

NOR-TECH

GENERAL TERMS AND CONDITIONS

1. **Terms and Conditions.** The services provided by Nor-Tech to Customer shall be subject to the terms and conditions of this Agreement, except as otherwise agreed to in writing signed by Nor-Tech and Customer. Nothing contained in any other document shall in any way modify or add terms or conditions.
2. **Agreement Not to Solicit.** During the term of this Agreement and for a period of one (1) year immediately following the period for which Nor-Tech last performed services for the Customer under this Agreement, Customer shall not, directly or indirectly, for itself or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, member, officer, director, sole proprietor, or otherwise, solicit, participate in or promote the solicitation of any employee of Nor-Tech to leave the employ of Nor-Tech, or hire or engage any employee of Nor-Tech. The parties hereby agree that in the event of a breach by Customer of the terms of the above restrictive covenant, damage would result. The amount of such damage, though, would be impossible to ascertain with reasonable certainty. Therefore, it is agreed that should Customer violate the above restrictive covenant, it shall be liable to Nor-Tech for a sum equal to one (1) year of salary, plus bonuses for such employee(s) of Nor-Tech solicited or hired by Customer or the total annual compensation Customer pays such employee(s), whichever is greater. This sum represents agreed-upon liquidated damages. In addition, should Customer violate the above restrictive covenant and refuse to pay the liquidated damages, Customer shall be liable for all costs, including reasonable attorneys fees, incurred by Nor-Tech as a result of having to enforce the provisions of this Agreement.
3. **Confidentiality.** Nor-Tech recognizes that while performing its duties hereunder, Nor-Tech and its employees may be granted access to certain proprietary and confidential information regarding Customer' business, customers, suppliers and employees. Nor-Tech agrees to keep such information confidential and the obligations of this paragraph will survive the termination of this Agreement. This paragraph does not apply to information (i) that was previously known or information that is available in the public domain; (ii) that was given to Nor-Tech by someone who is not obligated to maintain confidentiality; (iii) Nor-Tech has already discovered such information prior to the day this Agreement is signed. Within five (5) business days after the termination of this Agreement or at Customer's request, Nor-Tech shall return to Customer all copies of confidential information in tangible form.
4. **Term and Termination.** This Agreement shall commence on the date this Agreement is executed by both parties and shall continue for a period of five years. This Agreement may be extended by written agreement signed by both parties. Notwithstanding the foregoing, Nor-Tech may terminate this Agreement at any time if you fail to perform any of your material obligations and in such an event, Nor-Tech shall have no obligation to reimburse you. Any obligations of this Agreement which, by their nature extend beyond termination or expiration, shall remain in full force and effect until fulfilled.

5. **Warranty/Limitation of Liability.** Nor-Tech warrants that it will perform all services in a skillful, competent and workmanlike manner. Notwithstanding the foregoing, the services to be provided by Nor-Tech are based solely on the information and material supplied by Customer and within Customer's control. Accordingly, Nor-Tech does not warrant that the services it provides hereunder will produce any particular result or any solution to Customer's particular needs, or error-free operation without interrupted service. Any liability of Nor-Tech is expressly limited to the fees Customer has paid giving rise to the claim. **EXCEPT AS PROVIDED IN THIS SECTION, NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE SERVICES OR PRODUCTS ARE GRANTED AND NOR-TECH SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. NOR-TECH SHALL NOT BE LIABLE (I) FOR ANY CLAIMS, EXPENSES, DAMAGES OR LOSSES ARISING FROM OR IN CONNECTION WITH THE SERVICE PROVIDED HEREUNDER, OR (II) FOR ANY SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, INTERRUPTIONS ECONOMIC LOSS OR LOSS OF DATA, CLAIMS OF THIRD PARTIES AND INJURY TO PROPERTY WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE. THIS LIMITATION SHALL APPLY EVEN IF NOR-TECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
6. **Miscellaneous.** Invoices that are past due shall be subject to finance charges of 1 ½ % per month or the maximum permissible rate, whichever is lesser. If Customer's account is past due, Nor-Tech may, without notice, immediately cease providing any and all further services without any liability to Customer for interruption or pending work or any other claim. If Customer's account is referred to an attorney for collection, Customer shall pay all of Nor-Tech's expenses incurred in such collection efforts including, without limitation, court costs and reasonable attorney fees. Customer may not assign its rights and obligations under this Agreement without the prior written consent of Nor-Tech. Such consent shall not be unreasonably withheld. Subject to the foregoing restrictions, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement is intended to benefit Nor-Tech and Customer and no other parties. It is the express intent of Customer and Nor-Tech that this Agreement is not a third-party beneficiary contract. Any and all matters of dispute of any nature whatsoever arising out of, or in any way connected with this Agreement or the relationship between the parties hereto shall be subject to determination only by the courts of the State of Minnesota within the County of Dakota in accordance with the laws of the State of Minnesota.
7. **Charges for Labor Beyond Scope.** Circumstances may arise where Nor-Tech is asked to perform labor outside the usual scope of tasks related to resolving or fixing issues, under Nor-Tech's control, related to Nor-Tech's function of providing HPC Clusters, Workstations or other computing equipment, applications and utilities. Circumstances that are beyond the scope of Nor-Tech's responsibilities may result in extra charges incurred by the customer, which are billable by and payable to Nor-Tech. Examples of such circumstances are: A) Customer's employees delay Nor-Tech's access to equipment which is under investigation due to conflicts with customer's IT staff. B) Replacement equipment shipped to customer by Nor-Tech or other vendors is installed in the wrong customer equipment. C) Customer's Internet connection speeds are below 40Mb/s or latencies in excess of 100ms. D) Customer has altered the configuration of the system/cluster manager/scheduler software or altered the configuration of the network such as IP, Gateway or DNS settings. This includes external equipment such as corporate firewalls, routers and switches that have affected the communications of the system/cluster. E) Customer's power has failed and caused equipment damage or delays. F) Customer has installed updates to OS, applications, etc. that have affected the functionality of the system/cluster.
8. **Limitation on Actions.** No action, regardless of form, arising from or in connection with this Agreement shall be brought by one Party against the other party more than one year after the date of completing the services for which the cause of action arose.