

SERVICES AGREEMENT

This Agreement, effective on **January 1, 2020** is

Between **COMPANY**, a corporation duly organized and existing under the laws of Belgium and having its registered office at **ADDRESS**, VAT number **VAT**, (hereinafter referred to as "COMPANY");

And Universiteit Gent (Ghent University), a public institution with legal personality duly organized and existing under the laws of Belgium and having its registered office at Sint-Pietersnieuwstraat 25, B-9000 Gent, VAT number BE 248.015.142, and duly represented by Prof. Rik Van de Walle, Vice-Chancellor, for whom signs and acts by delegation, pursuant the Board of Governors decision of July 3, 2015: Danny Schellemans, department of information and communication technology (hereinafter referred to as "UNIVERSITY");

Hereinafter collectively referred to as "the Parties" or individually referred to as "a Party";

Therefore, the Parties agree as follows:

ARTICLE 1 - SERVICES

UNIVERSITY agrees to deliver compute time in the period **START** – **END**, within its possibilities and to its reasonable efforts (a.o. according to Article 7.2.) on the compute clusters of the own Tier-2 high performance computer infrastructure (hereafter TIER2) within the Vlaams Supercomputer Centrum to COMPANY (hereafter the "Services").

A JOB is an instruction or computational task that the COMPANY submits on any of the TIER2 clusters. UNIVERSITY shall take any necessary action in order to have the JOB of the COMPANY done according to this Agreement between UNIVERSITY and COMPANY. COMPANY accepts that: (i) computational tasks are submitted in a queue, and the speed by which these tasks are processed depends on the requested resources, but also on the activity of other users on the clusters, (ii) the wall-clock time of a JOB cannot exceed 72 hours and will be automatically terminated by the scheduling software on TIER2 after this duration, (iii) to achieve longer run-times, a JOB needs to create a checkpoint, from which a restart can be issued as a new JOB on TIER2. UNIVERSITY can offer advice on setting up checkpointing for a JOB and/or on optimising jobscripts to facilitate restarts from a checkpoint. A JOB that has terminated but has demonstrably suffered from hardware, compiler or system setup issues under control of UNIVERSITY will not be charged. By no means this includes errors due to mistakes in input data and scripts, due to usage of incorrect theoretical frameworks or any other user-defined parameters under control of COMPANY. The latter remains the sole responsibility of COMPANY.

To access the Services an account will be created. COMPANY is responsible for all activities that occur under its account(s), regardless of whether the activities are undertaken by COMPANY, its employees or a third party (including its contractors or agents) and, except to the extent caused by a breach of this Agreement by the UNIVERSITY, the UNIVERSITY and its affiliates are not responsible for unauthorized access to the account of COMPANY. COMPANY will contact the UNIVERSITY immediately if it is believed that an unauthorized third party may be using COMPANY's account or if COMPANY's account information is lost or stolen.

COMPANY is responsible for taking the steps to back up the data which is stored and being generated on TIER2. UNIVERSITY will offer advise on the creation of backups but will not create any backups.

ARTICLE 2 - TIMING

COMPANY can start using the Services on **January 1, 2020** or on such other date as may be agreed in writing by the Parties ("commencement date"), and shall continue until **ENDDATE** ("termination date"). Upon termination of this period, this Agreement shall automatically terminate subject to the provision as set forth in Article 8.2. This Agreement cannot be renewed tacitly.

ARTICLE 3 - COMPENSATION

3.1. UNIVERSITY will provide COMPANY a report every **six** months of COMPANY's use of TIER2, on the basis of which the prices will be calculated.

COMPANY will compensate UNIVERSITY for use of TIER2 computing time at the following rates:

On cluster *golett* 0,40 € (/core /day)
On cluster *phanpy* 1,60 € (/core /day)
On cluster *swalot* 0,58 € (/core /day)
On cluster *skitty* 0,41 € (/core /day)
On cluster *victini* 0,37 € (/core /day)
On cluster *joltik* 2,52 € (/core /day) and 20,16 € (/GPU /day)
On cluster *kirlia* 1,00 € (/core /day)

Additional clusters may become available during the term of this Agreement. The rate for these new clusters shall be specified in an addendum to this Agreement.

Rounding will be done at the minute-level. Only consumed compute time will be charged.

For storage the COMPANY will be invoiced 10,00 € per TB per month.

Prices are overhead costs inclusive and exclusive of V.A.T.

3.2. Payment shall be made within thirty (30) days upon receipt by COMPANY of invoices that UNIVERSITY will send every **six** months.

3.3. Invoices submitted by UNIVERSITY shall bear the following reference *Usage supercomputer HPC UGent* and shall be addressed to: **ADDRESS**.

ARTICLE 4 - SOFTWARE LICENSES

COMPANY shall be solely responsible for obtaining and maintaining valid licenses or license files for specific scientific software that cannot be accessed freely or through an open-source license and that is specific to the

performance of the Services on TIER2. At request of UNIVERSITY, COMPANY shall provide UNIVERSITY with documents evidencing COMPANY's compliance with the foregoing.

ARTICLE 5 - OWNERSHIP OF RESULTS

5.1. Each Party shall retain undivided ownership in and to its background knowledge or infrastructure. Except as otherwise stated, this Agreement shall not grant or be construed as granting any rights by license or otherwise to the other Party.

5.2. COMPANY shall own any results or data obtained in the carrying out of the JOB on TIER2, unless the JOB is carried out within a joint research project between the Parties under a research agreement that supersedes this Agreement.

ARTICLE 6 - CONFIDENTIALITY

6.1 Information provided by COMPANY to the UNIVERSITY shall be deemed confidential. The UNIVERSITY shall treat such information as confidential.

6.2 The UNIVERSITY shall take all reasonable measures to guarantee such confidentiality of the information provided by COMPANY. It shall employ the same reasonable care and discretion with respect to the confidential information of the COMPANY that it employs with similar information of its own which it does not desire to disclose, publish or disseminate. The UNIVERSITY shall ensure that its directors, employees and other intermediaries are bound by and shall honour a similar duty of confidentiality.

ARTICLE 7 - LIABILITY

7.1 COMPANY agrees to indemnify and hold harmless UNIVERSITY, its officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the JOB to be carried out on TIER2, including but not limited to the use by COMPANY of the results obtained from such JOB provided.

7.2 UNIVERSITY shall be responsible for the availability of the TIER2 clusters and its operative performance, within its best efforts. The TIER2 clusters will be unavailable during a scheduled maintenance window, emergency maintenance or in case of power failure in the datacenter. JOBS that are submitted will be scheduled based upon a fair share model, which pursues equal distribution of TIER2 resources among all users; if all resources are occupied the JOB will reside in the queue. UNIVERSITY will offer a best effort support via the service desk hpc@ugent.be. Documentation and information is available via a website, for which the link will be provided to COMPANY.

7.3 Neither party shall be liable for any delay in performing or for failure to perform its obligations hereunder if the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control, including

any breach or non-performance of this Agreement by the other Party (hereinafter “event of force majeure”), provided the same arises without the fault or negligence of such party. If an event of force majeure occurs, the date(s) for performance of the obligation affected shall be postponed for as long as is made necessary by the event of force majeure, provided that if any event of force majeure continues for a period of or exceeding three (3) months, either party shall have the right to terminate this Agreement forthwith by written notice to the other party. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure.

ARTICLE 8 - TERMINATION

8.1 In the event that either Party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement may be terminated upon written notice at the option of the Party not in default upon expiration of the sixty (60) day period.

8.2 Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

ARTICLE 9 - GENERAL

9.1 For the purposes of this Agreement and with regard to the Services to be provided hereunder, UNIVERSITY shall be deemed to be an independent contractor and not COMPANY's agent or employee. UNIVERSITY shall have no authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on COMPANY except as provided for herein or authorized in writing by COMPANY. Without prejudice to the foregoing, UNIVERSITY shall, unless otherwise agreed, be able to name COMPANY as a user of its facilities in any reports or marketing materials that it generates.

9.2 All written communications, including any report, required or permitted under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by e-mail (with confirmation of receipt, in writing or by execution) or by ordinary mail (except for a formal notice (f.e. Article 8) which is to be sent by registered or first class mail) to the following addresses of either party:

If to UNIVERSITY:

Danny Schellemans
Universiteit Gent – HPC UGent – DICT
Krijgslaan 281 – S9
B-9000 Gent
Danny.Schellemans@UGent.be
Ewald.Pauwels@UGent.be

If to COMPANY :

XXX
XXX
XXX
XXX
XXX

9.3 This Agreement is personal in its character and cannot be assigned, sold, transferred or encumbered in any manner by any Party hereto without the express written consent of the other Party, any attempt to do so being void.

9.4 If any provision of this Agreement or part of any provision is found by any court or other authority of a competent jurisdiction to be illegal, invalid or unenforceable, that provision or part of a provision shall not affect the legality, validity or enforceability of any other provision of this Agreement. The provision that is found illegal, invalid or unenforceable shall apply with the minimum modification necessary agreed between the Parties to make it legal, valid and enforceable.

9.5 This Agreement can only be changed by a written document signed by all Parties.

9.6 This Agreement shall be governed by the laws of Belgium. Only the courts of the judicial district of East Flanders shall have jurisdiction.

IN WITNESS WHEREOF, the Parties have signed this Agreement in two original copies of which either Party receives a copy.

COMPANY

UNIVERSITY

SIGNATORY(IES) + FUNCTION

SIGNATORY(IES) + FUNCTION