

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-QSB

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended  
September 30, 1996

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-26820

TERA COMPUTER COMPANY  
(Exact name of registrant as specified in its charter)

WASHINGTON  
(State or other jurisdiction of  
incorporation or organization)

93-0962605  
(I.R.S. Employer  
Identification No.)

2815 EASTLAKE AVENUE EAST  
SEATTLE, WA 98102  
(206) 325-0800  
(Address of principal executive offices)  
(Registrant's telephone number, including area code)

Check whether the issuer: (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

As of September 30, 1996, there were 3,936,843 shares of the Company's Common Stock, par value \$0.01 per share, and 2,360,000 shares of the Company's preferred stock, par value \$0.01 per share, were outstanding.

Transitional Small Business Disclosure Format (check one): Yes  No

TERA COMPUTER COMPANY

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TERA COMPUTER COMPANY  
(A DEVELOPMENT STAGE COMPANY)  
BALANCE SHEETS

	DECEMBER 31, 1995	SEPTEMBER 30, 1996
	-----	-----
		(UNAUDITED)
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 4,284,720	\$ 2,043,787
Accounts receivable	42,065	22,144
Inventory		463,776
Advances to suppliers	982,972	298,236
Other assets	90,322	141,851
Total current assets	5,400,079	2,969,794
PROPERTY AND EQUIPMENT, NET	1,641,351	1,405,527
LEASE DEPOSITS	227,702	185,315
TOTAL	\$ 7,269,132	\$ 4,560,636
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 686,115	\$ 894,137
Accrued payroll and related expenses	1,292,626	1,645,986
Potential contract adjustments	250,000	250,000
Current portion of obligations under capital leases	529,516	338,638
Total current liabilities	2,758,257	3,128,761
OBLIGATIONS UNDER CAPITAL LEASES		
less current portion	418,808	269,215
SHAREHOLDERS' EQUITY:		
Convertible preferred stock, par \$.01 - Authorized 5,000,000 shares; issued and outstanding, 2,360,000 shares		6,886,925
Common stock, par \$.01 - Authorized, 25,000,000 shares; issued and outstanding, 3,889,455 and 3,936,843 shares	19,059,818	19,105,398
Accumulated deficit	(14,967,751)	(24,829,663)
TOTAL	\$ 7,269,132	\$ 4,560,636
	=====	=====

See notes to financial statements  
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TERA COMPUTER COMPANY  
(A DEVELOPMENT STAGE COMPANY)  
STATEMENT OF OPERATIONS  
(UNAUDITED)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,		PERIOD FROM DECEMBER 7, 1987 (INCEPTION) THROUGH SEPTEMBER 30, 1996
	1995	1996	1995	1996	
OPERATING EXPENSES:					
Research and development	\$ (1,732,912)	\$ (2,195,293)	\$ (3,453,316)	\$ (8,704,416)	\$ (36,833,869)
Marketing and sales	(59,464)	(162,848)	(149,420)	(441,072)	(1,607,030)
General and administrative	(232,897)	(276,166)	(461,784)	(766,618)	(4,521,917)
	(2,025,273)	(2,634,307)	(4,064,520)	(9,912,106)	(42,962,816)
RESEARCH FUNDING	367,688	48,355	2,189,719	77,831	18,547,440
Net operating expense	(1,657,585)	(2,585,952)	(1,874,801)	(9,834,275)	(24,415,376)
OTHER INCOME (EXPENSE)	(94,075)	12,178	(138,376)	(27,637)	(414,287)
NET INCOME (LOSS)	\$ (1,751,660)	\$ (2,573,774)	\$ (2,013,177)	\$ (9,861,912)	\$ (24,829,663)
NET INCOME (LOSS) PER SHARE	\$ (0.67)	\$ (0.41)	\$ (0.77)	\$ (1.98)	\$ (17.45)
WEIGHTED AVERAGE SHARES OUTSTANDING	2,631,014	6,284,358	2,604,624	4,981,174	1,422,685

See notes to financial statements  
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TERA COMPUTER COMPANY  
(A DEVELOPMENT STAGE COMPANY)  
STATEMENT OF CASH FLOWS  
(UNAUDITED)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,		PERIOD FROM DECEMBER 7, 1987 (INCEPTION) THROUGH SEPTEMBER 30, 1996
	1995	1996	1995	1996	
OPERATING ACTIVITIES:					
Net income (loss)	\$ (1,751,660)	\$ (2,573,774)	\$ (2,013,177)	\$ (9,861,912)	\$ (24,829,663)
Net cash used by operating activities	(1,689,476)	(2,670,434)	(2,374,278)	(8,440,189)	(21,456,111)
INVESTING ACTIVITIES:					
Net cash used by investing activities	(218,845)	(181,452)	(489,575)	(392,778)	(2,569,580)
FINANCING ACTIVITIES:					
Net cash provided (used) by financing activities	10,615,762	165,615	11,737,705	6,592,034	26,069,478
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	8,707,441	(2,686,271)	8,873,852	(2,240,933)	2,043,787
CASH AND CASH EQUIVALENTS:					
Beginning of period	187,195	4,730,058	20,784	4,284,720	
End of period	\$ 8,894,636	\$ 2,043,787	\$ 8,894,636	\$ 2,043,787	\$ 2,043,787
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:					
Cash paid for interest	\$ 11,738	\$ 35,955	\$ 58,242	\$ 93,047	\$ 505,290

See notes to financial statements  
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TERA COMPUTER COMPANY  
(a development stage company)  
NOTES TO FINANCIAL STATEMENTS  
(unaudited)

BASIS OF PRESENTATION

The accompanying balance sheets and related interim statements of operations and cash flows have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-QSB and Item 310(b) of Regulation S-B. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments considered necessary for fair presentation have been included. Interim results are not necessarily indicative of results for a full year. The information included in this Form 10-QSB should be read in conjunction with Management's Discussion and Analysis and the financial statements and notes thereto included in the Company's financial statements for the years ended December 31, 1994 and 1995, and the period from December 7, 1987 through December 31, 1995, contained in the Company's Form 10-KSB filed for the fiscal year ended December 31, 1995.

#### INVENTORY

Inventory is valued at standard costs that approximate actual costs computed on a first-in, first-out basis, not in excess of market values. As of September 30, 1996, 100% of the inventory consists of components and subassemblies.

#### NET PROFIT (LOSS) PER SHARE

Net profit (loss) per share is computed on the basis of the weighted average number of common shares outstanding. As outstanding stock options, warrants and other common stock equivalent shares are antidilutive, their effect has not been included in the calculation of net profit (loss) per share.

#### ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

##### PRELIMINARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

The information set forth in this Item 2 includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act, as amended, and is subject to the safe harbor created by those sections.

#### OVERVIEW

The Company is a development stage enterprise that has an accumulated net loss of approximately \$24.8 million as of September 30, 1996. Approximately 42% of the

Company's funding to date has been from Advanced Research Projects Agency (ARPA) research funding, with the remainder provided primarily through the sale of equity.

The Company has experienced net losses in each year of operations and expects to incur further substantial losses while it completes development of its Multithreaded Architecture (MTA) system prototype and commences production, and possibly thereafter. The Company has had no revenue or earnings to date. On November 8, 1996, the Company entered into an agreement with the Regents of the University of California for the phased-in delivery of an MTA system of up to eight resource modules to the San Diego Supercomputer Center (SDSC), with initial funding provided by the National Science Foundation. Delivery of the first two resource modules to SDSC is scheduled for the first half of 1997. The Company will recognize revenue as resource modules are delivered and accepted. Until such time as the Company has obtained additional commitments from customers for early MTA systems, it plans to increase personnel only modestly.

#### RESULTS OF OPERATIONS

NINE MONTHS ENDED SEPTEMBER 30, 1995 AND 1996

During the nine months ended September 30, 1995, the Company reduced its accrual for bonuses by \$420,000 and its accrual for potential contract adjustments by \$545,000. These reductions affected all categories of the Company's expenses in the 1995 three-month and nine-month periods as compared to the 1996 interim periods.

Research and development expense for the three months and nine months ended September 30, 1996 were \$2.2 million and \$8.7 million, respectively, compared to \$1.7 million and \$3.5 million for the same periods in 1995. In addition to the reductions in 1995 described above, the increase was due to an increase of (i) non-recurring hardware engineering expense and prototype parts cost as the Company continued fabrication of the integrated circuits required for its prototype and (ii) costs related to pre-production activities. Costs related to the development of the MTA system accounted for approximately 88% of the Company's operating expenses in the first nine months of 1996, an increase from 85% in the 1995 period. During the first nine months of 1996, \$3.8 million was directly related to the fabrication of the prototype, of which \$600,000 was spent in the third quarter. With the Company's completion of its initial prototype and its first sales contract, the Company believes its research and development expenditures will decrease in the fourth quarter of 1996. In 1997 such expense will increase as the Company obtains additional commitments for production MTA systems.

Marketing and sales expense for the nine months ended September 30, 1996 was \$441,000, compared to \$149,000 for the same period in 1995. General and administrative expense for the nine months ended September 30, 1996 was \$767,000, compared to \$462,000 for the same period in 1995. In addition to the reductions in 1995 described above, the increase in marketing and sales expense was due to increased staff and expenditures in connection with third party applications software development, and the increase in general and administrative expense was due largely to increased operating

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costs associated with being a publicly owned company. These expenses are expected to increase as the Company obtains additional commitments for production MTA systems.

LIQUIDITY AND CAPITAL RESOURCES

Since its incorporation through September 30, 1996, the Company's principal sources of liquidity have been ARPA research funding of approximately \$18.5 million and proceeds from the sale of equity of approximately \$26 million. The Company has received all \$15.5 million allowed under its research contract with ARPA for the initial system development and currently is billing ARPA under a new research contract awarded in September 1995. Billings under this contract are expected to be approximately \$200,000 in 1996. At September 30, 1996, the Company had \$2 million in cash and no bank line of credit.

The Company used cash for operations of \$8,440,000 during the first nine months of 1996, as compared to \$2,374,000 during the comparable period in 1995. The increase in the first nine months of 1996 is due primarily to the fact that the Company had research funding of approximately \$2.1 million greater in the first nine months of 1995 than in the comparable period in 1996. Moreover, the Company incurred approximately \$3 million more in direct prototype costs during the first nine months of 1996 than it incurred in the first nine months of 1995. Another \$464,000 was used during the first nine months to purchase inventory, consisting primarily of integrated circuits in various stages of fabrication, and power supplies.

The Company's investing activities have consisted primarily of expenditures for fixed assets, which have totaled \$2,570,000 from the date of incorporation through September 30, 1996, net of proceeds on disposal of assets.

Expenditures were \$490,000 and \$393,000 for the first nine months of 1995 and 1996, respectively.

In July 1996, the Company completed an \$8,024,000 private placement of units, each unit consisting of two shares of preferred stock and one warrant, from which the Company received, after deducting selling commissions and offering expenses, approximately \$6,887,000. The preferred stock is convertible into common stock upon registration of the underlying common stock with the Securities and Exchange Commission, and the warrants have the same terms as the Company's existing outstanding warrants.

During the fourth quarter of 1996 and in 1997, the Company's working capital needs will depend primarily upon its level of staffing, the cost of components purchased to complete the testing of its initial MTA system prototype and manufacturing startup costs, and inventory and receivable financing associated with production MTA systems. The Company has experienced delays in the development of particular components of the MTA system that have increased the need for working capital, and the Company could experience significant additional delays in the manufacturing process that could further substantially increase the Company's need for working capital. Even assuming full development of all components, the availability of

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certain components, primarily integrated circuits, will be a limiting factor on the number and size of the MTA systems that may be sold in 1997, assuming the receipt of purchase orders. In addition to prototype costs and manufacturing startup, inventory and receivable financing costs, the Company's needs for working capital in the last quarter of 1996 and during 1997 will primarily be operating costs required to fund ongoing research, development and engineering efforts, development of a customer service organization, capital expenditures for leased equipment and increases in its sales and marketing efforts. Additionally, the Company's administrative functions will increase in order to support its engineering and sales efforts.

The Company's current cash resources are insufficient to meet these requirements beyond the fourth quarter of 1996. To meet its needs in 1997, the Company expects to receive revenues from sales of MTA systems, from the possible exercise of its presently outstanding warrants, which are redeemable by the Company in certain situations, from the sale of additional equity or debt or other financing transactions. There can be no assurance that any additional financing will be available when needed or, if available, will be on satisfactory terms. If sufficient funding is not available by January 1997, the Company will have to curtail sharply its present operations.

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## PART II. OTHER INFORMATION

### ITEM 5. OTHER INFORMATION

On November 11, 1996, the Company announced that a prototype MTA system was undergoing tests in Seattle and had run its first programs. This system consists of one computational processor, one I/O processor, and a gigabyte of memory.

On November 8, 1996, the Company entered into an agreement with the Regents of the University of California pursuant to which the Company will deliver the first commercially configured MTA system to SDSC for testing and evaluation by scientists at the University of California, San Diego, and at SDSC, and by approved third-party researchers. SDSC's purchase of the MTA system is being funded in part by a multi-year, \$4.2 million grant from the National Science Foundation. The Agreement provides for the phased-in delivery of up to eight resource modules, with the first two modules scheduled for delivery during

the first half of 1997. The Agreement calls for SDSC to evaluate the MTA system, including the hardware architecture, operating system, programming environment, compilers and software tools provided by the Company, and to port selected application software to the MTA system.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

10. Cooperative Agreement between the Regents of the University of California, University of California, San Diego, Office of Advanced Scientific Computing and Tera Computer Company, dated November 8, 1996\*

11. Computation of Earnings (Loss) Per Share

27. Financial Data Schedule

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\* Confidential treatment requested.

(b) Reports on Form 8-K

During the quarterly period ended September 30, 1996, the Company filed the following Current Reports on Form 8-K with the Commission:

Current Report on Form 8-K, dated July 1, 1996, reporting under Item 5 the engagement of H.J. Meyers & Co., Inc. of Rochester, New York, to act as the Company's Sales Agent to raise a minimum of \$2,500,000 up to \$8,000,000 of funds in an All Accredited Investor private placement of Units. The Company filed its unaudited balance sheet as of May 31, 1996,

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with the pro forma application of funds received to date from the private placement, and its internal statement of operations for the five months ended May 31, 1996, with this report.

Current Report on Form 8-K, dated July 15, 1996, reporting under Item 5 the closing of a private placement of Units, each Unit consisting of two shares of Series A Convertible Preferred Stock and one Redeemable Common Stock Purchase Warrant (Units), with H.J. Meyers & Co., Inc. of Rochester, New York, acting as the Company's Sales Agent, in which the Company raised a total of \$8,024,000. No financial statements were filed with this report.

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SIGNATURES

In accordance with the requirements of the Securities Exchange Act of 1934, the registrant caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

TERA COMPUTER COMPANY

Date: November 14, 1996

By: JAMES E. ROTTSOLK

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James E. Rottsolk  
Chief Executive Officer

November 4, 1996 (FINAL)

Attachment A

Initial Tera MTA System and Upgrade Options

The prices quoted to UCSD below are discounted from Tera's list prices for equivalently configured systems in recognition of the value to Tera of this Cooperative Agreement.

INITIAL MTA SYSTEM:

Model Number	No. of Processors	Memory Capacity	UCSD Price* \$	UCSD Maintenance** \$
MTA-8C-2E	2	2GB	1,340,000	43,000
MTA-8C-4E	2	2GB	910,000	43,000
MTA-8C-6E	2	2GB	1,000,000	43,000
MTA-8C-8E	2	2GB	750,000	43,000
Total	8	8GB	4,000,000	172,000

\* These prices are tailored to UCSD's anticipated incremental funding and are for special Tera MTA configurations that are not available as standard products. This UCSD price includes hardware, software, installation charges, on-site support, training, warranty, and first-year maintenance charges. No peripherals are included in the UCSD price. Requisite proof of appropriate software licenses is required before Bundled Software can be shipped.

\*\* MTA-8C-2E, 4E, 6E, and 8E maintenance charges begin 1 year following the Acceptance Date of each of these configurations.

The configurations listed above include binary versions only of the following Tera Bundled Software:

- TOS -- Tera operating system
- f77,cc,c++ -- Tera Fortran 77, C, and C++ compilers
- tdb -- Tera source level debugger

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Cooperative Agreement between Tera and UCSD

November 4, 1996 (FINAL)

UPGRADE OPTIONS

UPGRADED MODEL NUMBER	NO. OF ADDITIONAL PROCESSORS	ADDITIONAL MEMORY CAPACITY	UCSD UPGRADE PRICE* \$	TERA'S LIST PRICE MAINTENANCE** \$
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Confidential  
Treatment  
Requested      Confidential  
Treatment  
Requested

MTA-16C-16E	8	8GB
MTA-32C-32E	16	16GB

\* These UCSD upgrade prices are for special Tera MTA configurations that are not available as standard products. UCSD upgrade prices include hardware, software, installation charges, on-site support, training, and warranty. No peripherals or maintenance support are included in the UCSD upgrade price. Requisite proof of appropriate software licenses is required before Bundled Software can be shipped.

\*\* MTA-8C-16E, and 32E maintenance charges reflect Tera's anticipated annual maintenance list prices for 16 and 32 processor systems.

The configurations listed above include binary versions only of the following Tera Bundled Software:

- TOS -- Tera operating system
- f77, cc, c++ -- Tera Fortran 77, C, and C++ compilers
- tdb -- Tera source level debugger

Optional Support

Fee  
\$  
Confidential  
Treatment  
Requested

Additional on-site Tera software engineer

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Cooperative Agreement between Tera and UCSD

Peripheral Equipment

Model/Option	Part Number	Price \$ (see Note 1)
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Confidential  
Treatment

Requested

MAXIMUM STRATEGY STORAGE SERVERS

Gen5 XL1, 1 bank: 14-231-001  
94 GB(R5), 103 GB(RO)  
no host interface adapters

Gen5 L1, 1 bank: 14-231-0005  
30 GB(R5), 34 GB(RO)  
no host interface adapters

HOST INTERFACE ADAPTERS

HIPPI IPI-3 (32-bit) 12-221-0044  
HIPPI IPI-3 (64-bit) 12-230-0024  
Fibre Channel 12-221-0072

REDUNDANCY OPTION

XL-Redundancy 14-230-0026

CAPACITY EXPANSION OPTION

+ XL One Bank 14-230-0020  
94 GB(R5), 103 GB(RO)

+L One Bank 14-230-0022  
30 GB(R5), 34 GB(RO)

MAXIMUM STRATEGY UCSD SUPPORT

dataSURE

all configurations

Gen5 XL

3 months warranty included  
+9 months 00-000-0006  
+12 months 00-000-0012  
monthly 00-000-0013

Gen5 L

3 months warranty included  
+9 months 00-000-0014  
+12 months 00-000-0015  
monthly 00-000-0016

Note 1:

Maximum Strategy, Inc Terms and Conditions of Sale apply  
Prices subject to change without notice.  
Prices effective as of January 15, 1996

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Cooperative Agreement between Tera and UCSD  
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November 4, 1996 (FINAL)

PERIPHERAL EQUIPMENT (CONTINUED)

MODEL/OPTION	PART NUMBER	PRICE \$	ANNUAL MAINTENANCE AGREEMENT
		Confidential	Confidential

	Treatment Requested	Treatment Requested
PSITECH FRAME BUFFERS		
HIPPI 8 bit Frame Buffer (2Kx2K)	HFB360-08	
HIPPI 24 bit Frame Buffer (2Kx2K)	HFB360-24	
HIPPI 24 bit Frame Buffer (2Kx2K) Enhanced with audio & video capture capabilities	HFB360A-24	
Field Upgrade Options		
HFB360:		
Color Upgrade HFB360-08 to 024	HFB360-CB	
HFB360A:		
Aux. Single HIPPI Port (Striper)	HFB-ASH	
HIPPI Expansion Double Wide Port	HFB-HEB	
Dual 16 bit Audio/Compression	HFB-AUD	
NTSC Capture Module	HFB-NCM	
RGB Capture Module	HFB-RGB	
D1 Video/AES3 Audio Capture Module	HFB-DCM	
MONITORS		
21" Gray scale 85-170kHz, 100-150ft L Portrait High Brightness Monitor	HFB-MON	N/A
SOFTWARE LICENSES		
HFB library (HFB360 Compatible)	HFB-lib	
CABLES		
HIPPI Cable 1 Meter	HFB-HC-1	N/A
HIPPI Cable 5 Meters	HFB-HC-5	N/A
HIPPI Cable 25 Meters	HFB-HC-25	N/A
Monitor Cable (color)	HFB-VC5	N/A
Monitor Cable (mono)	HFB-VC5	N/A
MANUALS		
1 set	M-HFBlib	N/A
	M-HFB360-OM	N/A

Notes:

1. Customer contracts with PsiTech for Maintenance
2. PsiTech Terms and Conditions of Sale apply
3. HIPPI 2Kx1K Frame Buffer is also available.

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Cooperative Agreement between Tera and UCSD

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ATTACHMENT B

TERA COMPUTER COMPANY SOFTWARE LICENSE AGREEMENT

LICENSEE NAME AND ADDRESS:

INSTALLATION SITE ADDRESS:

Center for Advanced Computational  
Science and Engineering  
University of California, San Diego  
9500 Gilman Drive  
La Jolla, CA 93093-0534

San Diego Supercomputer Center

Attention: Dr. Wayne Pfeiffer  
Associate Director

Anne Mayer

1.0 DEFINITIONS

1.1 "Proprietary Information" means any and all information which is  
a) associated with the items in Schedule A attached hereto disclosed by Tera Computer Company ("Tera") to Licensee electronically, visually or in a document or other tangible form; or b) provided by Tera to Licensee in writing, or reduced to writing within ten (10) days of oral disclosure, and marked "Proprietary Information". The items licensed as identified in Schedule A shall be deemed Proprietary Information. All updates, upgrades, bug fixes, patches, and derivative works associated with the items in Schedule A whether developed by Tera or Licensee are "Proprietary". The term "Proprietary Information" shall include any notes, extracts, analyses or materials prepared by Licensee which are copies of or derivative works of the Proprietary Information or from which the substance of the Proprietary Information can be inferred or otherwise understood.

1.2 "Designated System and Site" means the System and location identified in Schedule A on which the Software is licensed for use.

1.3 "Software" means the Tera Bundled Software and Documentation provided hereunder as identified in Schedule A attached hereto, including all updates, upgrades, bug fixes, patches and derivative works.

1.4 "Related Materials" means any and all materials provided by Tera hereunder in connection with the items listed in Schedule A including, without limitation, any flow charts, logic diagrams, schematics, program listings, libraries, executables, source files, header files, data files, operating instructions, user manuals

and performance information, in whatever form, including machine readable materials, whether or not specifically identified in the Exhibits.

1.5 "Technology" shall mean the Software, Related Materials, and other Proprietary Information provided by Tera pursuant to this Agreement.

2. GENERAL: Licensee and Tera agree that the following terms and conditions apply to the provision of Software as specified in the attached Schedule A. Some Software may be owned in whole or in part by a third party. The protections included in this license (including all reservations of rights and limitations of liabilities) extend to Software provided under this Agreement by both Tera and any third-party provider.

This Agreement becomes effective when it has been signed by both parties and continues concurrently with the Cooperative Agreement. Upon termination of the Cooperative Agreement, parties shall negotiate a Hardware/Software Maintenance Agreement and a new Software License Agreement as appropriate.

3. LICENSE: Tera hereby grants, and Licensee accepts, a single, non-transferable and non-exclusive license to use Software subject to all the terms and conditions of this Agreement. No rights to sublicense or market the Software are granted. All rights not specifically granted to Licensee by this license shall remain in Tera.

The Software may be used by Licensee only on the equipment listed on Schedule A and at the site specified above. Licensee may use the Software on other equipment made by Tera while the equipment listed in Schedule A is not operative, due to its malfunction. Licensee may duplicate the Software for backup, archiving, or security, but all copyright or proprietary notices in the original must be included in all copies or partial copies. Licensee shall not

clone, reverse assemble, or reverse compile any part of the Software for which Licensee does not have source code access or adopt any part of the Software as its own. Licensee shall not translate the Software into a computer language different from the language in which it was provided to Licensee by Tera.

4. FORM OF CODE PROVIDED (SOURCE AND/OR BINARY): Licensee is licensed to use only the format of the Software specified in the attached Schedule A.

5. MANUALS: Tera will provide on-line documentation for all applicable user manuals at no additional charge. Licensee may order hard copies at then-current prices.

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6. NON-DISCLOSURE:  
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(A) Software

Licensee acknowledges that the Software, and Related Materials are proprietary products of and shall remain the property of Tera or its suppliers. Licensee will not disclose or otherwise make available to any third party any Software, or information contained therein, in any form, except to its employees for purposes limited to and specifically related to Licensee's use of the Software in accordance with this Agreement. Licensee shall take appropriate action by instruction or signed agreements with such employees to satisfy Licensee's obligations under this Agreement.

Licensee's obligations of confidentiality and nondisclosure shall apply to all forms of software received. Licensee shall maintain records of the location of each original and copy of Software and the serial number of the equipment on which it is used and shall allow Tera or Tera's representative(s) access to those records on reasonable notice. This obligation not to disclose the Software, and Related Materials is ongoing and shall survive termination of this Agreement.

(B) Injunctive Relief

Because harm not adequately compensable might result from unauthorized disclosure of confidential information, either party may seek injunctive relief, without posting a bond, if the other party breaches its obligations of nondisclosure under this Agreement.

(C) Exception  
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Notwithstanding the above, neither party shall have any liability or obligation to the other for, nor be in any way restricted in, its disclosure, marketing, or use of the Proprietary Information, Software, or Related Materials, which:

- a. are already in the possession of Licensee from a non-Tera source;
- or

- b. are or become publicly known through no wrongful act of Licensee;  
or
- c. are received lawfully from a third party without restriction and without breach of this Agreement; or
- d. are disclosed pursuant to an enforceable order of a court of competent jurisdiction

Provisions of this Article shall survive any termination of this Agreement.

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7. PATENT AND COPYRIGHT; Tera will indemnify Licensee as to any rightful claim that the Software, or any part thereof (except software supplied to Tera by X/Open Company Ltd.) constitutes an infringement of any United States patent, copyright, or trade secret. To qualify for this indemnity, however, Licensee must give Tera prompt notice of any such claim and must cooperate fully with Tera's defense or settlement. If the use of the Software, or any part thereof (except software supplied to Tera by X/Open Company Ltd. and incorporated in the Software), is enjoined, Tera will, at its own expense and at its option, either (A) procure for Licensee the right to continue using the Software or the infringing part thereof; (B) replace same with non-infringing substitutes; (C) modify it so that it becomes non-infringing; or (D) if Tera finds no commercially reasonable solution under (A), (B), or (C) above, terminate the license of same at no cost to Licensee except for charges accrued to such time as use is enjoined.

Tera shall not be liable to Licensee for any claim which is based upon the use of the Software, or any part of it, in connection with equipment, software, or devices not furnished by Tera, or in any manner for which the Software was not designed, or where the Software has been modified by or for Licensee.

The foregoing states the entire liability of Tera with respect to infringements of patents, copyrights, or trade secrets by the Software.

Parts of the Software may have been patented or copyrighted by Tera or its third-party provider. Patent or copyright notices may have been included in the Software for protective purposes, and such notices shall not be construed as causing publication of the Software.

When any extramural or third-party computer program materials are to be disclosed by Licensee to Tera or used in conjunction with the Software by Licensee, Licensee warrants that it has the right to make such disclosure or use and agrees to indemnify and hold Tera harmless from liability for patent and copyright infringement in connection therewith.

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8. THIRD-PARTY LICENSE: Some Software may require an additional license from a third party. This requirement is noted on Schedule A. Licensee agrees to obtain the license from the third party at Licensee's expense and by separate agreement and so certify to Tera in writing, before delivery of the affected Software.

9. GNU: Some Software is distributed in under the terms of the GNU General Public License. This restriction is noted on Schedule A. Licensee agrees to conform to the GNU General Public License for all affected Software.
10. CHARGES: First year Software maintenance is included in the price of "Tera Products" (Tera MTA computer systems, upgrades and peripheral equipment sold to Licensee). After one year, Licensee agrees to pay the charges specified in Attachment A. In addition, Licensee shall pay (or reimburse Tera for paying) all applicable sales and use taxes.
11. INVOICES, PAYMENTS, AND PRICE ADJUSTMENT: First year Software maintenance charges are included in the price of Tera Products. After one year from Designated System acceptance, invoices for monthly charges will be issued monthly in advance and will be dated the first of the month. Invoices for other charges negotiated by Tera with Licensee for Software-related activities that are separate from this Agreement will be issued as the charges are incurred. Charges due for a portion of a month will be computed at the rate of one-thirtieth (1/30th) of the monthly charge for each day. Licensee may prepay maintenance charges on an annual basis and receive a five percent discount.

All invoices will be due and payable within thirty (30) days of the date of invoice. Payment is considered made when good funds are received in the account specified on the invoice.

If Licensee elects to renew this license for subsequent periods, after the first year of charges, Tera may adjust charges upon ninety (90) days written notice, but only once in any twelve (12) month period. The adjusted prices will not exceed Tera's published prices in effect on the date of the adjustment or the Southern California Cost of Doing Business Index (formerly CPI) for the current period, whichever is less.

12. WARRANTY: Tera warrants that when it delivers the Tera Bundled Software, the Software shall conform in all material respects to Tera's published specifications when operated on the Computer specified on Schedule A for a period of one (1) year from Acceptance Date (Initial Warranty Period). Tera shall provide at no cost to Licensee, all maintenance and fixes to Tera Bundled Software to enable performance according to Tera's software specifications. Tera shall provide all upgrades of Tera Bundled Software developed during the Initial Warranty Period to Licensee at no

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additional cost. This warranty will be extended at no additional cost to Licensee for any period in which this License is renewed. Renewal of this License in subsequent periods will extend the Warranty for the period covered by the License.

Tera reserves the right to correct Documentation due to typographical or clerical errors.

This warranty is given by Tera and not by any of its third-party suppliers.

Neither Tera nor any of its third-party suppliers warrants or guarantees the results from use of the Software.

13. IMPLIED WARRANTIES, DISCLAIMER; INDEMNIFICATION: EXCEPT AS OTHERWISE REQUIRED BY LAW, THE EXPRESS WARRANTY IN THE WARRANTY ARTICLE OF THIS AGREEMENT IS TERA'S EXCLUSIVE WARRANTY AND IS IN LIEU OF ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

TERA'S MAXIMUM LIABILITY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF TERA BUNDLED SOFTWARE.

LICENSEE IS RESPONSIBLE FOR THE SELECTION OF SOFTWARE TO ACHIEVE ITS INTENDED RESULTS, USE OF SOFTWARE, AND THE RESULTS OBTAINED THEREFROM.

14. LIMITATION OF LIABILITY: TERA WILL NOT BE LIABLE IN ANY EVENT FOR ANY CONSEQUENTIAL, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. TERMINATION: This Agreement or the license of any Software may, prior to commencement of charges, be terminated by the Licensee at no charge upon written notice to Tera.

After commencement of charges, this Agreement or the license of any Software may be terminated as follows:

(A) by the Licensee upon ninety (90) days written notice or

(B) by Tera for nonpayment by Licensee of any amount due under this Agreement, which nonpayment continues for a period of ten (10) days; or

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(C) by either party upon thirty (30) days notice for non-performance by the other party of any other material term or condition of this Agreement or of any other contract between Licensee and Tera related to the Software or the equipment for which it is licensed.

The license of any Software shall automatically terminate upon de-installation of the equipment for which it is licensed.

Upon termination of this Agreement Licensee shall promptly return to Tera all copies of the Software involved or certify in writing to Tera that all copies have been destroyed, including all copies which Licensee has modified and/or merged into other computer program material.

16. RELOCATION; EXPORT: The Technology, including technical data, are subject to the U.S. Export Administration Act and its associated regulations and may be subject to export regulations in other countries. Licensee agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses if Licensee exports or re-exports the Technology.

17. ASSIGNMENT: This Agreement and the rights granted and obligations undertaken hereunder may not be transferred, assigned or delegated in any manner by Licensee, but may be so transferred, assigned or delegated by Tera upon written notice to Licensee.

18. NOTICES: Notices will be effective when received in writing and shall be sent to the person and address designated on the signature page of this Agreement or such other person or address as may have been furnished to Licensee or Tera by notice according to this Article.

19. APPLICABLE LAW: This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of California, U.S.A. excluding its choice of law provisions.

20. SURVIVAL OF AGREEMENTS: Notwithstanding the termination or completion of this Agreement, all indemnities, warranties, and duties of non-disclosure in this Agreement will continue in full force and effect to the extent required for their full observance and performance.

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21. ENTIRE CONTRACT: The terms and conditions stated in this Agreement and in the Schedule(s) constitute the complete and exclusive statement of the Agreement between Licensee and Tera and supersede all prior oral and written statements of any kind whatsoever made by either party or their representatives. Any order form used by Licensee in connection with this Agreement will be considered to have its pre-printed clauses and statements deleted. Any waivers or amendments, to be effective, must be in writing, signed by both parties.

LICENSEE: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UCSD

Tera Computer Company. 2815 Eastlake Avenue East Seattle, WA 98102-3027

BY /s/ Anne Mayer -----

By /s/ James E. Rottsolk -----

Name Anne Mayer -----

Name James E. Rottsolk -----

Title Business Contracts Admin. -----

Title President and CEO -----

Date 11/6/96 -----

Date November 8, 1996 -----

Notices to above -----

Notices to above -----

Title \_\_\_\_\_

Title \_\_\_\_\_

November 4, 1996, 10:42 AM (FINAL)

SCHEDULE A to the Tera Computer Company Software License Agreement

Designated System: Tera MTA-8C-8E System, Serial #1 Site: San Diego Supercomputer Center (SDSC)

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SOFTWARE	SOURCE OR BINARY ACCESS	ANNUAL MAINTENANCE FEE
-----	-----	-----
TERA OPERATING SYSTEM		See Attachment A
TOS - Tera operating system and utilities (Licensee must provide requisite proof of a current license to X/Open Company Ltd. UNIX)	Source and binary	
TERA PROGRAMMING ENVIRONMENT		See Attachment A
f77, cc, c++ - Tera Fortran 77, C, C++ compilers and supporting libraries	Binary only	
tdb - Tera source level debugger (Licensee must comply with GPL restrictions for GNU-based software)	Binary only	
DOCUMENTATION		See Attachment A

Licensee: The Regents of the  
University of California, UCSI)

Tera Computer Company  
2815 Eastlake Avenue East  
Seattle, WA 98102-3027

By /s/ Anne Mayer

By /s/ James E. Rottsolk

-----  
Name Anne Mayer

-----  
Name James E. Rottsolk

-----  
Title Business Contracts Admin.

-----  
Title President and CEO

-----  
Date November 6, 1996

-----  
Date November 8, 1996

Confidential Treatment  
For Portions of this  
Agreement has been  
Requested Pursuant to  
Rule 24b-2

11/6/96

Cooperative Agreement  
Between

The Regents of the University of California  
University of California, San Diego  
Office of Advanced Scientific Computing  
9500 Gilman Drive  
La Jolla CA 92093-0411

And

Tera Computer Company  
2815 Eastlake Avenue  
Seattle WA 98102-3057

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ATTACHMENTS

- ATTACHMENT A Initial Tera MTA System and Upgrade Options
- ATTACHMENT B Tera Computer Company Software License Agreement  
(Note that Attachment B itself includes an attachment identified as "Schedule A")

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This Agreement is executed by and between The Regents of the University of California, University of California, San Diego, a corporation of the State of California (hereinafter referred to as "UCSD"), and Tera Computer Company, a corporation of the State of Washington, (hereinafter referred to as "Tera").

WHEREAS, UCSD is the recipient of Grant No. ASC-96 13855 issued by -----  
the National Science Foundation for the conduct of a project entitled "Acquisition and Evaluation of a Multi-Threaded, Shared Memory Supercomputer" which will pay for part (but not all) of the compensation to Tera hereunder; and

WHEREAS, Tera wishes to install the first commercial Tera MTA system and make it widely accessible, and

WHEREAS, UCSD and Tera have received indications from the U.S. Department of Energy, Department of Defense and other potential funding agencies that funding may be available to upgrade the Tera MTA system to a larger configuration; and

WHEREAS it is considered in the best interest of UCSD and Tera to participate in a Cooperative Agreement with the joint goals of improving the stability of Tera's operating system to conduct UCSD research and education programs, accelerating the availability of applications software for Tera MTA systems, and promoting participation by Industrial Participants and independent software vendors;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and with the knowledge that each party intends to rely on the provisions herein in favor of such party, UCSD and Tera agree as follows:

1. DEFINITIONS

a. INDUSTRIAL PARTICIPANTS

Industrial or commercial entities invited by Tera or UCSD and accepted by UCSD as participants in the evaluation of Tera Products provided under this Agreement.

b. TERA BUNDLED SOFTWARE

Tera operating system, compilers, tools and libraries provided by Tera

to UCSD under this Agreement, as itemized in ATTACHMENT A, INITIAL TERA MTA SYSTEM AND UPGRADE OPTIONS. A separate Software License Agreement must be executed by the parties for Tera Bundled Software, as set forth in ATTACHMENT B, TERA SOFTWARE LICENSE AGREEMENT.

c. TERA PRODUCTS  
MTA computer systems, upgrades and peripheral equipment offered by Tera to UCSD under this Agreement, as itemized in Attachment A.

d. TERA SERVICES

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Hardware and software maintenance services, consulting and professional services offered by Tera to UCSD under this Agreement, as itemized in Attachment A.

e. MTA SYSTEM  
All Tera Bundled Software, Tera Products and Tera Services for 8-processor Multi-Threaded Architecture system ordered by UCSD hereunder, as itemized on the face of referenced Purchase Order.

2. PERIOD OF PERFORMANCE

Subject to the termination provisions herein, the effective period of this Agreement shall be October 1, 1996 through September 30, 1998 for the initial installation, testing and evaluation phase. This Agreement may be extended by mutual agreement of the parties for a second operational phase.

3. COMPENSATION AND PAYMENT

a. COMPENSATION  
Subject to the availability of funding requested by UCSD from extramural sponsors, and in consideration of the services rendered and items delivered or reported by the respective parties as provided herein, UCSD agrees to pay to Tera the amount of Four million dollars (\$4,000,000), including tax for the MTA System, in accordance with the payment schedule outlined in Article 3c below.

b. PURCHASE OF MTA SYSTEM  
UCSD intends to purchase a MTA System during the period of this Agreement, subject to the availability of extramural funding. As such funding becomes available, UCSD will issue Purchase Orders (or change orders) which shall incorporate this Cooperative Agreement. In the event such extramural funding is not available for the entire system, UCSD shall not be obligated to purchase the entire system.

c. ORDER AND DELIVERY OF THE MTA SYSTEM

UCSD agrees to exercise its best effort to issue Purchase Orders (or change orders) in accordance with the following Estimated PO Dates. Because purchase of the MTA System is dependant upon availability of extramural funding, UCSD will confirm increments as such funding is received, such confirmation to be made by issuance of a Purchase Order (or change order) for the specific item. The parties estimate that Purchase Order(s) (or change orders) shall be issued approximately no later than the dates below, and that deliveries shall be made within six months of order confirmation.

Deliverable Item	Estimated Purchase Order Date	Estimated Initial Delivery Date
1. First Two Processors	10/15/96	3/31/97
2. Second Two Processors	12/31/96	6/30/97
3. Third Two Processors	12/31/96	6/30/97
4. Fourth Two Processors	9/30/97	3/31/98

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d. ORDERS CONTINGENT UPON EXTRAMURAL FUNDING

Tera acknowledges that the extramural funding commitments to UCSD as of the date of this Cooperative Agreement are not sufficient to cover the full cost of the third and fourth deliverables. In the event that UCSD does not receive additional extramural funding for the third and/or fourth deliverable, this Agreement may be negotiated or terminated in accordance with Article 16.d. UCSD will promptly notify Tera of any change in the status of anticipated extramural funding that will affect UCSD's ability to cover the cost of any deliverables set forth above, or in any future modifications to this Cooperative Agreement.

e. PAYMENT FOR MTA SYSTEM

Payments and delivery of goods and services ordered hereunder shall be made incrementally as provided herein. UCSD will make payments to Tera based on achievement of the Milestones set forth below. Achievement of the Milestone will be considered "acceptance" by UCSD for purposes of invoicing and payment. The amounts for which Tera shall bill UCSD, as described below, include all applicable sales and use taxes associate with purchases hereunder. Payments are due on the date that UCSD signs a Notice of Acceptance (hereinafter "Acceptance Date", see Article 5.n) and will be made as follows:

Deliverable Item -----	Milestone -----	\$(incl tax) -----
1. First Two Processors	Pass Level 1 Acceptance Tests	\$1,340,000
2. Second Two Processors	Pass Level 2 Acceptance Tests	910,000
3. Third Two Processors	Pass Level 3 Acceptance Tests	1,000,000
4. Fourth Two Processors	Pass Level 3 Acceptance Tests	750,000
		-----
	Total Payments	\$4,000,000

f. INVOICING

Tera shall submit invoices to UCSD at the time of acceptance, with payment due within thirty (30) days from date of acceptance. Invoices shall be mailed to UCSD at the billing address indicated on the face of the Purchase Order or Change Order. Tera offers a Prompt Payment Discount of one half percent (0.5%) for payments received within ten (10) days from date of acceptance.

4. RIGHTS AND DUTIES OF UCSD

a. SITE PREPARATION

UCSD will undertake all reasonable site preparation as advised by Tera, and at no cost to Tera.

b. PURCHASE OF ADDITIONAL TERA PRODUCTS AND SERVICES

UCSD may order additional Tera Products and Tera Services not included with the purchase by UCSD of the MTA System, as listed in ATTACHMENT A. All such Purchase Orders and Change Orders issued for the purposes of this Agreement shall incorporate the terms of this Agreement. In the event that UCSD purchases additional Tera Bundled Software, the parties will execute a separate Tera Software License which will become an attachment to this Agreement. The Tera Software License agreement is attached to this

Agreement and incorporated herein as ATTACHMENT B.

c. REPORT ON EVALUATION

UCSD agrees to evaluate Tera Products, including hardware architecture, operating system, programming environment, compilers and software tools provided by Tera under this Agreement. UCSD agrees to consult with Tera in setting priorities for evaluation, and to provide feedback from its evaluations in periodic meetings to be scheduled by agreement of the parties. UCSD agrees to provide written reports to Tera where appropriate. UCSD agrees to monitor Tera and Industrial Participant use and to include such information in periodic reports.

d. APPLICATIONS PORTING

UCSD agrees to port applications software selected by UCSD to Tera's system in order to test and demonstrate such selected applications with Tera's assistance.

e. ACCESS BY TERA

UCSD agrees to provide reasonable access (both direct physical and remote access) to Tera Products by Tera employees during regular business hours. UCSD agrees to establish limited accounts for such Tera employees for the purposes of software development, testing and benchmarking. Upon request, UCSD will provide reasonable access to Tera for the purpose of customer demonstrations, provided that such demonstrations do not interfere with UCSD's scheduled use of Tera Products. All such access by Tera will be subject to UCSD's security restrictions, and UCSD's scheduled use of Tera Products. It is estimated that Tera's access to Tera Products for all purposes will average not more than twenty percent (20%) of available system resources through September 30, 1997, and not more than ten percent (10%) of available system resources thereafter.

f. APPROVAL AND ACCESS BY THIRD PARTIES

UCSD agrees to work with Tera to identify and invite Industrial Participants and independent software vendors to use and evaluate Tera Products provided to UCSD under this Agreement. Tera may share its allocation of available Tera system resources with Tera-designated Industrial Participants, Tera consultants, and independent software vendors, provided that no user will be granted Privileged Access from remote sites. UCSD reserves the right to limit the number of persons and the overall access time as necessary to assure that such use will not interfere with UCSD's obligations to the National Science Foundation and any other sponsors of this project. UCSD reserves the right to determine whether such access shall be permitted in consideration for access and usage fees, and in the event that such fees are imposed, subject to UCSD's obligations to sponsors, UCSD shall retain 100% of such revenue. Notwithstanding the above, all such access, use and evaluation by third parties must comply with applicable University regulations permitting activities leading to the extension of knowledge or to increased effectiveness in teaching, but not tests, studies or investigations of a purely commercial character, unless it can be shown conclusively that satisfactory facilities for such services do not exist elsewhere. Tera further acknowledges that any such use must be in conformance with the limitations

or restrictions imposed on UCSD by governmental or other sponsors of the project.

5. RIGHTS AND DUTIES OF TERA



a. COST

In consideration for the rights granted to Tera by UCSD hereunder, Tera agrees to sell the MTA System to UCSD hereunder at costs specified on the face page of Purchase Order and Article 3.e.

b. DELIVERY OF TERA MTA SYSTEM

Tera agrees to exercise its best efforts to deliver the Tera MTA System provided under this Agreement in accordance with the Initial Estimated Delivery Dates specified in Article 3.c., that is, within six months of the date UCSD issues Purchase Orders or change orders confirming availability of funding. In the event that timely delivery cannot be accomplished, Tera will notify UCSD in writing no later than thirty (30) days prior to the Initial Estimated Delivery Date. In such notice, Tera will propose alternative delivery date(s) and will propose specific consideration to UCSD in exchange for UCSD's acceptance of a revised delivery date (for example, a price reduction or additional Tera Products or Services). UCSD reserves the right, in lieu of accepting Tera's proposal for a revised delivery date(s) to terminate this Agreement pursuant to Article 16.b.

c. LOAN OF TWO PROCESSORS

Both parties acknowledge that at the time this Agreement is entered into, UCSD does not have all committed funding listed in Article 3.a and Article 3.c for a total of eight processors. Tera will use its best efforts to provide the fourth two processors (deliverable item #4) to UCSD on a no-cost loan basis for the initial term of this Agreement, in the event that funding does not become available by the Estimated Purchase Order date of 9/30/97. Tera will retain title to all equipment loaned to UCSD hereunder.

d. INSTALLATION AND TRAINING

Tera agrees to provide, at no cost to UCSD, all installation services and staffing required to install Tera Products delivered to UCSD hereunder promptly and successfully. Tera agrees to provide required training of designated UCSD staff to operate all Tera Products provided hereunder, including training materials, manuals, etc. Tera agrees to meet with UCSD designated personnel at such times as reasonably requested to troubleshoot problems which may arise in the course of installation and operation of Tera Products, and to take reasonable measure as recommended by UCSD to resolve such problems.

e. SITE PREPARATION INFORMATION

Tera will provide UCSD with mechanical, electrical and communications site planning information no later than ninety (90) days before estimated delivery of Tera Products. Tera agrees to provide ongoing site preparation consulting such that UCSD's site will be ready to receive Tera Products on the delivery date. Tera will make a final site inspection prior to shipment of Tera Products, if appropriate. Tera will advise UCSD if the site is not ready and will document what actions are necessary to complete site preparation. All

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necessary site preparation will be undertaken at the sole expense of UCSD.

f. WARRANTY AND MAINTENANCE OF TERA MTA SYSTEM AND BUNDLED SOFTWARE

Tera warrants that all Tera Products and all Tera Bundled Software provided to UCSD as part of the MTA System shipped to UCSD shall be free from defects in material and workmanship and shall be in conformance with Tera's specifications for a period of one (1) year from Acceptance Date of each specific Tera Product or item of Tera Bundled Software ("Initial Warranty Period"). Tera shall provide at no additional cost to UCSD, all maintenance and fixes to Bundled Software to enable performance according to Tera's software specifications. In addition, Tera shall provide all upgrades of Bundled Software developed during the Initial Warranty Period to UCSD at no additional cost. Tera shall replace or repair any defective Tera Products or components of the Tera MTA System

during the Initial Warranty Period and any subsequently agreed-upon maintenance period. Tera shall have no obligation under this Article to repair or replace Tera Products or Bundled Software when the defect results from accident, disaster, neglect, abuse, misuse, transportation, or alterations other than by Tera personnel or as approved by Tera. Following expiration of the Initial Warranty Period for each item of the Tera MTA System and Bundled Software, UCSD may elect to extend warranty and maintenance services for each Tera Product or Bundled Software item at a price to be agreed upon by the parties.

g. UPGRADES OF TERA PRODUCTS

During the Initial Warranty Period (as defined above), Tera agrees to provide UCSD, at no additional charge, with upgrades of Tera Products, including peripheral equipment received by UCSD hereunder. Following expiration of the Initial Warranty period, and in consideration for the rights granted to Tera hereunder, Tera agrees to sell all upgrades of Tera Products, as itemized in Attachment A. The prices listed in Attachment A are for information purposes only; the parties will negotiate prices and discounts at the time order(s) are placed.

h. PROVISION OF WARRANTY AND MAINTENANCE OF TERA PRODUCTS

Tera agrees to provide twelve (12) person-months of on-site support from a qualified technician for all necessary repair, replacement and maintenance service on Tera Products during the Initial Warranty Period at no charge to UCSD. Tera agrees to also provide telephone support to UCSD on an as-needed basis during regular business hours.

i. SPARE PARTS

Tera agrees to maintain sufficient stock of spare parts to provide prompt maintenance service on any Tera Products provided hereunder, during the period of this Agreement, and any agreed-upon extended warranty, maintenance and Service period. A sufficient stock of spare parts is that which will enable Tera to effect regular maintenance on Tera Products and to repair or replace any failed component of such products within a reasonable response and repair time.

j. LIMITATION OF WARRANTY

UCSD's exclusive remedy for Tera's breach of the foregoing warranties shall be Tera's

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replacement of repair of Tera MTA System, or Tera Bundled Software, or Tera Products which do not perform in conformance to Tera specifications. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OR USAGE FOR A PARTICULAR PURPOSE.

k. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

l. IDENTIFICATION OF INDUSTRIAL PARTICIPANTS

Tera agrees to work jointly with UCSD to promote participation in the Agreement by Industrial Participants, and where appropriate, independent software vendors. Tera shall identify such proposed third parties, and obtain approval from UCSD prior to making commitments to any proposed third parties.

m. ACCEPTANCE TESTS

Tera agrees to work jointly with UCSD to design and implement appropriate tests of the deliverables provided by Tera hereunder. The parties will agree to the specific testing to be performed at each level, and will agree as to what constitutes success in meeting the tests. Tera agrees to perform the

agreed-upon acceptance tests on Tera Products, and to make such adjustments, fixes, repairs, replacements as necessary to enable the Tera Product(s) to function satisfactorily and to pass the appropriate Acceptance Test. Acceptance tests shall become progressively more demanding, and, subject to agreement upon final details of each level, shall be as follows:.

- Level 1 Acceptance Tests will be conducted on the first two processors, and shall require successful installation and running of Tera diagnostics on site at San Diego.
- Level 2 Acceptance Tests will be conducted on the first four processors, and shall require successful running of two of the following three applications, to be jointly agreed upon by Tera and UCSD: AMBER, GAMESS OR RNAFOLD.
- Level 3 Acceptance Tests will be conducted on the full six processor, (or full eight processor system) and shall require successful execution of all three above applications simultaneously for eight (8) hours with no system interruptions.

n. ACCEPTANCE DATE AND TRANSFER OF TITLE

Upon successful completion of the appropriate level of Acceptance Tests, Tera will provide UCSD a Notice of Acceptance. The date on which UCSD signs the Notice of Acceptance, ("Acceptance Date"), will be considered the first day of the Initial Warranty Period on the Tera MTA System, or part thereof. Title and risk of loss will transfer to

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UCSD at the Acceptance Date, and UCSD will retain title to all Tera Products for which a Notice of Acceptance has been executed by UCSD. Tera warrants that UCSD shall acquire good title to Tera Products purchased hereunder free and clear of all liens, claims, and encumbrances. Notwithstanding the above, Tera will retain title to any processors loaned to UCSD pursuant to Article 5c.

6. PROJECT MANAGEMENT AND NOTICES

a. UCSD PERSONNEL

UCSD's Project Manager is Dr. Wayne Pfeiffer who shall be responsible for all technical and operational matters relating to this Agreement. UCSD's Contract Officer is Anne Mayer who shall be responsible for any formal modifications to this Agreement.

Dr. Wayne Pfeiffer  
Associate Director  
Center for Advanced Computational  
Science and Engineering  
University of California, San Diego  
9500 Gilman Drive  
La Jolla CA 93093-0534  
Phone: 619 534-5120  
Fax: 619 534-5056  
e-mail: wpfeiffer@ucsd.edu

Anne Mayer  
Contract Officer  
Purchasing Department  
University of California,  
San Diego  
9500 Gilman Drive  
La Jolla CA 92093-0914  
Phone: 619 534-4437  
Fax: 619 534-5803  
e-mail: amayer@ucsd.edu

b. TERA PERSONNEL

Tera's Project Manager is Richard M. Russell, Director New Business Development, who shall be responsible for all technical, operational matters relating to this Agreement. Tera's Contractual Officer is James Rottsolk, President and Chief Executive Officer, who shall be responsible for all contractual matters relating to this Agreement.

Mr. Richard Russell  
Director, New Business Development  
Tera Computer Company

Mr. James E. Rottsolk  
President and CEO  
Tera Computer Company

2815 Eastlake Avenue E  
Seattle WA 98102  
Phone: 206 325-0800  
Fax: 206 325-2433  
e-mail: russell@tera.com

2815 Eastlake Avenue E  
Seattle WA 98102  
Phone: 206 325-0800  
Fax: 206 323-1318  
e-mail: jim@tera.com

c. NOTICES

All communications and notices between the parties concerning this Agreement shall be deemed to be sufficiently made on the date sent to the other party via first class mail, facsimile receipt acknowledged, or with the use of electronic mail and sent or addressed to the party's representatives designated above.

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7. CONFIDENTIALITY AND NON-DISCLOSURE

a. PROJECT PROPRIETARY INFORMATION

"Project Proprietary Information" means any and all information which is: a) associated with the items in this Agreement or attachments hereto (including Attachment B, License Agreement and Schedule A) disclosed by Tera to UCSD electronically, visually, in a written document or other tangible form; or b) provided by Tera to UCSD in writing, or reduced to writing within ten (10) days of oral disclosure, and marked "Project Proprietary Information". UCSD agrees to exercise reasonable efforts not to disclose or otherwise make Project Proprietary Information available to any third party.

b. OTHER PROPRIETARY INFORMATION

"Other Proprietary Information" means such Tera proprietary or confidential information not associated with the work under this Agreement, whether in electronic, documentary or other tangible form, but not including the Project Proprietary Information to which UCSD has rightful access hereunder. In the course of work performed by UCSD under this Agreement, UCSD may have an opportunity to gain access to Other Proprietary Information. Tera agrees to exercise reasonable efforts to protect Other Proprietary Information from intentional or inadvertent disclosure to UCSD. UCSD agrees to refrain from attempting to access such Other Proprietary Information, and in the event that UCSD inadvertently gains access to Other Proprietary Information, UCSD agrees not to examine, use, copy, or keep such Other Proprietary Information without the consent of Tera, and to return it promptly to Tera.

c. EXCEPTIONS

Notwithstanding the above, UCSD shall have no liability or obligation to Tera for, nor be in any way restricted in its disclosure, marketing or use of Project Proprietary Information or Other Proprietary Information which:

- i) is already in the possession of UCSD from a third party; or
- ii) is or becomes publicly known through no wrongful act of UCSD; or
- iii) is received lawfully from a third party without restriction and without breach of this Agreement; or
- iv) is disclosed pursuant to an enforceable order of a court of competent jurisdiction, or pursuant to written authorization from Tera to UCSD.

8. PUBLICATIONS, ANNOUNCEMENTS AND USE OF NAMES

a. PUBLICATIONS

Subject to the provisions of Article 9 on disclosure of patentable inventions, the parties shall have the right to publish or otherwise present the results of evaluations and findings arising from performance hereunder, provided however, that advance copies of such proposed publications or presentations will be provided to the other party sufficiently in advance to permit the other party to comment. Authorship of all such publications and presentations will be determined by

generally accepted academic publishing principles.

b. ANNOUNCEMENTS

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The parties agree that it may be appropriate and desirable to make a public announcement or issue a press release regarding the existence and purpose of this Agreement. Unless required to applicable public disclosure law, University policy, or the terms of applicable sponsored contract or grant, the parties agree that the specific terms and conditions of this Agreement shall not be publicly announced. Neither party shall use the name of the other party in any public announcement or press release, or any disclosure not required as set forth above, without the prior written approval of the other party. The parties agree to consult with each other, and to permit each other prior review of any proposed public announcements regarding this Agreement.

c. USE OF NAMES

Neither party may use the name, trademark(s) or trade name(s) of the other party, directly or indirectly, in connection with any product, service, promotion, publication or public announcement without the prior written approval of the other party.

9. INVENTIONS, PATENTS AND COPYRIGHTS

a. DEFINITIONS

- i. "JOINT INTELLECTUAL PROPERTY" as used hereunder means individually and collectively all inventions, improvements, or discoveries and all works of authorship, excluding articles, dissertations, theses, and books, whether or not patentable or copyrightable which are generated by one or more employees of UCSD and one or more employees of Tera in the performance of work conducted under this Agreement.
- ii. "TERA SOLE INTELLECTUAL PROPERTY" as used hereunder means individually and collectively all inventions, improvements, or discoveries and all works of authorship, excluding articles, dissertations, theses, and books, whether or not patentable or copyrightable which are generated solely by one or more employees of Tera in the performance of work conducted under this Agreement.
- iii. "UNIVERSITY SOLE INTELLECTUAL PROPERTY" as used hereunder means individually and collectively all inventions, improvements, or discoveries and all works of authorship, excluding articles, dissertations, theses, and books, whether or not patentable or copyrightable, which are generated solely by one or more employees of UCSD in performance of the work conducted under this Agreement.

b. OWNERSHIP OF INTELLECTUAL PROPERTY

All rights and title to University Sole Intellectual Property belong to UCSD. All rights to Tera Sole Intellectual Property belong to Tera. All rights to Joint Intellectual Property shall belong jointly to both parties. The parties agree to negotiate in good faith the disposition of rights, including copyright, patents and licensing, to Joint Intellectual property, such disposition taking into consideration the relative contributions of the parties.

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## c. LICENSE TO INTELLECTUAL PROPERTY

The parties agree to provide each other a perpetual non-exclusive royalty-free license to use, and to sublicense others to use all Intellectual Property (including Joint Intellectual Property, Tera Sole Intellectual Property, and University Sole Intellectual Property), except when one party is prevented from offering such rights to the other, under the terms of contracts or grants awarded by third parties, including governmental and non-governmental sponsors of the work.

## d. DISCLOSURE OF INVENTIONS

Subject to restrictions which may be imposed on Tera by applicable third parties, Tera shall promptly disclose to UCSD in confidence each patentable or copyrightable Tera Sole Intellectual Property and Joint Intellectual Property, including date of invention, named inventors, title and a brief description of the invention. Subject to restrictions which may be imposed on UCSD by applicable extramural research sponsor(s), UCSD shall promptly disclose to Tera each patentable or copyrightable University Sole Intellectual Property and Joint Intellectual Property, including date of invention, named inventors, title and a brief description of the invention. The parties agree to maintain such patentable invention(s) in confidence for a period of time not to exceed ninety (90) days to permit a United States patent application to be filed thereon by the Inventor. Each party agrees to take any action reasonably requested by the other party to evidence, obtain, perfect or maintain the rights of such party to any Intellectual Property.

## 10. INDEMNIFICATION

Each party shall defend, indemnify and hold harmless the other party, its officers, agents and employees from and against any and all claims, actions, damages, costs, liability or expenses (including reasonable attorney fees) resulting from injury to any person (including death) or damage to property arising out of the performance of this Agreement, but only in proportion to, and to the extent to which such injury or property damage is due to the negligence or intentional misconduct of the indemnifying party, its employees, agents and subcontractors.

## 11. INDEMNITY AGAINST INFRINGEMENT

Tera agrees to indemnify and hold harmless UCSD, its subsidiaries, third parties and end users, from any liability, damage or expense, including but not limited to legal expenses, arising out of a claim of U.S. patent infringement, copyright infringement, or misappropriation of trade secrets based solely upon the use or sale of Tera Products and/or Tera Bundled Software. Tera agrees to defend or settle at Tera's expense, all suits or proceedings arising out of any of the foregoing, provided that UCSD shall give Tera prompt written notice of all suits or threats of suit against UCSD, its subsidiaries, third parties and end users. In any event, UCSD at its own expense, shall have the right to participate in the defense of any such action through UCSD's General Counsel. If any item is held to be an infringement or misappropriation for which UCSD is indemnified by Tera, and its use is enjoined, Tera shall:

- a. procure for UCSD and its customers the right to utilize the Tera Product and/or

Tera Bundled Software granted herein; or

- b. replace or modify it so it becomes non infringing (without compromising UCSD's intended use of said Tera products).

If neither of the foregoing is feasible, with the approval of UCSD, Tera shall remove said Tera Products and/or Tera Bundled Software and refund the purchase price of the transportation and installation and site preparation cost thereof less depreciation. Tera will not be liable to the extent the infringing item has been modified by any of the parties indemnified hereunder and such modification is the cause of any such infringement or misappropriation, or if the infringement is due to the combination of the Tera Product with a product sold or licensed by UCSD hereunder.

12. INDEPENDENT CONTRACTOR

Each party's relationship to the other shall be that of an independent contractor. Personnel hired by one party shall be deemed employees of said party and shall not for any purpose be considered employees or agents of the other party. Each party assumes full responsibility for the actions of its personnel while performing services pursuant to this Agreement and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), Worker's Compensation and disability benefits. The manner and means through which the work under this Agreement will be accomplished are entirely the responsibility of the respective parties hereto.

13. FORCE MAJEURE

Neither of the parties shall be liable in damages or have the right to terminate for any delay or default caused by conditions beyond its control, including but not limited to, acts of God, war, insurrection, strikes, fires, floods, work stoppages and embargoes, and the inability of suppliers to furnish necessary components.

14. COMPLIANCE WITH LAWS

Each party will comply with all applicable federal, state and local laws, regulations and ordinances including, but not limited to, the regulations of the U.S. Government relating to export and re-export of software and technical data. UCSD agrees that any software and technical data provided under this Agreement may be subject to restrictions under the export control laws and regulations of the United States, including but not limited to the U.S. Export Administration Act and its regulations. UCSD hereby gives written assurance that, unless authorized by appropriate U.S. Government license or regulations, neither software nor technical data provided by Tera under this Agreement, nor the direct product thereof, shall be exported, directly or indirectly, to prohibited countries or nationals thereof. UCSD agrees that it is responsible for obtaining required government documents and approvals prior to export of any commodity, machine, software, or technical data.

15. ASSURANCE OF PERFORMANCE AND DISPUTES

- a. ASSURANCE OF PERFORMANCE AND DISPUTES

Uniform Commercial Code (UCC) Section 2-609 is incorporated herein by this reference. The University has the right to adequate assurance of performance as

provided under UCC 2-609.

b. DISPUTES

If either party believes there is a dispute arising from the administration or performance of this Agreement, either fiscal or non-fiscal, the party shall notify the other party's contractual contact in writing and shall appeal to the University's Material Manager, at the University Purchasing Office address. All disputes will be resolved by following the procedural guidelines and steps required by the Regents of the University of California, and Business and Finance Bulletin BUS 43, Material Management.

16. TERMINATION

a. UPON BREACH

In the event that either party is in breach of any of its obligations hereunder, the other party will give prompt written notice detailing the nature of the breach. The breaching party shall have thirty (30) days from such notice of breach to take whatever action is necessary to cure the breach. In the event that the breach is 1) not cured within the thirty (30) day period; or 2) the parties do not agree in writing on an extension of the period to cure, this Agreement will terminate at the end of the thirty (30) day period.

b. REMEDIES FOR BREACH

If this Agreement is terminated by either party for breach pursuant to Article 15.a., UCSD shall, at its option, either return or pay for all Tera Products delivered, and will pay Tera for all Tera Services received prior to date of termination. Further:

- i. If this Agreement is terminated by UCSD for breach by Tera, UCSD will not be obligated to pay Tera for Tera Products (including processors) ordered but not yet received as of date of termination.
- ii. If this Agreement is terminated by Tera for breach by UCSD pursuant to Article 15.a., UCSD shall pay for all Tera Products delivered, and Tera's remedy for Tera Products (including processors) ordered but not yet received as of date of termination will be as provided under UCC Section 2-706 (1), Seller's Resale Including Contract for Resale.

c. FOR CAUSE - LATE DELIVERY

TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT. UCSD reserves the right to terminate this Agreement upon thirty (30) days prior written notice to Tera for "Late Delivery". "Late Delivery shall be delivery which is not made within six months of issuance of a PO or change order, or any extension of this period requested by Tera and granted by UCSD by written amendment to this Cooperative Agreement or Purchase Order/Change Order. Such termination will not be considered as termination for breach, and Articles 15.a, and 15.b. shall not be applicable. In the event of termination for Late Delivery, UCSD shall, at its option, either return

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or pay for all Tera Products delivered, and pay Tera for all Tera Services received prior to date of termination. Upon notice of termination, Tera will be relieved of its obligation to deliver Tera Products and Services not received by UCSD prior to notice of termination, and UCSD will be relieved of its obligation to accept or pay for Tera Products and Services not received by UCSD prior to notice of termination.

d. FOR CAUSE - UNAVAILABILITY OF FUNDS

Pursuant to Article 3.d. above, UCSD reserves the right to terminate this Agreement upon thirty (30) days prior written notice to Tera if pending extramural funding are not available to UCSD and no alternative sources of funding become available. Such termination will not be considered as



termination for breach, and Articles 16.a, and 16.b. shall not be applicable. In the event of termination for unavailability of funds, UCSD shall pay for all Tera Products delivered, and all Tera Services received prior to date of termination. Upon notice of termination, Tera will be relieved of its obligation to deliver Tera Products and Services not received by UCSD prior to notice of termination, and UCSD will be relieved of its obligation to accept or pay for Tera Products and Services not received by UCSD prior to notice of termination. Notwithstanding this right to terminate for unavailability of funds, UCSD intends to issue Purchase Orders or Change Orders for Deliverable Items as specified in Article 3.c. above only upon confirmation by UCSD that funding is available for each deliverable before issuance of a Purchase Order or Change Order. Accordingly, once Purchase Orders or Change Orders have been issued for specified Deliverable Items, UCSD may not cancel the specific Purchase Order or Change Order for unavailability of funds.

17. SURVIVABILITY

All rights and duties of the parties shall terminate upon the effective date of termination or expiration of this Agreement, with the exception of Articles 7, 9, 10 and 11 which shall survive termination.

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18. SUCCESSORS AND ASSIGNS

All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns and legal representatives. Neither party shall assign this Agreement or any rights hereunder, without the prior written consent of the other party.

19. WAIVERS, AMENDMENTS, OR MODIFICATIONS

The waiver, amendment or modification of any provision of this Agreement or any right, power or remedy hereunder shall not be effective unless in writing and signed by the contracting officer of the party against whom enforcement of such waiver, amendment or modification is sought. No failure or delay by either party in exercising any right, power, or remedy with respect to any of the provisions of this Agreement shall operate as a waiver thereof.

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20. GOVERNING LAW, SEVERABILITY

The validity, construction and performance of this Agreement and the legal relations among the parties to this Agreement shall be governed by and construed in accordance with the substantive laws of the State of California. If any part, term or provision of this Agreement is declared unlawful or unenforceable by judicial determination or performance, the remainder of this Agreement shall remain in full force and effect.

21. ENTIRE AGREEMENT, ORDER OF PRECEDENCE

The foregoing terms and conditions, together with the attachments are the complete and exclusive expression of the Agreement between the parties, superseding any prior agreements, written or oral, notwithstanding anything contained in any documents issued by either party. In the event of any inconsistency or conflict in the provisions of these documents, the order of precedence shall be:

- a. Referenced UCSD Purchase Order
- b. This Cooperative Agreement
- c. Attachments to this Agreement, in alphabetical order

Accepted on behalf of

Accepted on behalf of

Tera Computer Company

The Regents of the University of California

By: /s/ James E. Rottsolk

By: /s/ Anne Mayer

-----  
Name: James E. Rottsolk

-----  
Name: Anne Mayer

Title: President & CEO

Title: Business Contracts Administrator

Date: November 8, 1996

Date: November 6, 1996

TERA COMPUTER COMPANY  
(A DEVELOPMENT STAGE COMPANY)  
COMPUTATION OF PER SHARE EARNINGS  
(UNAUDITED)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,		PERIOD FROM DECEMBER 7, 1987 (INCEPTION) THROUGH SEPTEMBER 30, 1996
	1995	1996	1995	1996	1996
	-----	-----	-----	-----	-----
WEIGHTED AVERAGE SHARES OUTSTANDING	2,631,014	6,284,358	2,604,624	4,981,174	1,422,685
NET INCOME (LOSS)	\$(1,751,660)	\$(2,573,774)	\$(2,013,177)	\$(9,861,912)	\$(24,829,663)
NET INCOME (LOSS) PER SHARE	\$ (0.67)	\$ (0.41)	\$ (0.77)	\$ (1.98)	\$ (17.45)

<ARTICLE> 5

<LEGEND>

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE UNAUDITED FINANCIAL STATEMENTS OF TERA COMPUTER COMPANY FOR THE NINE-MONTH PERIOD ENDED SEPTEMBER 30, 1996, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

</LEGEND>

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