

GENERAL PROVISIONS

Definitions

As used herein, the following terms have the indicated meanings:

“SLURM” means the “Simple Linux Utility for Resource Management” software package, or program, which provides a job scheduling capability for computers.

“SchedMD” means SchedMD LLC

"Contract" means the contract, or agreement entered into with the Buyer that includes these GENERAL PROVISIONS.

"Buyer" means the party who entered into the Contract with SchedMD, as identified in the Contract.

Limitation of Remedies

SchedMD’s entire liability for damages for any cause whatsoever, and regardless of the form of action, shall be limited to (i) liability for bodily injury (including death), and damage to real property and tangible personal property; and (ii) the amount of any other actual loss or damage up to the amount paid by Buyer under this Agreement. In no event will SchedMD be liable for (i) third-party claims against Buyer; (ii) loss of or damage to Buyer's records or data; or (iii) any economic consequential damages (including lost profits or savings), or incidental damages, reliance damages, punitive damages or multiples of actual damages, even if SchedMD has been advised of the possibility of such damages.

Termination

If either party is in default of any material provision of this Contract, and such default is not corrected within thirty (30) days after receipt of written notice specifying the default, this Contract may be terminated by the party not in default. If the default is such that it reasonably cannot be cured within thirty (30) days, then the defaulting party must commence cure within thirty (30) days and proceed to cure with due diligence.

SchedMD may terminate this Contract if Buyer acts or fails to act in a way that is so serious as to warrant immediate termination. This includes unauthorized preparation of derivative works, unauthorized sublicensing of SLURM, failure to make payment for support and services, or violation of intellectual property rights.

With respect to any SchedMD Confidential Information, as defined below, the obligation of nondisclosure and use with respect to such SchedMD Confidential Information shall survive and remain in effect and binding on Buyer, and Buyer must use all reasonable efforts to return to SchedMD all materials that include any SchedMD Confidential Information. Buyer may destroy such SchedMD Confidential Information rather than return it with the permission of SchedMD. Buyer shall certify that all such materials have been so returned or destroyed.

All rights, obligations and duties that, by their nature, survive the expiration or termination of this Contract shall remain in effect binding the parties and their legal representatives, successors and assignees beyond any expiration or termination of this Contract.

Trademarks And Trade Names

This Contract shall not be deemed to give Buyer any right; either expressed or implied, to use SchedMD's trademarks or any of SchedMD's trade names without SchedMD's specific written consent.

Confidentiality

Source Code and any other items identified and marked by SchedMD as confidential information are deemed to be SchedMD Confidential Information. Buyer agrees that it shall treat such materials in a manner at least as protective as the manner in which Buyer treats its own confidential information. Buyer shall provide such Source Code or other SchedMD Confidential Information to its employees or subcontractors solely on a "need to know" basis, and Buyer shall provide SchedMD with a current list of those employees or subcontractors.

With respect to SchedMD Confidential Information, Buyer agrees, for an unlimited period after receipt of Source Code, and for a period of five years in the case of all other SchedMD Confidential Information, to use the same care and discretion to avoid disclosure, publication, and dissemination outside Buyer as Buyer employs with similar information of its own which Buyer does not desire to have published, disclosed or disseminated outside of the Buyer.

Disclosure of SchedMD Confidential Information will not be precluded if such disclosure is:

(A) In response to a valid order of a court or other governmental body of the United States, or any political subdivision thereof; provided however, that Buyer will first (i) have given notice of such order as soon as practical to the SchedMD, and render reasonable cooperation to enable SchedMD to contest the order and (ii) have made reasonable effort to obtain a protective order requiring that the SchedMD Confidential Information so disclosed be used only for the purpose for which the order was issued; or

(B) Otherwise required by law, provided Buyer first (i) has given notice to the SchedMD upon becoming aware of the requirement and (ii) notified the requiring party that the information to be disclosed is considered confidential.

Notwithstanding any other provisions of this Contract, the obligations specified in this section will not apply to any information that is:

- (a) Already in the possession of Buyer without obligation of confidence; or
- (b) Independently developed by Buyer; or
- (c) Becomes publicly available without breach of this Contract; or
- (d) Rightfully received by Buyer without obligation of confidence; or
- (e) Released for disclosure with the written consent of the SchedMD.

Assignment

Buyer shall not assign this Contract or any rights hereunder without the prior written consent of SchedMD.

Severability

If any term, provision, covenant, or condition of this Contract is held by a court to be invalid, void, or unenforceable, the rest of the Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Export Control

Each party will comply with all applicable laws and regulations at its expense including all export and import laws and regulations. Buyer will not provide SLURM, including documentation, to countries or individuals prohibited by law or regulation.

Changes

This Contract may be modified only by a written amendment referring to this Contract and signed by persons authorized to bind SchedMD and Buyer.

Force Majeure

Neither party shall be held to be in breach of this Contract by reason of any failure in the performance hereunder if such failure is due to causes beyond its reasonable control. To the extent failure to perform is caused by such an event, such party shall be excused from performance hereunder so long as such event continues to prevent such performance, except for Buyer's obligations to pay fees.

Disputes

(A) Any unresolved dispute with a value under \$100,000 relating to the Contract (whether contract, tort, or both) or the breach of the Contract shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Utah County, UT, having jurisdiction.

(B) Any dispute arbitrated under this Contract shall be subject to the following modifications to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA; (2) the location for all arbitration proceedings shall be in Utah County; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees, not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

(C) The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these GENERAL PROVISIONS entitled Governing Law and Venue.

(D) If suit or arbitration is brought to enforce the terms of this Contract or to seek damages relating thereto (whether settled or pursued to final judgment or award), or if an attorney is employed or expenses are incurred to compel performance of any party's obligations under this Contract, the losing party shall pay the prevailing party his or its costs and attorney fees. As used herein, the term "attorney fees" means the full costs of legal services performed in connection

with the matters involved, calculated on the basis of usual fees charged by attorneys performing those services, and not limited to "reasonable attorney fees" as defined in any statute or rule of court. This section shall survive the termination of this Contract.

(E) Neither party may bring an action, regardless of form, arising out of this Contract, more than two years after the cause of action arose, or, in the case of nonpayment, more than two years from the date the last payment was due.

Warranty

Because the program is licensed free of charge, there is no warranty for the program, to the extent permitted by applicable law. Except when otherwise stated in writing, the copyright holders and/or the Contractor provide the program and its modifications "as is" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The entire risk as to the quality and performance of the program is with the Buyer. Should the program prove defective, the Buyer assumes the cost of all necessary servicing, repair or correction.

In no event unless required by applicable law or agreed to in writing will any copyright holder, or any other party who may modify and/or redistribute the program as permitted above, be liable to the Buyer for damages, including any general, special, incidental or consequential damages arising out of the use or inability to use the program (including but not limited to loss of data or data being rendered inaccurate or losses sustained by the Buyer or third parties or a failure of the program to operate with any other programs), even if such holder or other party has been advised of the possibility of such damages.

Entire Agreement

This Contract consists of the Contract document, these GENERAL PROVISIONS, and any other referenced documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Order of Precedence

The parties shall resolve any inconsistencies in the terms and conditions comprising the Contract by giving precedence in the following order: (a) the Contract document; (b) these GENERAL PROVISIONS; (c) other referenced documents, exhibits, and attachments; and (d) statement of work.

Governing Law and Venue

The Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah. Any action at law or judicial proceeding instituted by either party pertaining to the Contract shall be instituted in the State of Utah in the 4th Judicial District.