its confidentiality obligations to the Discloser or the Discloser's proprietary rights, the Discloser shall be entitled to obtain appropriate injunctive relief and other measures restraining further, attempted or threatened breaches of such obligations. Such relief or measures shall be in addition to, and not in lieu of, any other rights and remedies available to the Discloser.

18) As used herein: a) **"Representatives"** means a particular party's or its Affiliates' directors, officers, employees, representatives, consultants, contractors, legal and financial advisors, and agents; b) **"Affiliate"**, with respect to a particular party, means any entity or individual that directly or indirectly, through one or more intermediaries, controls or is

controlled by, or is under common control with, such party; and c) **"control"**, **"controlling"**, **"controlled by"** and **"under common control with"** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, or otherwise.

19) Notwithstanding any other provision of this agreement, Recipient and its Representatives are not prohibited by this agreement from providing documents that contain, and from otherwise releasing Confidential Information provided: a) they make such provision and/or release directly to U.S. government agencies or indirectly through an attorney whom they have engaged to represent them in discussions with such agencies, and b) the primary purpose for doing so is to report a suspected violation of federal law that such agency or agencies have the responsibility to enforce.

20) The Recipient and its Representatives shall not be held criminally or civilly liable under any Federal or State trade secret law for the release of a Trade Secret in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. The Recipient and its Representatives shall not be held criminally or civilly liable under any Federal or State trade secret law for the release of a Trade Secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual employed by Recipient or its Representatives who files a lawsuit for retaliation by their employer for reporting a suspected violation of law may release a Trade Secret to the attorney of such individual and use the Trade Secret in the court proceeding, if the individual files any document containing the Trade Secret under seal and does not release the Trade Secret, except pursuant to court order.

21) The laws of the state of Washington, USA, without giving effect to its principles of conflicts of law, govern all adversarial proceedings arising out of this agreement.

22) This agreement may be executed by the parties in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. This agreement and any counterpart original thereof may be executed and transmitted by facsimile or in electronic form. The signed facsimile or signed electronic transmission shall be valid and acceptable for all purposes as if it were an original.

Each party is signing this agreement on the date stated below that party's signature.

CRAY INC.

COMPANY

(x) _____

Printed Name: _____

Title: _____

Date: _____

(x) _____

Printed Name: _____

Title: _____

Date: _____