Special Terms and Conditions: SLA (06/2024)

1   General, scope of application

1.1   These Special Terms and Conditions: Software (hereinafter: "STC SLA" or "STC") https://www.hpc-gridware.com/terms-conditions-sla apply in addition to the General Terms and Conditions https://www.hpc-gridware.com/terms-conditions/ and all contracts provided by HPC-Gridware in the area of the sale and/or provision of hardware.

1.2   HPC-Gridware is also entitled to amend these GTC within the existing contractual relationships with effect for the future, insofar as these amendments become necessary as a result of a subsequent disruption to the basis of the transaction and/or the equivalence relationship and/or a subsequent contractual loophole due to changed circumstances (e.g. due to the invalidity of provisions due to a change in legislation or case law) and are reasonable for the customer. The changes shall become effective if HPC-Gridware draws attention to the changes, the customer is able to take note of the changes and does not object to them within six weeks of receipt of the notification of change. If no objection is made within six weeks of receipt of the notification and the utilisation of the services and/or services is continued after expiry of the objection period, the changes shall be deemed to have been effectively agreed from the expiry of the deadline. In the event of an objection, the contract shall be continued under the previous conditions. In the event of an objection, however, both parties are entitled to terminate the contract with a notice period of two weeks. HPC-Gridware shall draw the customer's attention to the aforementioned deadlines and the legal consequences of their expiry in the event of failure to exercise the right of objection whenever changes are announced.

2   Subject matter of the contract

2.1   The subject matter is the provision of services by HPC-Gridware for the software products listed in the service description (hereinafter referred to as "Products"). The scope and service times are defined in the service description.

2.2   If no response times are specified in the service description, HPC-Gridware's response time is two working days.

2.3   If no rectification times are specified in the service description, HPC-Gridware's rectification time is seven working days for category 1 errors, 15 working days for category 2 errors, 30 working days for category 3 errors and 250 working days for category 4 errors after the above-mentioned response time has expired.

2.4   However, if no update times are specified in the service description for update services, the update time of HPC-Gridware shall be ten working days after the respective update has been announced by the respective manufacturer, subject to any agreed update management, which shall take precedence. Unless expressly agreed in the service description, upgrades are excluded from this agreement.

2.5   The parties agree that Saturdays, Sundays and/or public holidays, in particular at HPC-Gridware's registered office, are not working days.

2.6   HPC-Gridware is authorised to provide the services by means of remote maintenance or remote diagnosis.

3   Takeover/requirements

3.1   Products that have not been created and/or installed by HPC-Gridware will be checked and evaluated by HPC-Gridware beforehand and, if necessary, put into an executable state if this is required for the test (hereinafter: "acceptance test"). HPC-Gridware may make this acceptance test dependent on a separate payment.

3.2   If the software does not correspond to the current version, HPC-Gridware can make the update/upgrade to the current version dependent on a separate payment.

3.3   HPC-Gridware has neither the duty nor the obligation to check the software for proper licensing. Proper licensing of the software and all components is the sole responsibility of the customer.

3.4   A prerequisite for HPC-Gridware's services is that the customer operates the products under the accesses specified in the service description and in the specified software and hardware environment. If the specifications stated in the service description are changed, HPC-Gridware must be informed of these changes immediately.

3.5   In the event that HPC-Gridware is deprived of access to the products due to circumstances for which the customer is responsible, HPC-Gridware shall be entitled to suspend the services until such time as access has been restored. HPC-Gridware shall notify the customer of this immediately. Even during this period, the customer is obliged to continue to pay a fee.

3.6   The customer is responsible for changing the access data for the corresponding software after the end of the co-operation.

4   Troubleshooting

4.1   If fault rectification is agreed in the service description, the following fault classifications shall apply, unless otherwise specified in the service description.

4.1.1   Operation-preventing error (category 1, critical, very serious error): An error preventing operation is present if the use of the products is impossible or severely restricted, for example due to malfunctions, incorrect work results or response times (and this error cannot be circumvented with reasonable organisational aids).

4.1.2   Serious operationally disruptive error (category 2, high, serious error): A serious operation-impeding error exists if the use of the products is significantly restricted or if core functionalities fail for some of the products and cannot be circumvented by reasonable organisational or other economically reasonable means.

4.1.3   Moderately serious error that impedes operation (category 3, medium, moderately serious error): A moderately severe operation-impeding fault is present if the use of the products is impeded or restricted because individual functions can only be used to a limited extent.

4.1.4   Other error (category 4, low, minor error): A miscellaneous error is present if the use of the products is not directly and/or not significantly/substantially impaired, in particular in the case of unfavourably defined basic settings or missing cosmetic functions or settings.

4.2   Functionalities requested by the customer do not constitute an error.

4.3   In case of doubt, HPC-Gridware shall decide on the categorisation of an error at its own discretion, taking due account of the interests of the customer.

4.4   The type and manner of error correction shall be at the reasonable discretion of HPC-Gridware. If HPC-Gridware offers the Customer patches, bug fixes, a new software version or programme parts as well as spare parts, etc. to avoid or eliminate errors, the Customer must accept these (if and as soon as it is reasonable for him to do so) and install them in accordance with the installation instructions, unless this activity is already to be carried out directly by HPC-Gridware in the service description.

4.5   The rectification of an error may also take the form of instructions to the customer. The customer must follow such instructions unless this is unreasonable for him.

4.6   HPC-Gridware is entitled to provide an interim solution to circumvent the error (workaround) until the error is finally rectified, insofar as this is possible and reasonable for the customer with regard to the effects of the error.

5   Additional services

The following services are to be paid for additionally by the customer if they are not already included in the service description:

- On-site services at the customer's premises.

- Services performed by HPC-Gridware at the customer's request outside normal office hours (Monday to Friday, from 09:00 to 18:00).

- Services on the products that become necessary due to improper handling and/or breaches of duty by the customer or third parties, for example non-compliance with instructions for use.

- Instruction and training.

- Adaptation of the products to modified and/or new systems, devices, servers or operating systems of the customer.

- Elimination of malfunctions due to interference by third parties or malware, in particular computer viruses, worms or Trojans.

- Consultancy services for products that are not included in the service description.

- Services on products that serve to eliminate unusual malfunctions for which HPC-Gridware is not responsible, in particular due to catastrophes, natural disasters, fire, accidents, lack of care, misuse, vandalism, overvoltage, lightning, power failure, moisture and water damage.

- Adjustments to the products at the request of the customer and adjustments that become necessary due to legal, regulatory, official or statutory requirements.

- Services that exceed the scope of the service description or additional services not specified in the service description.

6 Supplementary warranty limitations

6.1 The liability for material defects and defects of title for the care and/or maintenance services provided and/or the products supplied shall lapse if the customer or third parties make changes to the products to be maintained or supplied which HPC-Gridware has not previously expressly agreed to in text form. This shall not apply if the customer proves that the fault is not attributable to the modifications and that these have not made it more difficult to identify and rectify the fault.

6.2 The liability for material defects and defects of title for the care and/or maintenance services provided and/or the products delivered shall lapse if the customer does not accept patches, bug fixes, updates or upgrades as well as spare parts provided, unless the customer proves that the error is not attributable to this. This shall only apply if the error in question would have been rectified by the non-installed patch, bugfix, update or upgrade as well as the spare part.

6.3 If services provided by HPC-Gridware are not covered by liability for material defects and/or defects of title and are also not covered by the service description, the customer shall bear the costs, including any travelling costs and expenses incurred, in accordance with the hourly and travelling cost rates of HPC-Gridware valid at the time the service is provided.

6.4 The limitations of liability and warranty set out in this section shall not apply if HPC-Gridware can be accused of wilful intent or gross negligence, nor in the event of personal injury attributable to HPC-Gridware or fraudulent intent. Liability under the Product Liability Act also remains unaffected by this.

7 Contract term, cancellation

7.1 The contract term is specified in the service description. The contract is automatically extended by a further year in each case if one of the parties does not terminate the contract in text form at least three months before the end of the contract term. In the event of cancellation by the customer, the customer shall bear the burden of proof of the cancellation and its proper and timely receipt by HPC-Gridware.

7.2 The contract may be terminated by ordinary or extraordinary cancellation. The list of extraordinary grounds for termination in these STC is exemplary and not exhaustive.

7.3 Good cause shall be deemed to exist in particular in any case in which either

- the customer does not fulfil his obligation to pay the remuneration despite a reminder;

- or the customer is in arrears with the payment of the agreed remuneration for two consecutive dates or the customer is in arrears with the payment of the remuneration in an amount corresponding to the remuneration for two months in a period extending over more than two dates;

- or HPC-Gridware is held liable by third parties for alleged infringements of rights in connection with the work for the customer;

- or the customer is in breach of material contractual obligations. Depending on the severity of the offence, a prior warning may be necessary or dispensable in individual cases.

7.4 The cancellation of additional services shall not affect the contractual relationship as a whole.

7.5 HPC-Gridware is authorised to irretrievably delete all of the customer's data three months after termination of the contract and, if applicable, after expiry of any statutory retention periods.

8 Backup

The customer is solely responsible for his data. HPC-Gridware is not obliged to ensure the backup of data unless this has been expressly agreed.

9 Duty to co-operate

9.1 The customer shall support HPC-Gridware in the fulfilment of the contractual services at his own expense and arrange everything necessary for this.

9.2 In the event of error messages in particular, the customer shall observe the symptoms that have occurred, the products and the system and hardware environment in detail and report an error to HPC-Gridware, providing information that is useful for troubleshooting, such as the number of users affected, a description of the system and hardware environment and any simultaneously loaded third-party software and any other documents.

9.3 In particular, the customer shall support HPC-Gridware (to the best of its ability) in the search for the cause of the error and (if necessary) instruct its employees to co-operate with HPC-Gridware or its representatives.

9.4 In particular, the customer shall grant HPC-Gridware access, in particular remote access, to the computers or servers on which the products to be maintained are installed, stored and/or loaded and shall provide HPC-Gridware with all information, in particular access data, required for this purpose.

10 Data protection

10.1 The customer is advised that the provision of services may result in order processing within the meaning of Art. 28 GDPR, for which the customer may have to conclude a separate written agreement with HPC-Gridware. Unless the customer issues instructions to the contrary, HPC-Gridware will execute the service orders in accordance with Art. 6 para. 1 sentence 1 lit. b) GDPR.