

Swiss National Supercomputing Center (CSCS): General Terms and Conditions for the Operation of HPC Systems, Provision of HPC Resources, and Services Provided to the Swiss Research Community

("GTC CSCS")

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I. Preamble

- A) CSCS (Centro Svizzero di Calcolo Scientifico), a service and research unit of ETH Zurich based in Lugano, Switzerland develops and promotes technical and scientific services for the Swiss research community in the field of high-performance computing (HPC). CSCS facilitates top-level research by developing, operating, and supporting supercomputing systems that leverage and exploit cutting-edge and innovative technologies.
- B) In order to accomplish its national mission, CSCS collaborates with Swiss universities and research institutions within a larger project-oriented framework and operates supercomputing systems.

II. General Terms

1 Definitions

For the purpose of this document, the following terms and expressions are to be defined as follows:

- 1.1 “Collaboration agreement” or (CA) The collaboration agreement (CA) stipulates the collaboration between ETH Zurich/CSCS and the collaboration partner under a certain contractual scope. The CA details the specific terms of the collaboration and may consist of a framework agreement, the GTC (this document),

subcontracts, and/or service agreements, among others.

1.2 “Confidential information” Confidential information means all information, data and materials received by either party from the other party in connection to the terms outlined within the scope of the CA —whether disclosed, transferred or obtained in a written, oral, visual, or electronic form, or by any other means— provided that the confidential nature of the information is either: identified in the CA as being confidential, identified at the time of disclosure by the disclosing party to the receiving party as being confidential or, alternatively, the information is reasonably understood to be confidential given its nature or the circumstances surrounding its disclosure. Notwithstanding the foregoing provisions, the term “confidential information” includes intellectual property rights, but shall not include such information that:

- a. is publicly disclosed by the disclosing party, either before or after it becomes known to the receiving party;
- b. was known to the receiving party, without obligation to keep it confidential, prior to when it was received from the disclosing party;
- c. is subsequently disclosed to the receiving party by a third party lawfully in possession thereof without obligation to keep it confidential;
- d. has been publicly disclosed by an actor other than the disclosing party and without breach of an obligation of confidentiality with respect thereto; or
- e. has been independently developed by the receiving party without the aid, application or use of, or reference to, the information of the disclosing party, as demonstrated by written documentation;

1.3 “Dispute” Dispute means any dispute, controversy or claim arising under, out of, or relating to the CA, including, without limitation, to its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual

claims;

- 1.4 “HPC resources” HPC resources comprise systems for scientific computing that provide a high level of performance; this includes the necessary data processing and storage systems. ETH Zurich/CSCS is the sole owner of all HPC resources;
- 1.5 “HPC system” typically includes computing nodes, storage space for the data and a specialized network (interconnect) for the fast data exchange between the single components.
- 1.6 “Non-dedicated systems” Non-dedicated systems comprise all systems owned by ETH Zurich/CSCS that are part of the general infrastructure of the computing center. These systems are available to the partner according to given terms and the collaboration agreement.
- 1.7 “Dedicated systems” Dedicated systems are specific systems hosted by ETH Zurich/CSCS exclusively for the projects or activities of the partner.
- 1.8 “Data” Data means all information users store on HPC resources (eg. research data, program codes) as well as personal data about the user (e.g. name, email address);
- 1.9 “General infrastructure” building General building infrastructure means the basic configuration of the ETH Zurich/CSCS building incl. building automation and primary distributions of electricity and cooling resources.
- 1.10 “Computer-related infrastructural extensions” Computer-related infrastructural extensions are extensions for the connection of specific computer infrastructure to the general building infrastructure.
- 1.11 “Intellectual rights (IPR)” property IPR means all patents, right to inventions, know-how, confidential information and trade secrets, copyright and related rights, moral rights, database rights, utility models, design rights, pictures, designs trademarks, service marks, rights given in goodwill, and other equivalent rights or forms of protection (whether registered or unregistered) and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may

now or in the future exist anywhere in the world, re-examinations and renewals. It includes work products used to design, plan, organize and develop any of the foregoing and all documentation, including user manuals and training materials, and materials related thereto;

- 1.12 “Taxes” Tax means any excise or tax-related fee, including any value added tax, levy, charge, duty, fee, or withholding which is assessed, levied, imposed, or collected by any government body;
- 1.13 “User” User means any individual representing a ETH Zurich/CSCS collaboration partner who is permitted to use the HPC resources, regardless of whether they are actual users, engineers, etc.
- 1.14 “User account” User account means the CSCS-managed technical mechanism provided to users for the purpose of enabling said users to use ETH Zurich/CSCS HPC resources;
- 1.15 “User regulations” User regulations mean the rule governing the use of given HPC resources as outlined in the collaboration agreement. The user regulations may be updated from time to time for the access and use of the HPC resources and can be found here: <https://www.cscs.ch/services/user-regulations> or any other URL as may be provided by ETH Zurich/CSCS.

For clarity, the CA may contain additional definitions.

2 Subject Matter and Contractual Structure

- 2.1 These general terms and conditions (hereafter referred to as GTC) define the legal framework and stipulate general financial aspects in collaborations between ETH Zurich/CSCS and the collaboration partner (hereinafter referred to as partner).
- 2.2 The details of the collaboration between ETH Zurich, represented by CSCS, and the partner shall be defined in the CA.
- 2.3 Where ETH Zurich/CSCS and the Ppartner are collectively referred to, they are hereinafter referred to as “parties”.

- a. These GTC are an integral part of every CA between ETH Zurich/CSCS and a partner.
 - b. Provisions differing from these GTC shall be agreed in the CA and shall prevail in event of a conflict.
- 2.4 The following activities are covered, each regulated in a different section in this document:
- a. The procurement and operation of dedicated HPC systems
 - b. The provision of HPC resources on non-dedicated systems
 - c. Consultancy and expertise

3 Scope of Application

- 3.1 These GTC shall apply to the procurement, and operation of HPC systems, the provision of HPC resources, as well as consultancy and expertise by ETH Zurich/CSCS for the benefit of the following Swiss Partners:
- a. The ETH-Domain Institutions, cantonal universities and universities of applied sciences as well as other Swiss federal research institutions
 - b. Federal units in the districts 1 to 3 (in particular MeteoSwiss).
- 3.2 Services provided under “cscs2go” or to foreign universities and private companies are governed by different GTC provisions.
- 3.3 These GTC shall, where appropriate, apply analogously to the units of ETH Zurich.

4 Priorities of Use of CSCS Resources

- 4.1 In order to accomplish its national mission, the Swiss federal government, i.e. ETH Zurich, has a flexible building infrastructure for the operation of HPC systems at the CSCS site in Lugano. ETH Zurich/CSCS is solely responsible for the allocation of this infrastructure to the various types of use, with the following priorities (in descending order) being applicable:
- 1. Use as a User lab¹, including the associated basic infrastructure and the pilot systems for the development and test of new HPC systems.
 - 2. Use for national missions, such as by MeteoSwiss in the area of meteorology and climatology.

¹ Decision of ETH-Board of 6./7 July 2011 on HPCN Strategy 2013-2016

3. Use for strategic large research projects of the ETH Domain.
 4. Use for HPC systems within the framework of scientific collaborations with Swiss universities and research institutes.
 5. Others.
- 4.2 The allocation of the available building infrastructure is based on a multi-annual plan prepared by CSCS on the basis of ETH Zurich planning decisions that is in alignment with the planning of the ETH-domain and the federal government.

5 Basic Services Provided Free of Charge

- 5.1 The free basic service provided by ETH Zurich/CSCS site for HPC systems and the provision of services in connection with the installation and operation of the systems includes:
- a. Space for installation of the HPC system in the machine room.
 - b. Connection to the general building infrastructure. ETH Zurich/CSCS can make reasonable use of an uninterrupted power supply for some systems at their discretion.
 - c. Access to the general ETH Zurich/CSCS internet network connection, as long as use of it is commensurate. A commensurate use is proportional to the amount of HPC resources of the partner compared to all. The network zone may be integrated into the internal network of ETH Zurich/CSCS where required and coordinated with ETH Zurich/CSCS.
- 5.2 Requirements of the partner exceeding this basic service shall be outlined in the CA and its costs covered by the partner. This specifically applies to the necessary computer-related infrastructural extensions and integration into the building automation system.

6 Basic Conditions for Operation of Dedicated HPC Systems and Provision of HPC Resources

- 6.1 The building infrastructure of ETH Zurich/CSCS is not designed for open access by third parties. All HPC systems are housed in the same room without barriers. Physical access to the HPC Systems by the partner is purely at the discretion of ETH Zurich/CSCS. Hardware suppliers may be allowed physical access to the HPC systems for installation, maintenance and dismantling purposes.
- 6.2 All HPC systems must be room neutral in terms of exhaust heat.
- 6.3 The premises do not provide any automated fire extinguishing systems. Instead, the building is provided with an early fire detection system.

- 6.4 Data coming from and to ETH Zurich/CSCS will be transferred through the SWITCH network. The partner will provide the necessary bandwidth between their internal network and SWITCH.
- 6.5 The partner has to address support requests via a ticketing system provided by ETH Zurich/CSCS. Support is available from Monday to Friday between 8:00 and 17:00 CET, except during the ETH Zurich Christmas break and public holidays in Ticino.
- 6.6 The partner is not allowed to:
 - a. Sell, resell, lease, or the functional equivalent, the HPC resources to a third party
 - b. Use the HPC resources to store any Partner's Data that is controlled for export under export control laws.

III. Procurement and Operation of Dedicated HPC Systems

7 Procurement

- 7.1 The HPC systems required by the partner shall be procured by ETH Zurich/CSCS in accordance with the ETH Zurich *Finanzreglement* and the applicable procurement regulations (BoeB/VoeB). The HPC system shall not be procured until the financing has been secured by the partner and the appropriated funds have been transferred to ETH Zurich/CSCS.
- 7.2 The HPC system shall remain in the ownership of ETH Zurich/CSCS and will be inventoried by ETH Zurich/CSCS.
- 7.3 In case the HPC system will not be installed physically at the CSCS datacenter in Lugano, Switzerland, the partner shall be notified beforehand.
- 7.4 The partner shall prepare the user requirements and performance parameters together with the corresponding assessment criteria. In any case, ETH Zurich/CSCS shall check these requirements for feasibility and impacts on the costs and operation and shall complete these requirements with further criteria from ETH Zurich/CSCS perspective.
- 7.5 The procurement decision shall be decided upon jointly by all applicable parties. ETH Zurich/CSCS reserves the right to invoice to the partner half of any legal costs arising from any later objection to the procurement decision.

8 Lifetime and Life Cycle Management

- 8.1 The parties shall agree on a so-called "life cycle management" in the CA that provides terms for upgrades, extension stages and end of service of the system. As a general rule:
 - a. The parties mutually define a maximum lifetime for the HPC systems. If the maximum lifetime is not defined, its default is 3 years.

- b. Maintenance contracts with suppliers shall provide support and a warranty during the lifetime.
 - c. The life cycle management shall always consider the aspects of operability (ease of operation, availability, sustainability, etc.).
- 8.2 The parties shall discuss the replacement of dedicated hardware resources and the related migration in an appropriate advance amount of time, but at the latest one year before the expiration of the agreed lifetime.
- 8.3 After expiration of the agreed lifetime ETH Zurich/CSCS may continue to operate the system as their sole discretion. In the even the partner owned the system, the partner agrees to transfer such ownership to ETH Zurich/CSCS and facilitate the transfer of existing support contracts, if any. The costs of such operation will be covered by ETH Zurich/CSCS.

9 Costs

- 9.1 The partner shall always bear all one-off costs arising for procurement, installation, and decommissioning of a dedicated system. These costs are defined in the CA, including but not limited to:
- a. purchase price of the new system (hardware, software)
 - b. non-recurring extensions and upgrades
 - c. non-recurring license fees
 - d. costs for the necessary computer-specific building extensions and the integration into the building automation system (including any planning costs)
 - e. non-recurring engineering costs
- 9.2 If ETH Zurich/CSCS does not decide to take ownership after the agreed lifetime, the partner will cover all dismantling and recycling costs.
- 9.3 ETH Zurich/CSCS shall invoice the partner one-off costs incurred by ETH Zurich/CSCS before the hardware is ordered.
- 9.4 The partner shall pay all costs arising for the operation of the system at the ETH Zurich/CSCS site. The relevant details shall be agreed in the CA, including but not limited to:
- a. electricity and cooling costs
 - b. recurring manpower costs
 - c. recurring licenses costs

IV. Provision of HPC Resources

10 Service Provisions and Life Cycle Management

- 10.1 The CA shall specify which HPC resources the partner shall have access to, together with corresponding conditions and tariffs. This information can also be variable (e.g. via a service catalog with fees).
- 10.2 ETH Zurich/CSCS procures in advance non-dedicated systems necessary to deliver the HPC resources, making a reasonable capacity planning to accommodate present and future needs of the partner. User lab capacity can be exchanged with partners as long as the exchange is cost-neutral in the long-term.
- 10.3 The non-dedicated systems needed to deliver the HPC resources may be physically located in a Swiss Federal Institute and not necessarily at the CSCS datacenter in Lugano.
- 10.4 Maintenance contracts between ETH Zurich/CSCS and suppliers ensure support and warranty during the lifetime of non-dedicated systems.
- 10.5 In case of changes to the underlying hardware, ETH Zurich/CSCS shall provide equivalent resources as replacement in order to provide services to the partner. If the conversion factor is not agreed beforehand with the partner, the tariff applied in the CA of the replaced resource shall be used as a basis for the tariff rate of the replacement resource.
- 10.6 If services required by partner cannot be delivered by ETH Zurich/CSCS due to the changes in the hardware or for other reasons of non-performance under the CA due to circumstances under the full control and responsibility of ETH Zurich/CSCS, partner may terminate the CA for good cause, according to Article 2.2. of this GTC.
- 10.7 The HPC resources are provided in a shared environment. The partner must ensure that its usage does not significantly degrade the service.
- 10.8 The partner receives a portion of a larger infrastructure that is subject to failures and maintenance, during which the partner may have limited or no access to all resources.

11 Costs

- 11.1 The partner shall bear all costs related to the provisioning of HPC resources. In order to ensure cost recovery, ETH Zurich/CSCS defines the tariffs for the HPC resources in the CA and communicates it to the partner. The payment terms shall also be stipulated in the CA
- 11.2 Costs covered in the tariff include, but are not limited to:
 - a. purchase price of the system, including upgrades
 - b. maintenance fees
 - c. costs for the necessary computer-specific building extensions and the integration into the building automation (including any planning costs)

- d. power and cooling costs
 - e. license costs
 - f. manpower costs
- 11.3 Pay-per-use HPC resources may be available at a higher tariff, since ETH Zurich/CSCS bears the cost of the HPC system availability and under-utilization.
- 11.4 In the case when tariffs are variable, changes in the tariffs are communicated to the partner at least 2 months in advance.
- 11.5 In the case that a big investment is needed, the CA can ask for some of the costs to be covered up-front to ensure that this cost is eventually recovered.
- 11.6 The partner is not entitled to any pro-rated refund in case of failures, maintenance, or if they do not make full use of the allocated HPC resources.

V. Consultancy and Expertise

12 Consultancy and Expertise

- 12.1 ETH Zurich/CSCS can provide consultancy and expertise to partners with a scope defined in the CA, which can be either recurring (e.g. operational costs) or non-recurring (e.g. projects or specific tasks).
- 12.2 The person(s) that will take on the work specified in the CA can change at any time, at a sole discretion of ETH Zurich/CSCS, as the actual work and the surrounding conditions pertaining to staffing can change at any given time.
- 12.3 The amount of effort estimated in the CA represents an average over the duration defined in the CA. It does not represent a constant value over time (e.g. a fixed time slot of a person) but is expected to fluctuate in peaks and valleys.
- 12.4 The partner shall pay ETH Zurich/CSCS the remuneration as stipulated in the CA, plus Swiss VAT, where applicable. The service can be offered based on (hourly) rates with or without cost ceiling and/or at a fixed price as set forth in the CA.
- 12.5 The IPR produced by ETH Zurich/CSCS staff is the property of ETH Zurich/CSCS.

VI. Final Provisions

13 Ownership

- 13.1 ETH Zurich/CSCS is the sole owner of the HPC resources and HPC systems. HPC resources and HPC systems are in the inventory of ETH Zurich,

regardless of any investments made by the partner.

- 13.2 ETH Zurich/CSCS will be the sole owner of ETH Zurich/CSCS' data, while the partner will be the sole owner of the partner's data.
- 13.3 Each party is constantly and continuously remainsthe owner of its respective intellectual properties. No IPR are licensed to the other party under the collaboration agreement.

14 IT Security

- 14.1 Parties will make reasonable efforts to prevent unauthorised use of the HPC resources, and to terminate any unauthorised use. Each party will promptly notify the other party of any unauthorised use of, or access to, the HPC resources of which it becomes aware.
- 14.2 Users must follow ETH Zurich/CSCS instructions and regulations, especially related to IT security and use policies.
- 14.3 If a user breaches the regulations, his/her user account will be temporarily suspended at the sole discretion of ETH Zurich/CSCS until such time as they are in compliance with the regulations. Multiple violations can result in account termination.
- 14.4 If there is an emergency security issue, ETH Zurich/CSCS may automatically suspend user accounts. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the emergency security issue. If ETH Zurich/CSCS suspends an end user account for any reason without prior notice to the partner, ETH Zurich/CSCS will provide the Partner at their request a reason for the suspension as soon as is reasonably possible. As soon as the emergency security issue has been resolved, ETH Zurich/CSCS will unlock the suspended user account.

15 Data Protection

- 15.1 Both parties shall adhere to the applicable data protection laws and regulations.
- 15.2 Partner's data will not contain sensitive personal data. If users need to store sensitive personal data on HPC resources, the Partner shall get ETH Zurich/CSCS's written approval and both parties shall in good faith implement necessary data protection security measures (special encryption, etc.).
- 15.3 Parties shall be responsible for ensuring that the data and other deliverables are not used for purposes other than the agreed in the CA and shall take appropriate data protection safety precautions.
- 15.4 The parties shall convey this obligation to their staff and shall arrange for appropriate safety precautions to prevent any misuse of data, information, and deliverables.

16 Warranties

- 16.1 ETH Zurich/CSCS shall provide the services to the partner with due care and in accordance with the recognized state of the art diligence.
- 16.2 ETH Zurich/CSCS does not warrant the correctness of any output (research results, deliverables, etc.) resulting from the use of HPC resources except in cases of wilful misconduct on part of ETH Zurich/CSCS.
- 16.3 Each party shall notify the other party of any defects within a reasonable period after discovery and the other party will fix minor defects within a reasonable time period. In case of a major defect, the parties will agree on a time period to remedy the major defect within the CA. If the major defect is not resolved within the agreed time period, the party is entitled to terminate the relevant CA with a notice period of 1 month as per the end of a calendar month.

17 Limitation of Liability

- 17.1 Each party assumes liability for personal damages and damages to property according to the applicable mandatory laws.
- 17.2 Neither party shall be liable, whether in contract, tort (including negligence or strict liability) or any other legal or equitable theory, for consequential damages, such as but not limited to: research interruption or lost revenue, profits or sales, loss of information and data, or for any special, incidental, or punitive damages.

18 Fee, Invoicing and Payment Terms

- 18.1 Fees and payment terms shall be set forth in the CA. By default, invoices are due to be paid within 30 calendar days from the date of invoice.
- 18.2 Scientific collaboration is exempted of VAT fees according to Article Art. 21 Ziffer 28 MWSTG.

19 Force Majeure

- 19.1 Neither party shall be liable to the other party for non-performance under the CA if the non-performance is due to circumstances outside the control of the parties (force majeure). The same shall be applied to the integrity of the system operated by ETH Zurich/CSCS on behalf of the partner.
- 19.2 Neither party shall be liable for damages resulting from the breach of all or part of the CA, if such breach results from an event of force majeure.
- 19.3 An event of force majeure shall mean any circumstance not within the reasonable control, directly or indirectly, of a party, but only if and to the extent that:
- a. such circumstance, despite the exercise of reasonable diligence, cannot be prevented, avoided, or removed by such party; and
 - b. such event prevents such party from performing its obligations; and
 - c. such party has taken all reasonable precautions, due care, and reasonable alternative measures in order to avoid the effect of such event on such

party's ability to perform its obligations under the collaboration agreement and to mitigate the consequences thereof; and

- d. such event is not the direct or indirect result of the failure of such party to perform any of its obligations under the collaboration agreement; and
- e. such party has given the other party prompt notice describing such event, the effect thereof and the reasonable actions being taken to mitigate the effect of such event.
- f. Events of force majeure may include, but not be limited to: acts of war, public disorders, embargo, riots, explosions, fires, earthquakes, tsunami, flood, cyclone, volcanic eruptions, acts of God, radioactive contamination or ionizing radiation, epidemic, power supply interruption, strikes, lockouts or other labor dispute by workers or employees (but excluding strikes, lockouts and other labor dispute of the employees of the party claiming force majeure which are not part of a wider industrial dispute materially affecting other employees within Switzerland).

20 Confidentiality

- 20.1 Both parties hereby acknowledge that by virtue of the CA, they may have direct or indirect access and acquire knowledge of confidential information of the other party.
- 20.2 Both parties undertake hereby to hold in confidence any and all confidential information and not to use, disclose, reproduce, or dispose of any confidential information in any manner other than that expressly provided for in the CA. Each party is entitled to disclose confidential information to retained third parties on a need-to-know basis.
- 20.3 The confidentiality obligation does not apply if disclosure is required by law (BGÖ). If the law requires such disclosure, the disclosing party shall notify the other party in advance and furnish to the other party a copy of the proposed disclosure.
- 20.4 The confidentiality obligation shall be valid for a period of 2 years beyond the termination date of the CA.

21 No Simple Society or Joint Venture

The relationship of the parties established by the CA shall not be construed to constitute a joint venture or a simple society according to Art. 530 OR.

22 Notices

All notices, consents, and approvals permitted or required to be given in connection with the collaboration and under the CA shall be deemed to be sufficiently and duly given if written and sent by courier or transmitted by e-mail or other form of recorded communication tested prior to transmission, to the addresses set in the of the CA.

23 Termination

23.1 The CA and its subcontracts shall be effective for a limited time.

23.2 The CA may be terminated before the subcontracts ends only for good cause (see Article 10.5) in writing by either party at any time given a notice of 90 (ninety) days. The service delivered until termination of the CA shall be compensated by the partner.

23.3 Upon termination of the CA:

- a. the rights granted by one party to the other will cease immediately.
- b. Each party will provide the other party access to, and the ability to export, its respective data for three months without any additional charges.
- c. After the three-month period, each party will delete the other party's data by removing pointers on their active and replication servers and overwriting it over time.

24 Applicable Law and Jurisdiction

24.1 The CA shall be construed and governed by laws of **Switzerland**, without reference to its conflict of laws provisions, and shall not be governed by the United Nations Convention on Contracts for International Sale of Goods (the Vienna Convention).

24.2 Following the issuance of a notice by any party raising any dispute, the parties shall use their best endeavours to resolve and settle amicably such dispute, through consultation of their respective senior executives.

24.3 Any dispute that cannot be settled amicably within 90 (ninety) days of the defending party's receipt of the claiming party's above-mentioned notice, shall be finally settled by mediation. Place of mediation shall be **Zurich, Switzerland**.