

MAINTENANCE AND SUPPORT AGREEMENT

This Maintenance & Support Agreement together with any Accepted Quote associated with it and all attachments referenced in either the Accepted Quote or this Maintenance & Support Agreement (collectively the “**Agreement**”), made between corporation (“**you**” or “**Customer**”) and Cray, govern your purchase from Cray, and/or your use of Maintenance & Support. “**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 comprises Cray’s offer to sell the 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 the Terms for Maintenance and Support and does not contain any terms in addition to, or that otherwise conflict with the terms of the Agreement.

“**Data**” means data or information, including system-specific data.

“**Documentation**” means the user manuals and documentation that Cray makes available for or with respect to the Software, and all copies of the foregoing.

“**Effective Date**” means, the date on which: (i) Customer receives the Maintenance & Support, or allows others to do so; (ii) Customer makes any payment for the 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 Agreement and as specified in the Accepted Quote.

“**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”).

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

2. MAINTENANCE & SUPPORT

Cray shall provide Maintenance & Support to Customer as set forth in an Accepted Quote and this Agreement. Exhibit A hereto sets forth the specific description of Maintenance & Support that Cray shall provide to Customer.

3. MAINTENANCE & SUPPORT: EXCLUSIONS & LIMITATIONS.

a) Special Exceptions. Unless otherwise agreed in writing, Customer will not: (i) change, modify or alter the Hardware or other Cray provided accessories other than as Cray reasonably determines is appropriate to keep the System in operating condition under normal use; (ii) furnish accessories or supplies for, paint or

refinish, or provide any electrical work external to the System; or (iii) reinstall or deinstall System.

b) **Products Not Supplied by Cray.** Cray has no obligations under the Agreement to provide Maintenance & Support for hardware or software not supplied by Cray, and Cray will not be liable or responsible for the performance or nonperformance of such hardware or software, the support services provided by the suppliers thereof, or incompatibility between the System and such hardware and software.

4. SYSTEM ACCESS, THIRD PARTY SOFTWARE.

a) **Remote Diagnosis, System Administrator.** In certain circumstances, Cray is able to provide Maintenance & Support that consists of remote diagnosis utilizing common teleconferencing tools. In other instances, Cray may require system administrator capabilities to perform command line functions when connected to a System in order to perform Maintenance & Support. Customer hereby agrees to cooperate with Cray in utilizing Cray remote diagnostic tools and to grant Cray system administrator capabilities as described herein so that Cray may provide Maintenance & Support to Customer.

b) **Third Party Software.** If a Cray Maintenance & Support engineer determines that an issue is related to Third-Party Software, the Customer may be requested to consult with the software vendor directly to resolve the software issue. Customer agrees to consult with such software vendor to resolve the issue.

c) **Customer & System Data.** In connection with Cray's performance of Maintenance & Support, Cray may obtain, receive, and/or collect Data. You grant Cray a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of the Data solely to provide Maintenance & Support to you; a license to aggregate and use the Data in an anonymous manner in support of Cray's marketing and sales activities; and the right to copy and maintain the Data on Cray's or its suppliers' servers as necessary to provide the Maintenance & Support to you. You represent

and warrant that you have obtained all rights, permissions, and consents necessary to use and transfer the Data within and outside of the country in which you are located.

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; however, the Customer is responsible for reasonable care in preventing damage environmental conditions of any kind or nature impacting Hardware functionality, performance, or physical condition.

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 (or any component thereof) interrupts, failures, alarms, bugs 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. In addition, Customer shall provide the reasonable assistance requested and required by Cray to enable Cray to perform its obligations hereunder. Such assistance may include reasonable System testing by the Customer. Notwithstanding anything to the contrary, Customer agrees to provide Cray with access to the System and any information related to System problem that Customer reports to Cray.

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) Restriction on Relocation. Customer shall provide prior written notice to Cray of any relocation of any System for any reason. All System relocations must be performed by Cray or be conducted in accordance with Cray's written instructions, as determined by Cray. Failure to comply with the foregoing voids the System warranty as of the date of relocation. Following relocation of a System, the System must be recertified by Cray. The Maintenance & Support pricing in effect at the new location, including location surcharges, apply to the Maintenance & Support performed on recertified Systems.

f) Restriction on Modification. Unless otherwise agreed to in writing by Cray, Customer will not: (i) change, modify or alter the System or Hardware; (ii) furnish accessories or supplies for or, paint or refinish, or provide any electrical work external to, the System; or (iii) reinstall or deinstall the System.

6. WARRANTY & LIMITATION OF LIABILITY.

a) Warranty.

i) Warranty and Remedy. Cray warrants that the Maintenance & Support will be provided in a workmanlike manner. If the Maintenance & Support does not conform to the above warranty, Cray shall, as Customer's sole and exclusive remedy, promptly reperform the Maintenance & Support.

ii) Warranty Exclusions. THE ABOVE WARRANTY DOES 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 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: (1) THE MAINTENANCE & SUPPORT IS PROVIDED TO CUSTOMER AS IS; AND (2) CRAY EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING THE 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 Maintenance & Support, System, Hardware or Software, including, without limitation, loss of data, unauthorized access, business or profits or other economic advantage arising out of or in connection with the Agreement. 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 Maintenance & Support as set forth in the Approved Quote during the previous 12 months, or \$200,000.00

7. PRICING, PAYMENT & TAXES.

a) Pricing. You agree to pay the price for the Maintenance & Support as set forth in an Accepted Quote.

b) Payment. Unless otherwise agreed (in writing), invoices for the Maintenance & Support will be issued in advance on a monthly basis. Other invoices will be issued as the charges are incurred. 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 and refuse additional orders for Maintenance & Support 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.

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 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. CONFIDENTIAL INFORMATION.

"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, 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.

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: (1) 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.

10) 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) 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.

c) 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.

d) 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.

e) 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.

f) 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, and power failures. In the event that any components necessary to meet Cray required performance levels are unavailable, Customer and Cray will agree upon a revised schedule taking into account planned availability of such components with any delays being deemed a force majeure event. 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.

g) 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.

h) Entire Agreement. The terms and conditions stated in this Agreement, any Exhibits thereto, Addenda hereto and Accepted Quotes 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 Agreement will be considered to have its pre-printed clauses and statements deleted and such terms are expressly rejected by Cray. Cray specifically rejects any additional or contrary terms and conditions Customer may propose to the Agreement unless agreed in writing by an authorized representative of Cray.

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

j) 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.

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

l) 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 (i) any country subject to a United States trade embargo, (ii) a national or resident of any country subject to a United States trade embargo, (iii) any person or

entity to which shipment of System or Documentation is prohibited by the Export Controls, or (iv) anyone who is engaged in activities related to a prohibited use as such may be defined in the Export Controls.

m) Manuals and Documentation. Manuals and documentation for the System will be provided online. A copy may be printed and duplicated for Customer's internal use only so long as all copies include all proprietary notices included in the online manual and documentation.

EXHIBIT A
MAINTENANCE & SUPPORT LEVEL

HPC & ANALYTICS

www.cray.com/Assets/PDF/about/legal/HPCSSupportLevels1004.pdf

CLUSTER

www.cray.com/Assets/PDF/about/legal/CCSSupportLevels1003.pdf