

General Terms and Conditions for renting computational resources on the computer system for high performance computing

These General Terms and Conditions (hereinafter also referred to as "GTC") govern the relations between the Client and the Provider (hereinafter also collectively referred to as the "Parties") in renting (providing) computational resources on a computer system for high performance computing, both on Anselm Cluster and Salomon Cluster (hereinafter also referred to as the "Cluster", see <https://docs.it4i.cz/anselm-cluster-documentation> for Anselm Cluster and <https://docs.it4i.cz/salomon> for Salomon Cluster). Provider means the VŠB – Technical University of Ostrava, with registered offices at 17. listopadu 15/2172, 708 33 Ostrava – Poruba, ID no.: 61989100. Client means any entity to which computational resources on the Cluster have been rented pursuant the contractual relationship.

I. ACCESS TO THE CLUSTER

1. The Client's access to the computer system will be implemented remotely through access servers. A user account will be created for the Client on the Cluster's access and compute servers (a non-privileged/non-administrator Linux account).
2. Computational resource allocation, and job execution and management are done through the PBS Professional workload manager system, hereinafter the "PBS System" or "PBS".
3. The detailed procedure for creating the settings for access to the Cluster, including the technical and other requirements for the Client, is available at <https://docs.it4i.cz/anselm-cluster-documentation>, resp. <https://docs.it4i.cz/salomon>. By starting to use the computational resources rented, the Client agrees that the Client has carefully read and understood these procedures at the above Internet link, agrees to any changes made by the Provider, if applicable, and agrees to continuously monitor these procedures for any updates. Any updates and changes to the above procedures are communicated to the Client through publication at the above Internet link, and the Client is therefore obliged to continuously monitor procedures that have been published at the above Internet link.
4. The settings of access to the Cluster for the purposes of renting computational resources will be created within three (3) working days from the effective date of conclusion of the contractual relationship for rent of computational resources, unless a different time period is agreed by the Parties. The creation of access to the Cluster within the time limit specified in this paragraph of these GTC is dependent on the Client providing any necessary cooperation.
5. By providing computational resources on the Cluster, no rights to the Cluster configurations, software or technical equipment are being transferred to the Client. This is without prejudice to the Client's copyright and proprietary rights to software and data stored in data storage devices.

II. METHODS OF RENTING, MEASURING AND PAYING FOR COMPUTATIONAL RESOURCES

1. The rental of computational resources will be provided by the Provider to the Client through one of the methods specified in paragraph 2 of this Article of the GTC, and the method of renting computational resources to the Client (including additional details) will be agreed in writing in advance. The unit of measurement for the use of the rental of computational resources is 1 corehour, which represents the allocation of 1 Cluster core for 1 hour; the allocation of 1 Anselm cluster node for 1 hour represents a computational resource use of 16 corehours, the allocation of 1 Salomon cluster node for 1 hour represents a computational resource use of 24 corehours. Only whole nodes will be allocated to the Client, nodes cannot be split.
2. Rental methods for the Cluster's computational resources:
 - A. Dynamic allocation with no pre-agreed quota:
 - i. The rental of computational resources through the Client's shared access to computational resources (time-share) with other active users of the Cluster.
 - ii. The use of the rental of computational resources will be measured to the Client for each corehour, i.e. as wall-time.
 - iii. The Client pays the Provider for the amount of corehours that have actually been allocated.
 - iv. The Provider does not guarantee to the Client the availability of computational resources, as these are – when this computational resource rental method is chosen – used by the Client and by other Cluster users simultaneously.
 - v. The Provider does not guarantee to the Client that the Client's request will be processed at any given speed.
 - B. Dynamic allocation arranged for a certain period with a pre-agreed quota
 - i. The rental of computational resources through the Client's shared access to computational resources (time-share) with other active users of the Cluster.
 - ii. The Client and the Provider will agree in advance the total number of corehours to be allocated to users within the project, hereinafter the "Quota". For the purposes of the GTC, allocation means specifying a fixed amount of computational resources for the Client, for which the Provider guarantees to the Client the use and availability of computational resources.
 - iii. The Client and the Provider will agree in advance the duration of the project, during which the Client needs to use up the Quota, hereinafter the "Project Duration".
 - iv. The use of the rental of computational resources will be measured to the Client for each corehour of the agreed Quota, i.e. as wall-time.
 - v. In the case of an even use of the rental of computational resources, the Provider guarantees to the Client the ability to use up the Quota within the Project Duration.
 - vi. In the case of an uneven use of the rental of computational resources, the Provider does not guarantee to the Client the ability to use up the Quota within the Project Duration – any unused Quota corehours are forfeited at the end of Project Duration, i.e. the Client is not entitled to any additional use of such corehours beyond the Project Duration.
 - vii. An even use of the rental of computational resources means a suitable distribution of the use of the Quota throughout the Project Duration that allows the Quota to be used up by the end of the Project Duration; it is especially necessary to start using the Quota in a timely manner, i.e. preferably as early as the first month of the

Project Duration, as recommended by the Provider. Any other way of using the rental of computational resources is an uneven use.

- C. Static allocation arranged for a certain period
- i. For an agreed period of time, hereinafter the "Reserved Period", the Provider guarantees to the Client the exclusive ability to use a pre-agreed number of compute nodes of a pre-agreed type (compute nodes without acceleration / compute nodes with GPU acceleration / compute nodes with MIC acceleration), hereinafter the "Reserved Quota".
 - ii. Reserved Quota corehours that could not have been used during the Reserved Period due to Cluster hardware failure can be used after the expiry of the agreed rental period.
 - iii. The Client is entitled to terminate the Reserved Period at any time, without giving any reason, by a notice sent to the Provider's contact person at the address: VŠB – Technical University of Ostrava, 17. listopadu 15/2172, postcode 708 33.

The use of the rental of computational resources means:

- a) in the case of Dynamic allocation with no pre-agreed quota and Dynamic allocation arranged for a certain period with a pre-agreed quota: the allocation of computational resources (cores) and the execution of a job by the Client through the PBS System according to the Client's request that has been entered into the PBS System, calculated as the run time of the Client's task multiplied by the number of cores allocated for the Client's task;
 - b) in the case of Static allocation arranged for a certain period: reserving computational resources (cores, nodes).
3. The Parties agree that the Cluster's computational resources that are used by the Client will be measured through a record in the PBS System. Detailed information on the measurement of corehour use is available at <http://docs.it4i.cz/>; the Client is obliged to carefully read and understand the detailed information on measurement at the above Internet link and agrees to continuously monitor these conditions for any updates. Updates and changes to the above procedures are communicated to the Client through publication at the above Internet link. By starting to use the computational resources rented, the Client agrees to any unilateral changes made to them by the Provider.
 4. The Parties agree that the computational resources that have been used by the Client in the rental of computational resources in the manner specified in Article II(2)(A) of these GTC will be charged to the Client by the Provider based on the corehours actually used.
 5. The Parties agree that the computational resources that have been used by the Client in the rental of computational resources in the manner specified in Article II(2)(B) of these GTC will be charged to the Client by the Provider for the number of corehours included in the Quota, namely:
 - a) computational resources amounting to 50% of the Quota will be charged to the Client regardless of whether the allocated corehours have actually been used by the Client during the Project Duration,
 - b) computational resources amounting to the remaining 50% of the Quota will be charged to the Client based on the number of corehours that have actually been used by the Client in excess of the 50% of the Quota pursuant to subparagraph a) of this paragraph of these GTC during the Project Duration.

Example: The Client and the Provider agree a Quota of 1000 corehours allocated to the Client. If the Client uses 700 corehours during the Project Duration, the Provider will charge the Client for 500 corehours + 200 corehours. If the Client uses 300 corehours during the Project Duration, the Provider will charge the Client for 500 corehours, and if the Client uses 0 corehours during the Project Duration, the Provider will charge the Client for 500 corehours. Therefore, the Client will always pay at least the fee for 50% of the Quota, i.e. 500 corehours.

6. The Parties agree that when computational resources are used in the manner specified in Article II(2)(C) of these GTC, the corehours that have been allocated will be charged to the Client by the Provider according to the formula: NUMBER OF NODES x TIME x NUMBER OF CORES included in the Reserved Quota.
7. In the rental of computational resources in the manner specified in Article II(2)(C) of these GTC, if the Client did not use up the entire Reserved Quota due to Cluster hardware failure that had not been caused by the Client, the Client is entitled to use the unused Reserved Quota corehours to that extent later, i.e. during a period to be agreed between the Parties. The Client is not entitled to any refund of the fee for Reserved Quota corehours or any financial compensation in the event that the Client fails to use the option to additionally use the unused Reserved Quota corehours in accordance with this paragraph of the GTC.
8. The Client acknowledges that each commenced minute will count towards the computational resources used.
9. The Client is able to monitor the amount of corehours used through the "it4ifree" programme.

III. GUARANTEED SERVICE LEVEL

1. In the rental of computational resources in the manner specified in Article II(2)(B) and (C) of these GTC, the Provider guarantees to the Client the possibility of using computational resources for renting computational resources 24 hours a day.
2. In the case of a failure (an outage of Cluster hardware), the failures reported by the Client will be addressed by the Provider within the following time limits that have been set depending on the severity of the failure:

CATEGORY OF FAILURE	DESCRIPTION OF FAILURE	TIME LIMIT FOR REMEDYING FAILURE
A	Total outage of the Cluster.	No later than two (2) business days of the notification of the failure.
B	Outage of one or more compute servers (nodes).	No later than six (6) business days of the notification of the failure.
C	Other failures that do not prevent the use of allocated hardware.	No later than ten (10) business days of the notification of the failure.

3. Remedying the problem within the time limit specified in paragraph 2 of this Article of these GTC may be extended, if this is justified by the nature and severity of the failure and the Provider is objectively unable to remedy the failure within the specified time limit. Such a time limit for remedying a failure does not count towards the period of the rental of computational resources, in the case of a failure the period of the rental of computational resources is extended by the duration of the time limit for remedying the failure.
4. The notification of a failure will be sent by the Client electronically at the following address: support@it4i.cz.

IV. PROVIDER'S USER SUPPORT, MAINTENANCE AND CONSULTING SERVICES

1. In the course of providing computational resources, the Provider will provide to the Client – according to the Client's requests – user support relating to the use of computational resources and the functioning of the connection to the Cluster on the Provider's side, which includes addressing the Client's relevant problems (i.e. through answering and responding to the Client's immediate requests), answering questions during the use of computational resources, and providing general assistance in the use of the Cluster's computational resources. The price of user support is included in the fee for provided computational resources. User support does not include, without limitation, the Client's problems with connection to the Cluster on the Client's side.
2. In the course of providing computational resources, the Provider will provide to the Client – according to the Client's requests – user support relating to the preparation of the Cluster's use by the Client including, without limitation:
 - a) installing standard programmes that are fully supported by the Cluster's operating system,
 - b) entering the Client into the system,
 - c) adjusting disk and memory quotas.
3. Requests for user support and maintenance services will be sent by the Client to the Provider electronically at the address support@it4i.cz.
4. In the course of providing computational resources, the Provider will provide to the Client – at the Client's request and for a fee – consulting services including expert consultations provided to the Client in order to achieve maximum efficiency in using allocated computational resources. The Parties agree that the price for consulting services will be specified pursuant to the contractual relationship between the Client and the Provider while the fee for consulting services will be charged to the Client for each commenced hour, and will be charged to the Client as part of the next (i.e. the nearest in time) invoice that will be issued by the Provider. Consulting services will be provided by the Provider's experts in areas including, without limitation, the following:
 - a) assessing the Client's software solution,
 - b) offering new methods of computation,
 - c) designing new numerical algorithms,
 - d) programming supercomputer programmes according to the Client's requirements,
 - e) installing programmes other than those specified in Article IV(1)(a) of these GTC.
5. In the event the Provider has no licence or other authorisation to use the software that has been selected by the Client on the Cluster, the Client is obliged to acquire such a licence at its own expense. In the event the Provider has a licence to use the software that has been selected by the Client on the Cluster, the Client will pay to the Provider a fee for using such software, which will be agreed by the Parties in writing.
6. Requests for consulting services will be sent by the Client to the Provider electronically at the address support@it4i.cz. Based on a request sent in the above manner, the Provider will communicate to the Client contact information for the order of consulting services, along with other details concerning the order of consulting services. The decision on whether the Client's request, by its nature, is a request for consulting services pursuant to paragraph 4 of this Article of the GTC or a request for user support relating to the use of computational resources and the functioning of the connection to the Cluster on the Provider's side pursuant to paragraph 2 of this Article of the GTC is up to the Provider. In the event that – according to the Provider's assessment – the Client's request for user support or maintenance services is, by its nature, a request for consulting services, the Provider will notify the Client of that fact and will communicate to the Client contact information for the order of consulting services, along with other details concerning the order of consulting services. For placing an order for consulting services, including its confirmation and modifications, the Parties accept the form of electronic communication, i.e. even without a guaranteed electronic signature.
7. User support, maintenance services and consulting services pursuant to this Article of the GTC will be provided by the Provider on working days from 8:00 am to 4:00 pm within time limits that will depend on the complexity of the requested maintenance service, consulting service or user support, and on the Provider's available capacity, unless otherwise agreed by the Parties.

V. PAYMENT TERMS

1. For the purposes of payment for the rental of computational resources, the Parties agree that the Provider is entitled to issue an invoice in accordance with the following conditions:
 - a) the Provider's fee according to option A under Article II(2) of these GTC will be invoiced monthly in arrears after the end of the relevant calendar month, in an amount equal to the fee to which the Provider is entitled for the calendar month for which the invoice is being issued;
 - b) the Provider's fee according to option B under Article II(2) of these GTC will be invoiced in case of ordering computational resources over the amount of CZK 300 000 including:
 - (i) in the extent pursuant to Article II(5)(a) of these GTC after the commencement of the Project Duration,
 - (ii) in the extent pursuant to Article II(5)(a) of these GTC after the commencement of the Project Duration,
 - c) the Provider's fee according to option C under Article II(2) of these GTC will be invoiced in case of ordering computational resources over the amount of CZK 300 000 including in the extent pursuant to Article II (6) of these GTC before the commencement of the use of reserved period.
2. In the case that the order of computational resources will be in the amount of CZK 300 000, the Provider's fee according to Article V(1)(a, b) of these GTC will be invoiced after termination the provision of computational resources.
3. The price for the provided computational resources will be paid on the basis of a tax document – an invoice issued by the Provider.
4. Value added tax will be accounted for in accordance with applicable provisions of Act No 235/2004 Sb., on value added tax, as amended.
5. The invoice must meet the requirements for a tax/accounting document pursuant to Act No 563/1991 Sb., on accounting, as amended, and Act No 235/2004 Sb., on value added tax, as amended.
6. The price is due and payable within 30 days of the delivery of the invoice to the Client. The Parties agree that the obligation to pay the price for the Performance is met on the day of crediting the relevant amount to the Provider's account.

VI. RIGHTS AND OBLIGATIONS OF THE CLIENT

1. The Client is obliged to comply with the obligations set out in the document entitled "Acceptable use policy of HPC resources at IT4Innovations" (hereinafter the "Acceptable Use Policy"). The Client declares that it has carefully read and understood this policy, which is written in the English language, prior to entering into the contract and agrees to comply with the policy. The Provider is entitled to change the Acceptable Use Policy unilaterally at any time, however, the Provider is obliged to notify the Client of any such change – it will suffice if the notification of the change is made electronically.
2. The Client acknowledges that access to the Cluster will be granted to each individual designated by the Client (and their access will then be maintained) on the condition that each such individual signs and complies with the Acceptable Use Policy. The Client also acknowledges that, in the event of a violation of the Acceptable Use Policy by any individual designated by the Client, which occurred based on the Client's instruction, is considered a violation of the Acceptable Use Policy by the Client itself with all the resulting consequences.
3. The Client is obliged to inform the Provider of all facts that are material in terms of using the computational resources pursuant to the contractual relationship between the Parties, especially those that might – in any way – affect the use of computational resources or the Client's actual access to the Cluster.

VII. RIGHTS AND OBLIGATIONS OF THE PROVIDER

1. The Provider has the right to suspend the provision of computational resources in the event that:
 - a) the Client has been in default in the payment of any of its financial obligations for more than 14 days, i.e. until all outstanding liabilities of the Client are properly paid,
 - b) the Client has seriously breached any of its obligations or has breached any of the obligations set out in the Acceptable Use Policy, i.e. until the situation has been remedied,
 - c) there is an urgent need to use the Cluster on the part of the Czech Republic, territorial self-governing units, government and local government bodies, i.e. until the urgent need ceases to exist.
2. In the event the provision of computational resources is suspended in accordance with this Article of the GTC, and if the computational resource rental method according to options B and C under Article II(2) of these GTC is used, the Client is not entitled to any compensation for computational resources that were not used within the Project Duration or the Reserved Period.
3. In the event the provision of computational resources is suspended in accordance with this Article of the GTC, the Client is not entitled to any compensation for damages caused by the suspension of the provision of computational resources, not even to the extent of loss of profit.

VIII. COOPERATION AND MUTUAL COMMUNICATION

1. The Client agrees to provide the Provider with cooperation in providing computational resources, to the necessary extent and at the Provider's request.
2. All notifications between the Parties must be made in writing and must be delivered to the other party either in person or by registered mail or other form of registered postal service, unless otherwise specified or agreed between the Parties. Unless communication pursuant to the preceding sentence affects the validity and effectiveness of the concluded contractual relationship for the provision of computational resources and/or unless written form is expressly required by the GTC, delivery via fax or e-mail is also permitted.
3. For the purposes of deliveries between the Parties, the provisions of Section 573 of the Civil Code on the presumed time of delivery will not apply. In the case of delivery via a postal service provider, an item is deemed delivered upon its receipt by the Party to whom the item is addressed and, if that Party was unavailable during the delivery, the day of delivery is deemed to be the day on which the item was deposited at the postal service provider.
4. In the event of a change in the mailing address or e-mail address of either Party, the Parties agree to inform the other Party within three working days.

IX. PROTECTION OF INFORMATION

1. The Parties are aware that in the course of performing their obligations:
 - they may, intentionally or by omission, provide each other with information that will be considered confidential (hereinafter "Confidential Information"),
 - their employees and persons in a similar position may gain access to the other party's confidential information due to a deliberate act or omission by the other party.
2. The Parties agree that neither of them will disclose to a third party any confidential information obtained from the other Party in performing the contract.
3. The following are not deemed to be third parties:
 - a) the parties' employees and persons in a similar position,
 - b) the parties' bodies and their members,
 - c) in relation to the Client's confidential information, the Provider's subcontractors,
 - d) in relation to the Provider's confidential information, the Client's external suppliers.assuming that they contribute to performing the contractual relationship or any performance associated therewith, confidential information is disclosed to them solely for that purpose and the disclosure of confidential information is only done to the extent necessary to fulfil its purpose and under the same conditions as those specified for the parties by the GTC or some other agreement between the Parties.
4. The Parties agree to meet in full the confidentiality obligation and the obligation to protect confidential information arising from the GTC or some other agreement between the Parties and also from the relevant legislation including, without limitation, Act No 101/2000 Sb., on personal data protection, as amended. In this connection, the Parties agree to inform any and all persons who will be contributing to the performance of the contractual relationship on their part about the above obligations of confidentiality and

- protection of confidential information and they also agree to ensure – in an appropriate manner – that all persons contributing to the performance of the contractual relationship comply with these obligations.
5. All confidential Information remains the sole property of the disclosing party, and the receiving party will make the same effort to protect it and maintain its confidentiality as if the confidential information were its own. Except to the extent that is necessary for performing the contractual relationship, both Parties agree to refrain from duplicating the other party's confidential information in any way, disclosing it to any third party or their own employees and agents, except for those who need to know it in order to perform the contractual relationship. In addition, both parties agree not to use the other party's confidential information in any way other than for the purpose of performing the contractual relationship.
 6. If confidential information is provided in written form or in the form of text files on electronic data storage media, the disclosing Party is obliged to warn the receiving Party about the confidentiality of such material by labelling it as confidential at least on the front page or the front side of the medium. However, the absence of such a warning does not negate the obligation to protect such disclosed information.
 7. Notwithstanding the above provisions, information is not considered confidential if it:
 - a) became publicly known and its disclosure did not violate the receiving Party's obligations or any legislation,
 - b) can be proven to have been legally available to the receiving party prior to entering into a contractual relationship, unless such information was the subject of another contract on the protection of information that had been entered into between the parties,
 - c) is, after the conclusion of the contractual relationship, provided to the receiving party by a third party that is not limited in handling such information,
 - d) is published on the profile of the Client as the contracting authority in a Public Contract in accordance with Section 147a of Act No 137/2006 Sb., on public contracts, as amended.
 8. The termination of the contractual relationship, for whatever reason, does not affect the provisions of this Article.
 9. The provisions of this Article do not apply to the disclosure of information and confidential information to entities authorised to carry out inspection under public law.

X. VALIDITY AND EFFECTIVENESS OF THE CONTRACT, WITHDRAWAL

1. The provider is entitled to terminate the provision of computational resources, if the Client in any way violates any of the obligations set out in the Acceptable Use Policy.
2. Upon the early termination of the provision of computational resources, the Client is obliged to pay to the Provider the fee for the rental of computational resources according to the relevant selected option under Article II(2) of the GTC, namely:
 - a) in the case of the fee according to option A under Article II(2) of the GTC, the fee for the computational resources that had been used by the Client by the date of the termination of the provision of computational resources,
 - b) in the case of the fee according to option B under Article II(2) of the GTC, the fee for computational resources amounting to 50% of the Quota (unless already paid by the Client prior to the end of the contractual relationship) plus the fee for the computational resources that had been actually used by the Client in excess of 50% of the Quota by the date of the termination of the provision of computational resources,
 - c) in the case of the fee according to option C under Article II(2) of the GTC, the fee of computational resources according to Article II(6) of these GTC.

The fee pursuant to this paragraph of the GTC will be invoiced to the Client as of the date of the termination of the provision of computational resources.

XI. COMMON AND FINAL PROVISIONS

1. The Parties expressly declare that they do not wish for any rights or obligations to be derived – beyond the express provisions of the contractual relationship between the Parties – from existing or future practices established between the Parties or any customary practices that are established generally or within the sector relating to the subject-matter of the contractual relationship, unless the Parties have expressly agreed otherwise. In addition to the above, the Parties confirm that, as at the date of the commencement of the provision of computational resources, they are not aware of any business custom or practice established between them.
2. Pursuant to the provisions of Section 1765 of the Civil Code, both Parties have assumed the risk of a change of circumstances.
3. The provision of Section 557 of the Civil Code, as amended, to the effect that if any expression used permits multiple interpretations, in case of doubt it will be interpreted to the detriment of the party who used the expression first, does not apply.
4. For the avoidance of doubt, it is hereby stated that the provisions on disproportionate shortening pursuant to Section 1793 of the Civil Code, as amended, and provisions on usury pursuant to Section 1796 of the Civil Code, as amended, do not apply to contractual relationships in the rental of computational resources on the Cluster.
5. The Parties' rights and obligations that are not regulated are governed by the laws of the Czech Republic including, without limitation, Act No 89/2012 Sb., the civil code, as amended.
6. Should any provision of the GTC prove to be invalid or unenforceable, or should it become invalid or unenforceable after the conclusion of the contractual relationship between the Provider and the Client, such a fact does not cause the remaining provisions of the GTC to become invalid or unenforceable, unless otherwise required by the enforcement provisions of legal regulations.
7. Any dispute between the Parties arising out of or in connection with the rental of computational resources on the Cluster will always primarily be resolved amicably by mutual agreement. If amicable settlement is not reached within a reasonable period of time, either of the Parties will be entitled to submit the matter in dispute to a court of local jurisdiction. In accordance with Section 89a of Act No 99/1963 Sb., the code of civil procedure, as amended, the Provider's general court is hereby declared to be the court of local jurisdiction to hear disputes arising from the rental of computational resources on the Cluster.

Ostrava, 14 September 2016

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