

## APPLIANCE PURCHASE AGREEMENT

between

zzz\_test\_admin

("XYZ" or "Customer")

and

EXASOL Europa Vertriebs GmbH

("EXASOL")

Neumeyerstr. 22-26

90411 Nuremberg

Status	Entwurf
Contract No	00015197.1
Valid to	4/6/2016
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## 1 Preamble

1.1 EXASOL develops, markets and supports the EXASOL database, a high-performance relational database management system and associated tools and drivers ("Software"). Besides a pure software solution, EXASOL also offers its customers and partners a configured system („Appliance“) consisting of the Software installed on a server cluster including a preconfigured license server („Hardware“).

For the Appliance EXASOL uses hardware from the manufacturer Dell. Dell is one of the world's leading computer manufacturers. EXASOL is a Dell OEM partner and thus an authorized reseller of Dell hardware.

1.2 Contract partner description

1.3 Purpose of contract

## 2 Subject

2.1 Service description

2.2 Special Terms

2.3 XYZ will pay to EXASOL fees as agreed in the Annexes. All prices are exclusive of value added tax ("VAT").

## 3 Reference Customer

EXASOL is entitled to refer to Customer by name and display its logo for marketing and promotional purposes.

If EXASOL plans the publication of press releases, success stories, video-statements of the Customer, written quotes of the Customer or presentation slides about the Customer, the aforementioned advertising material will be coordinated with Customer before publication.

## 4 General Terms and Conditions

Unless expressly otherwise agreed between the parties, this Agreement shall be governed by

- EXASOL's General Contract Terms and Conditions (Annex 1); and
- Dell's service description of the selected support level (cf. Annex) which may be found at <http://www.dell.com/learn/uk/en/ukcorp1/service-contracts-support-services>, Service Contracts for Commercial Customers.

## 5 General Provision

5.1 Amendments and additions to this Agreement must be made in writing, including amendments to or a waiver of this written form requirement shall be made in writing.

5.2 In the event that one or more provisions of this Agreement should be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be deemed to be replaced with such legally permissible provision which comes as close as possible to the economic purpose of the invalid or unenforceable provision.

5.3 This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany without regard to the UN Convention on the International Sale of Goods (CISG). The courts of Nuremberg shall have exclusive jurisdiction over any dispute arising out of or in connection with this Agreement.

Date: \_\_\_\_\_ Date \_\_\_\_\_

zzz\_test\_admin

EXASOL Europa Vertriebs GmbH

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

## Annex 1. General Contract Terms and Conditions "Appliance" of EXASOL Europa Vertriebs GmbH

### 1 General Provisions

#### 1.1 Application of the Contractual Terms and Conditions

For the sale of the Appliance, for further agreed services and for pre-contractual obligations, these General Contract Terms and Conditions of EXASOL shall apply exclusively. Customer's general terms and conditions shall not apply, even if they are attached to requests for an offer, orders, declarations of acceptance, etc., and regardless of whether or not EXASOL expressly objects to them in any individual case. The services specified in these General Contract Terms and Conditions form only part of the Agreement if the provision of the respective services is explicitly agreed upon between the parties.

#### 1.2 Confidentiality and Data Protection

1.2.1 The Parties hereby agree to treat all information, including but not limited to software, documents, presentations, etc. as confidential, of which they became aware or received from the other party prior to the conclusion of or during the term of the contract which are protected by law, or which evidently contain business or company secrets or are marked as confidential, notwithstanding the expiration of the contract, unless such information is publicly known in the absence of a breach of this confidentiality obligation ("Confidential Information"). Parties hereby agree to store and secure all Confidential Information in a manner so as to prevent any misuse by third parties or the parties themselves.

1.2.2 The Parties will make Confidential Information available only to those employees (including employees of their affiliates) who require access to them in the performance of their job-related duties ("need to know"). The receiving party shall instruct these persons regarding the confidentiality of the objects and documents in question and have written agreements in place which ensure the observance of this confidentiality obligation. Access to third parties shall not be permitted except with the express written consent of the disclosing party.

1.2.3 EXASOL processes the necessary customer data relevant for business transactions with due consideration of the data protection regulations.

#### 1.3 Applicable Law, Place of Performance

The laws of the Federal Republic of Germany shall apply without regard to the Convention on the International Sale of Goods (CISG). The place of performance and legal venue for any dispute in connection with this contract is Nuremberg, Germany.

#### 1.4 Remuneration, Payment

1.4.1 Unless otherwise provided for in the Agreement or service description, payment obligations are due in full immediately after Customer's receipt of invoice. If Customer delays acceptance without cause, the purchase price, maintenance fee and service fees (e.g. for operations engineering services or consulting) are due and payable even though the Appliance/service was not provided. Unless otherwise agreed, the maintenance fee and service fees for operations engineering services are payable in advance at the beginning of the agreed service period.

1.4.2 Prices quoted by EXASOL are to be understood as exclusive of any relevant taxes or duties applicable at the time of shipping and/or delivery.

1.4.3 Only claims which are undisputed by EXASOL or have become final and legally binding may be offset by Customer. Except for claims in connection with § 354a HGB (German Commercial Code), Customer may not assign, delegate or otherwise transfer any of its rights or obligations under this contract without the prior written consent of EXASOL. Customer shall only have a right of retention or the right to claim non-performance of the contract within this contractual relationship.

#### 1.5 Obligation to Cooperate, Backups

- 1.5.1 Customer shall appoint – if necessary per service provided - a qualified and sufficiently authorized employee, who shall be available to EXASOL during execution of maintenance, operations engineering, consulting and training services and who is authorized to make necessary decisions and initiate measures.

With regard to maintenance and operations engineering services the following contact persons have to be designated:

- „MyEXASOL User Manager“ for the management of the access to customer-specific support-sites
- „Decision Maker“, who is/are entitled to place orders and book EXASOL's services, e.g. update to the current version, restore a backup, etc.
- „Incident Manager“, who shall inform EXASOL in case of an Incident (according to Sec. 4.4, in case Monitoring service was booked), and who is/are able to support EXASOL with the Incident processing according to Sec. 4.3.

- 1.5.2 Customer shall ensure that data backups are conducted in a manner and frequency which takes the value and relevance of the data for Customer's business into account. It is recommended to perform at least a full backup weekly and to save and protect such backups until the next backups are safely generated. It is also advisable to generate incremental daily backups. Backups can be stored in the Cluster itself, and should additionally be stored outside of the Cluster.

- 1.5.3 EXASOL regularly releases bugfix versions. Customer is obliged to update his installed Software timely.

## 1.6 Liability

- 1.6.1 EXASOL is only liable for compensation and reimbursement for expenses (including, without limitation, lost profits, lost expenses, etc.) irrespective of the legal basis (e.g. pre-contractual, contractual and similar obligations, product liability, violation of duty or tort) to the following extent:

- a) Liability based on intent or guarantees given by EXASOL shall be without limitation.
- b) In the event of gross negligence, EXASOL shall be liable for typical, and upon the conclusion of the contract foreseeable damage.
- c) In case of a breach of cardinal duties (such as default) that endangers the purpose of the contract and which does not constitute gross negligence, EXASOL shall be held liable only for such damage which is typical for this kind of business and was foreseeable upon the execution of this Agreement, but to the maximum amount of 50% of the purchase price per claim and 100% of the purchase price for all claims from and in connection with the contract overall.

- 1.6.2 EXASOL is entitled to claim contributory negligence of Customer. In particular, Customer has the responsibility for data protection and blocking of malware in accordance with the latest technical standards.

- 1.6.3 In case of injuries to life, body and health and for claims under the German Product Liability Act, the statutory provisions shall apply.

## 1.7 Amendments to the General Contract Terms and Conditions

- 1.7.1 Amendments to these General Contract Terms and Conditions will be notified in text form (in writing, no signature required, e.g. via e-mail) to the Customer not later than two months before the proposed effective date. If Customer does not object to the amendment to EXASOL until the proposed effective date, consent shall be deemed to be given. The revocation shall be addressed to EXASOL Europa Vertriebs GmbH, Neumeyerstraße 22-26, 90411 Nürnberg or via e-mail to [legal@exasol.com](mailto:legal@exasol.com). In case of a revocation, the existing General Contract Terms and Conditions without the proposed amendment continue to apply. In the notice informing about the amendment, EXASOL will particularly emphasize Customer's right to revocation and the respective time limit. EXASOL's right to amendments pursuant to this Section is limited to provisions about Operation Engineering Services, Service Levels (e.g. Response and Processing Times) and the maintained versions.

- 1.7.2 If EXASOL only introduces a new service or functionality or suggests an amendment, which does not affect Customer's rights and obligations, EXASOL is allowed to announce such an amendment with one month's notice. In such case a three-week revocation period applies.

## 1.8 Service times

EXASOL's service times are Mon-Fri 8AM-6PM (Europe/Berlin), except for German national public holidays. From Dec 24th until Dec 31st, the following times apply: Mon-Fri 9AM-12AM (Europe/Berlin).

## 1.9 Third Party Beneficiary Dell Products

Dell Products, an Irish company whose registered office is in 70 Sir John Rogerson's Quay, Dublin, Ireland, is a third party beneficiary of the Agreement between EXASOL and Customer.

## 2 Terms and Conditions for the Purchase of the Software System/Appliance

(Software and Hardware)

### 2.1 Definition of Appliance and Software

(see also the overview on our website: <https://www.exasol.com/support/browse/SOL-345>)

2.1.1 Customer receives a configured system („Appliance“) consisting of Software installed on a server cluster including a preconfigured license server („Hardware“) as defined in the service description in the Annex.

2.1.2 „Software“ means the software stack consisting of EXASuite and clients and drivers provided by EXASOL (e.g. ODBC, JDBC, ADO.NET)

„EXASuite“ consists of the EXASOL database software as well as a tuned operating system (EXACluster OS).

„Clients- and Drivers“ are the client EXAplus as well as drivers provided by EXASOL (e.g. ODBC, JDBC, ADO.NET).

### 2.2 Extent of Use for the Software

2.2.1 With payment of the purchase price Customer is granted a non-exclusive, non-transferable, non-sublicensable, and unlimited in time right to use EXASuite on the Hardware and to use EXASOL Clients and Drivers. This right of use is limited according to the parameters stated in the service description. Unless otherwise agreed in the Agreement or the service description, the license can be used for commercial purposes. If and in as far as Customer is granted a development license or a test license, then the commercial use of the Software is not permitted; the Software may then only be used for development and test purposes.

2.2.2 If Customer transfers the Software to a system (hardware or IT environment) – other than the one of the Appliance, Customer shall communicate on which system EXASuite is to be operated (including – if applicable - the respective serial numbers, instance types, size of the Cluster, RAM size, CPUs, hard disk and network configuration, including switch, cloud provider, and data processing centre). As soon as EXASuite is transferred to a system other than the one originally communicated to EXASOL, EXASOL is to be informed of the respective changed data. If EXASuite is to be transferred to a system that is located outside of the European Union, EXASOL reserves the right to object. The Customer is obliged not to install any other software on the license server than the one licensed by this Agreement.

2.2.3 The Software shall not be rented, subleased or otherwise distributed in tangible or intangible form. The use by and for third parties (e.g. by outsourcing or application service providing) without prior consent of EXASOL is not permitted.

2.2.4 Without consent of EXASOL, the Customer is not allowed to change, edit or copy the provided Software to an extent that is not in accordance with the designated use of Sec. 69 UrhG (German Copyright Act). A decompilation is only permitted in accordance with the provisions of Sec. 69e of the German Copyright Act (UrhG).

2.2.5 Certain Software components are subject to the GNU General Public License (short “GPL components”). These and comparable license terms are in each case listed in the EXASuite software part concerned (Software + Driver + Clients etc.). At Customer’s request, EXASOL will send such list in digital form to the Customer prior to the conclusion of the contract. If a test system is at Customer’s disposal before conclusion of the contract, the license terms can be viewed directly in the respective Software package (e.g. EXAoperation/EXAplus).

2.2.6 In case of a breach of the above-mentioned provisions as well as a breach of Sec. 2.3 by the Customer, insofar that the Software was given to a non-authorized third party, Customer shall pay EXASOL a contractual penalty in the amount of half the total amount the third party would have had to pay if the third party had licensed the Software directly from EXASOL according to the then-current price list but at least to the amount of half of the current contractual license fee. The right to claim further damages is reserved.

### 2.3 Transfer to a third party

2.3.1 The transfer of the Software shall only be permitted with EXASOL’s written consent. EXASOL grants approval if (i) Customer assures EXASOL in written form that Customer has transferred all original copies of the Software to the third party and that Customer has deleted all copies, if (ii) the third party agrees in written form to the terms and transfer conditions hereunder and, if (iii) there are no other reasons (e.g. protection against competition) which oppose the transfer.

2.3.2 Customer shall only be permitted to transfer the Software to a third party in whole, and not in part, and only by final waiver of Customer’s right to use the Software.

### 2.4 Delivery

- 2.4.1 The delivery of the Appliance will take place according to a separate agreement between the parties. As soon as EXASOL knows a possible delivery date from the hardware manufacturer, EXASOL will contact the Customer.
- 2.4.2 Unless otherwise provided for in the Agreement or service description, the Hardware/Appliance will be shipped at the expense of Customer. In addition, Customer bears the cost of any customs duties, taxes and other governmental charges. The risk will be transferred to the Customer as soon as Hardware/Appliance is handed over to the person in charge of its transportation.
- 2.4.3 EXASOL retains ownership of the Hardware/Appliance until full payment of the agreed purchase price.
- 2.4.4 The Software is only provided in machine code (binary license), not in source code.
- 2.4.5 The user documentation for the Software is available for download by Customer on the homepage of EXASOL in the German and English languages.

## 2.5 Material Software Defects

- 2.5.1 The Software's characteristics and functions are conclusively described in the user documentation and service description. The statements contained there are to be understood as specifications and not as a guarantee or warranty. A guarantee or warranty is only granted if it is clearly stated as such by written declaration by authorized representatives of EXASOL.
- 2.5.2 The Software is fit for the contractually stipulated use; in case of a missing agreement regarding the contractual use, the Software is suitable for standard use. It meets the criteria of software of this kind and has the quality that is customary for this kind of software; however it is agreed that it is not error-free. A functional impairment of the program resulting from hardware defects, environmental conditions, faulty operation or similar conditions shall not be deemed a defect. An insignificant reduction of quality shall not be considered a relevant defect.
- 2.5.3 Customer is obliged to immediately report defects and provide relevant information known to Customer that could help EXASOL to identify the cause of the defect in question. In the event of a defect, EXASOL may remedy the defect by delivery of software that is not defective, or by providing the possibility to work around the effects of the defect. In case of a defect, at least three remedy attempts shall be accepted. An equal value program version or the equivalent prior program version without the defect shall be accepted by Customer as remedy as far as reasonable. If a new version of the Software is provided in exchange for an older version, the older version shall be destroyed or upon request handed over to EXASOL.
- 2.5.4 Customer shall provide EXASOL with assistance in error analysis and the fixing of defects by describing the defect which occurred, delivering comprehensive information to EXASOL and granting time and opportunity to fix the defect. EXASOL can fix the defect at its choice remotely or at Customer's premises. EXASOL may also provide services via remote maintenance. Customer shall provide the necessary technical requirements at Customer's own expense and shall provide remote access to the Software upon prior notification and agreement.
- 2.5.5 If EXASOL does not successfully complete the remedy of defects within an appropriate time frame, Customer is entitled to set an adequate grace period (usually at least 2 weeks) with threat of final refusal. After expiration of the grace period, Customer may within 2 weeks demand an appropriate reduction of the paid license fee, or Customer may terminate the contract with regard to the Software concerned. In cases required by law (cf. Sec. 323 para. 2 BGB – German Civil Code) the setting of a deadline may be omitted. Claims for damage compensation or reimbursement for expenses shall be governed by Sec. 1.6.
- 2.5.6 For defects in third-party products (software) EXASOL will pass on to Customer, to the extent legally possible, those claims to which EXASOL itself is entitled against the third-party providers. EXASOL's liability for defects due to defective third-party products is limited to a reduction of the fee paid and respectively the rescission of the contract. Sec. 1.6 of these General Terms and Conditions remains unaffected thereby. The terms of use for delivered third-party software will be governed by the respective license terms of the licensor.
- 2.5.7 Warranty claims are possible within a maximum time period of one year after delivery. In case of intentional or grossly negligent breach of duty, fraudulent concealment of a defect, personal injuries, claims under the Product Liability Act as well as the assumption of a guarantee of quality the statutory provision about the limitation of claims shall apply; in case of a provision of a guarantee this shall only apply, unless otherwise provided in the aforementioned provision of the guarantee.

## 2.6 Software Defects of Title



2.6.1 EXASOL will indemnify Customer against third-party claims which may be brought against Customer in connection with the contractual use of the Software. Customer will immediately inform EXASOL of any planned legal proceedings and legal defence and give EXASOL the opportunity to initiate proceedings against the third party/parties.

2.6.2 Further, EXASOL will either provide Customer at its discretion with a license, deliver a suitable substitute or modify the Software so that third-party rights are not violated.

## 2.7 Material Hardware Defects

EXASOL assigns to Customer all claims and rights due to defects in the Hardware (§ 437 German Civil Code) as well as any additional warranty claims against the manufacturer who supplied the Hardware. So far as the Customer has claims against the manufacturer or a third party based on own rights (e.g. based on incorrect advice of the manufacturer), the Customer is obliged to primarily enforce these rights. Apart from that, Customer has no claims and rights against EXASOL due to defects in the Hardware, unless

- EXASOL has fraudulently concealed a defect,
- EXASOL, their legal representatives or agents have breached their duties either intentionally or through gross negligence,
- injury to life, body or health.

## 2.8 Initial Sizing – Performance Influencing Factors

Recommendations – if any - regarding initial sizing of the Appliance were made to EXASOL's best knowledge and based on the conditions and influencing performance factors at the moment the recommendation was made. However, the Software is a complex data base, whose performance values depend on various factors (e.g. hardware environment, other environmental conditions, data model and query structure, data volume, etc.). Every change of such a factor may affect the performance values, thus EXASOL cannot provide any guarantee for specific performance of the Software or Appliance, in particular if respective factors were subsequently changed. If Customer wishes advice and assistance regarding the performance related to current system conditions, EXASOL offers the data base administration (cf. Sec. 4.5) service or individual consulting (cf. Sec. 5).

## 3 Terms and Conditions on Maintenance

### 3.1 Maintenance

3.1.1 Beyond its liability for defects, EXASOL provides the following maintenance and support:

- Bugs fixing in the Software
- Repair of hardware errors according to Dell's service description for the selected support level which may be found at [www.dell.com/service\\_contracts](http://www.dell.com/service_contracts)
- Provision of a hotline for error reporting
- Personalized access to a customer-specific support website
- Access to current software versions

3.1.2 EXASOL provides only qualified employees (including employees of affiliated companies within the meaning of §§ 15ff AktG – German Stock Corporation Act) or authorized third parties – in particular employees of Dell – for maintenance and support who are familiar with the functionality of the Software. Maintenance is carried out at the discretion of EXASOL and in case of Software Errors usually by providing software which modifies and/or complements the Software specified in Sec. 2.1.

3.1.3 EXASOL provides maintenance services in accordance with the care customary in its business area and in accordance with the following provisions: bugs which occur in the Appliance are to be categorized by the error priorities mentioned in Sec. 3.2, and then handled according to the appropriate response and processing times (Sec. 3.3). EXASOL does not give a guarantee for the elimination of the error in general or within a certain time frame. Further, there is no obligation to guarantee a certain availability of the Appliance.

3.1.4 The scope of the contractual maintenance services for the Software is each major or minor version for two year starting from its introduction by EXASOL. This time period will be extended until the release of the second follow-up version. For the marking of the software versions the following system will be used: Major.Minor.Bugfix (e.g. 4.2.6: „4“ – refers to the major, „2“ – refers to the minor and „6“ refers to the bugfix version). For up-to-date information about the life cycle please visit this page on our website: <https://www.exasol.com/portal/display/DOWNLOAD/EXASolution+Life+Cycle>. Customer is not entitled to demand maintenance service for a version which is older than the aforementioned versions. If Customer requires such additional maintenance service for an older version a separate agreement with EXASOL is necessary.

3.1.5 If the Software is separated from the Appliance Hardware, Customer loses his rights and entitlements for maintenance and other services according to this Agreement.

## 3.2 Error Priorities

3.2.1 If Customer recognizes that the Appliance does not provide the functionality stipulated in the documentation or contract ("Error"), then Customer will inform EXASOL by either e-mail or the support portal and will describe the Error in a reproducible manner.

3.2.2 Reported Errors are differentiated according to the following priorities:

- Critical

Impairment of business critical processes, e.g. processes with high priority and a fixed time frame cannot be processed in due time. There is no possibility to avoid the Error; proper operation is generally not possible.

- Major

Impairment of important functions, e.g. processes with high priority can only be processed with extensive workaround solutions; work with the Software is significantly limited.

- Normal

Single functions of minor importance are not available or important functions are available by working around the problems; the Error affects only a function or module that the Customer does not need or use continuously and/or essentially. Furthermore, the system functionality is not affected or at least not substantially limited.

- Minor

An Error occurs, which does not have severe effects. Miscellaneous disturbances/ feature requests to the product with low priority.

3.2.3 The priority is initially determined by Customer. If Customer does not make any statements about the priority, the reported Error will receive the priority level "normal". The priority can change during the course of the correction work.

3.2.4 If the subject of an Error report is not an Error as defined in Sec. 3.2.1 and the processing of such requests has not been contractually agreed, then EXASOL may invoice the processing. If no Error exists, then the response-, processing and solution times defined below do not apply. Specifically, there is no Error as defined if the problem was caused by the unauthorized installation of software in the Cluster or by the operation of the Software in an uncertified environment.

## 3.3 Response, Processing and Solution Times

3.3.1 Depending on the classification of an Error, the following Response Times shall apply:

- Critical: within 4 hours
- Major: within 8 hours
- Normal: within 24 hours
- Minor: within 48 hours.

Within the Response Time, Customer will receive a confirmation about receipt of his Error report ("Simple Response"). The Response Time is calculated within the Maintenance Times as per Sec. 3.5 as the time difference between receipt of the Error report by EXASOL and the Simple Response from EXASOL by Customer.

3.3.2 If EXASOL has not received a qualified Error Report, Customer is obliged to provide additional information about the Error. If a VPN connection is available, EXASOL will independently retrieve additional information, i.e., log files, in order to start work on fixing the Error as fast as possible.

3.3.3 After receipt of the Error report and, if applicable, necessary additional information ("Qualified Error Report"), EXASOL will try to reproduce the Error ("Error Diagnosis"). If the problem is reproducible, EXASOL will inform Customer within the Processing Time, whether it is a bug in the Software contained in the Appliance or the Hardware and will provide an evaluation of the expected availability of a solution or bug fix ("Qualified Response"). If an Error exists, Customer will be regularly informed about the progress of the bug fix.

3.3.4 According to the Error priority, the following Processing Times for Software Errors shall apply, calculated as of the moment of receipt of the Qualified Error Report until sending a Qualified Response and within EXASOL's Maintenance Times:

- Critical: within 4 hours
- Major: within 8 hours
- Normal: within 24 hours
- Minor: for the next release

- 3.3.5 If necessary, EXASOL will coordinate next steps with the Customer and start the development of a solution (start of the „Solution Time“). To avoid down time or impairments of use, a temporary solution might be suggested (work-around). If Customer accepts the suggested solution (e.g. update to a current Software version, implementation of a specific command in the database), the error priority will be adjusted accordingly and the Solution Time ends. Customer may refuse a work-around only for good cause. Such good cause exists in particular, if a solution is not feasible or involves a disproportionate effort. The final bug-fix can be provided within one of the next releases.
- 3.3.6 If, during the course of the Error Diagnosis or development of a solution, measures are necessary which do not fall within EXASOL's responsibility - e.g. provision of important additional information for a Qualified Error Report (e.g. logfiles), hardware repair work of hardware not delivered from EXASOL or restoration of back-ups - and if EXASOL cannot proceed without such measures, then the time for the execution of those measures will not be included in the above defined Processing, Response and Solution times.
- 3.3.7 In case of errors in the Hardware contained in the Appliance, EXASOL will immediately commence and coordinate the maintenance work or replacement of defective parts in whole or in part by means of Dell's support organization. To remedy the disturbance as quickly as possible, the following measures, for example, may be carried out: troubleshooting by phone, on-site deployment of a service technician and/or on-site replacement of Hardware parts. The processing time shall be subject to the support level selected by Customer and the respective service description which may be found at [www.dell.com/service\\_contracts](http://www.dell.com/service_contracts).

#### 3.4 Implementation of Maintenance and Support Services for the Software

- 3.4.1 If, during the course of the Error Diagnosis or development of a solution, access to a system table is required, EXASOL will be entitled to login to the database by using a special database user, whose access privileges are limited to system tables. Thus, direct access to the data tables of the database is impossible.
- 3.4.2 Services are carried out taking into account provisions governing the protection of personal data. Particularly the copying of such data for analysis of an Error shall require the express approval of the Customer.
- 3.4.3 For the fulfilment of EXASOL's contractual duties, Customer grants to EXASOL the necessary access data for the Cluster. In case of correction work and other maintenance actions, this access data specifically includes user domains which are necessary for processing the request and which have the necessary privileges at the operating system and data base level. If Customer does not grant access to the affected system, Customer is responsible for the provision of necessary information for Error Diagnosis and development of a solution.

#### 3.5 Maintenance Times

Maintenance Times correspond to the Service Times according to Sec. 1.8. During Maintenance Times, Error reports can be provided via e-mail to [service@exasol.com](mailto:service@exasol.com), via the support hotline or through the EXASOL support portal. If not otherwise agreed upon, the above-stated Response, Processing and Solution Times (Sec. 3.3) apply only within the Maintenance Times.

#### 3.6 Duration, Termination

- 3.6.1 Unless otherwise provided in the Agreement of service description, the maintenance contract for the Appliance will be concluded for the fixed term of 36 months, starting from the date of provision of the Appliance and ending automatically after the expiry of the term. The maintenance contract for the switches will be concluded for the fixed term of 33 months, starting from the date of provision of the Appliance. If the manufacturer Dell offers a maintenance renewal after expiry of the term – if so, than probably once for a term of two years – parties can negotiate such a renewal. The termination in accordance with § 649 BGB (German Civil Code) is excluded.
- 3.6.2 The right of both parties to terminate for cause remains unaffected.
- 3.6.3 The termination shall require the written form in order to become effective.

## 4 Terms and Conditions regarding Operations Engineering

EXASOL offers a variety of operational services to ensure the smooth operation of the system.

Operational tasks include Installation Service, Operational Service, Incident Management, Monitoring and Database Administration. Operation Engineers usually do not require a privileged log-in to the databases, unless Database Administration Service is agreed. If a privileged login is required for conducting some tasks (e.g. a major update), the Customer will be informed beforehand.

Specific services, in particular services related to the management of nodes, cannot be provided for shared or virtual environments. Unless otherwise agreed, the operations engineering services are limited to the EXASuite-Cluster. For the provision and maintenance of a suitable infrastructure outside of the Cluster (e.g. for off-site data back-up, staging server, administration of clients) the Customer shall be responsible.

Unless otherwise explicitly agreed, the services will be provided remotely. Access to the Cluster via VPN is required.

### 4.1 Installation Service

Installation service typically starts with a comprehensive consultation regarding cluster configuration and integration of the Software in the specific target environment. After that, the Cluster will be prepared for the operation of EXASuite. In doing so, the following services are usually differentiated:

- Adding and installation of cluster nodes
- Creation of users in EXAoperation for administration and monitoring
- Setup of database instances
- Network setup of cluster nodes
- Integration of nodes in the cluster setup of backup scheduler
- Handover of login data for the database instances

The installation will be completed by the handover of the login-data and an introduction to the most important functionalities of EXAoperation.

### 4.2 Operational Service

4.2.1 Scope: This service basically includes scheduled maintenance tasks (not error correction work according to Sec. 3 above), in particular the following services:

- Update service for major and minor versions
- Node Management
  - Adding and installation of nodes
  - Adding and removal of spare nodes to a data base instance
- Cluster upgrade
- Database instance management
  - Creation / removal of database instances
  - Starting / stopping of database instances
  - Setup of a system-internal backup of the data base instances
  - Support for the setup of an external backup of the data base instances
- Database restoration upon request
- Monthly system usage reporting (available on the support-portal)

It is assumed that Customer reserves enough storage space in the Cluster or on the external storage media for the backup.

Reports about system usage require access to the statistics system tables in EXASuite.

4.2.2 Request for services: Customer must make an appointment with EXASOL in order to schedule when the Operational Services will be provided and coordinate the scope of the services. The appointment must be made at least three days before the planned service actions.

4.2.3 Operational Service Times: Operational Service Times correspond to the Service Times according to Sec. 1.8. If Operational Service "24/7" is agreed then the Operational Service Times are nonstop. If no Operational Service package is booked or if the services are to be performed outside of the Operational Service Times, the above-mentioned services can be ordered individually.

### 4.3 Incident Management

Within the scope of Incident Management, if an "Incident" occurs within the agreed Incident Management hours, EXASOL will initiate all necessary actions to restore the standard operation of the EXASuite Cluster as quickly as possible.

4.3.1 An "Incident" is an occurrence which poses a deviation from the standard operation of the EXASuite Cluster and which causes an interruption/disturbance of the operation, e.g. a database instance does not accept connections; the backup cannot be generated or one or more hardware components are defective, etc.

4.3.2 Incident Priorities, Response Time and Processing: Incidents are differentiated according to the priorities defined in Sec. 3.2.2 above. According to the Incident priority, the following Incident Response Times shall apply:

- Critical: within 1 hour
- Major: within 2 hours
- Normal: within 4 hours
- Minor: within 8 hours

Within the Incident Response Time, Customer will receive a simple response. The response time is calculated within the Incident Management Times as per Sec. 4.3.3 as the time difference between Customer's incident report and the simple response from EXASOL to Customer. If EXASOL has all necessary information about the Incident and a VPN-connection to the system exists, EXASOL immediately begins with the tasks to remedy the disturbance; otherwise the tasks cannot start before the provision of access to the system or the provision of necessary additional information about the Incident (qualified error report).

If the reason for the interruption/disturbance is an Error in the Software according to Sec. 3.2.1, EXASOL provides a Qualified Error Report during the course of Incident Management; however, error correction is not a subject of Incident Management but of maintenance service and warranty agreement. The preparation of the Qualified Error Report requires under certain circumstances the assistance of the Customer (e.g. provision of client-logs, provision of the session-ID).

If tasks to remedy the disturbance do not fall within EXASOL's responsibility, the processing of an incident will be completed by a recommendation of action (e.g. provision of enough storage space for the backups, repair of hardware, execution of SQL-commands in the data base in the context of a workaround, etc.). If the interruptions/disturbances are due to an incorrect use of the Software or the use of an unsuitable infrastructure (e.g. Customer has not reserved enough storage space in the Cluster for backups, an accepted solution was not implemented), EXASOL reserves the right to invoice the Customer for the additional work.

4.3.3 Incident Management Times: Incident Management Times correspond to the Service Times according to Sec. 1.8. If Incident Management Service "24/7" is agreed then the Incident Management Times are nonstop. If no Incident Management is booked or if the Customer wants Incident Management service be performed outside of the Incident Management Times, the Incident processing or the on-call service will be invoiced. EXASOL reserves the right to invoice a monthly lump sum compensation for months during which Incident processing has taken place.

4.3.4 Incident Report: Customer reports Incidents through the EXASOL support portal or via e-mail to [service@exasol.com](mailto:service@exasol.com). Outside the Service Times according to Sec. 1.8 the report must be additionally provided through the hotline. If the provision of Monitoring Service is additionally agreed (Sec. 4.4) and if EXASOL therefore receives an automated "Incident Notification", EXASOL will begin processing the Incident within the Incident Management Times.

## 4.4 Monitoring

4.4.1 EXASOL installs a software-based health-monitoring with an automated Incident report system in the EXASuite Cluster, which includes a multistage escalation strategy. The extent of the monitoring is oriented toward typical error sources in the EXASuite Cluster.

4.4.2 The booking of the Monitoring Service always requires the booking of the Incident Management Services as well.

4.4.3 If recurring disturbances occur due to an incorrect use of the Software or the use of an unsuitable infrastructure (cf. Sec. 4.3.2), EXASOL reserves the right (i) to turn off the respective Incident reports until the causes for the disturbance have been eliminated and (ii) not to forward them as a disturbance or Incident to Incident Management.

4.4.4 Monitoring Times are nonstop. Incident processing is carried out in the context of the agreed Incident Management.

## 4.5 Database Administration

4.5.1 Within the scope of Database Administration EXASOL monitors performance trends in the data base and reports them to the Customer on a regular basis (e.g. monthly). In addition, EXASOL analyses performance issues in the Cluster, which are not recognized as errors according to Sec. 3.2.1, and provides the Customer with suggestions for improvement. Such effort is limited to one man-day per month. EXASOL may undertake additional effort within the scope of the consulting portfolio.

4.5.2 EXASOL requires access to the system tables in the data base through a special data base user. This user only has access to the system tables and statistic system tables. Thus, a direct access to the data tables of the data base is excluded.

4.5.3 Database Administration Times correspond to the Service Times according to Sec. 1.8.

#### 4.6 Minimum Term, Termination

4.6.1 The operation engineering contract term is specified in the service description or Agreement. Unless otherwise agreed, the term starts with the delivery of EXASuite.

4.6.2 If the operation engineering contract is concluded for an indefinite period, it can be terminated - however not before the end of a minimum term agreed between the parties - by giving written notice within three months to the end of a month.

4.6.3 The right of both parties to terminate for cause remains unaffected.

4.6.4 Any termination notice must be in writing in order to be effective.

### 5 Terms and Conditions for Consulting Services

#### 5.1 Scope of Services

5.1.1 Within the scope of consulting services, EXASOL provides advice and support to the Customer according to the subject and extent described in the service description.

5.1.2 If nothing stating otherwise was explicitly agreed upon, EXASOL is not required to provide a certain result within the scope of consulting and does not have any obligation concerning the achievement of any objectives, which the Customer may be pursuing.

5.1.3 If the local presence at Customer's premises is not required to provide the Consulting Service, the Service can be provided remotely.

5.1.4 EXASOL is entitled to utilize employees of affiliated companies pursuant to §§ 15ff. AktG (German Stock Corporation Act) for the purposes of fulfilling the contract. If the service is provided by any other third party as subcontractor, Customer will be notified in advance.

#### 5.2 Time of Service

5.2.1 The Customer must make an appointment with EXASOL in order to schedule when the consulting services will be provided. The appointment must be made at least four weeks before the planned service actions. Any changes to the appointment must also be communicated before the previously agreed-upon appointment. If no appointment has been agreed upon, there exists no claim for the provision of the services.

5.2.2 If the Customer does not claim the services at the agreed-upon appointment, the claim for execution of the consulting services expires. In this case, 80% of the agreed-upon price will be charged.

#### 5.3 Payment Terms

5.3.1 Unless expressly agreed otherwise, prices quoted by EXASOL are to be understood plus VAT and any travel costs and expenses incurred.

5.3.2 One man-day consists of 8 hours on average. Man-days which were provided to a lesser or higher extent of 8 hours, will be invoiced proportionately per hours or minutes.

5.3.3 Unless expressly agreed otherwise, the information provided in the service description about the time required, represents a non-binding time estimate only. Fees will be invoiced according to actual man-days and consulting hours provided at the rates specified in the service description. If EXASOL notices during the provision of services that the time estimated in the service description will be presumably exceeded, Customer will be informed. Customer shall then decide without delay on further proceedings and inform EXASOL in written form.

5.3.4 If it was agreed that payment is due after service provision, EXASOL is entitled to invoice parts of the services after 2 or more man-days have been completed.

#### 5.4 Obligations to Cooperate

The Customer will make all necessary information, documentation and data – as appropriate, in written form – available to EXASOL. If required, EXASOL shall be given access to the business and operating premises of the Customer.

## 5.5 Work Results

- 5.5.1 If nothing was otherwise agreed upon, the Customer receives a simple, non-exclusive, non-transferable right to use work results.
- 5.5.2 Subject to agreements to the contrary, the Customer is not entitled to use the work results for non-internal use or – as far as that is not part of the intended use – make them available to third parties.

## 5.6 Storage and Return of Documentation

EXASOL will properly store all documentation provided in the framework of consulting services and will especially make sure that third parties cannot gain access to it. The provided documentation is to be returned at any time on the Customer's demand.

## 6 Conditions of Contract for the Provision of Training

EXASOL provides courses and training („training“) according to the provisions below.

### 6.1 Training Content and Conditions

- 6.1.1 Information on subject, content, duration and price of standard training and training packages as well as certifications are available at: <http://www.exasol.com/services/trainings.html> and are respectively defined in the Agreement or its Annexes.
- 6.1.2 If, in deviation from the standard training offer, customer-specific or special topics shall be covered, the parties shall agree separately, in advance and in written form, on content, duration, number of participants and prices. The specification of the individual training program must be completed at least two weeks before the training.

### 6.2 Training Package

- 6.2.1 If a training package was ordered, Customer is entitled to send a defined number of persons (as stated in the service description) during a defined service period (as stated in the service description) to either specific training modules (as stated in the Agreement or service description) or any training modules offered by EXASOL during the service period (flat rate). Dates for the individual training modules are announced on EXASOL's website. The training participants have to be identified by name at the beginning of the service period. A replacement of one of the aforementioned named participants is only possible if the replaced participant has not yet attended a training module.
- 6.2.2 The service period is stated in the service description. If during the service period less than three training courses take place for a training module which forms part of the ordered training package, the service period shall automatically extend to the date when the third training course of the respective training module takes place. Unless otherwise explicitly agreed, the service period starts from the signature of the Agreement. If the training contract is concluded for an indefinite period, it can be terminated - however not before the end of a minimum term agreed between the parties - with three months' notice to the end of the month.

### 6.3 Location and Time of Training

- 6.3.1 Training is typically conducted in EXASOL's training rooms. EXASOL reserves the right to change the location, as far as is reasonable for the participants.
- 6.3.2 In case of special agreements, in-house training can be conducted at Customer's premises. In this case Customer shall provide suitable rooms and facilities, in particular a separate room with a projection surface for a projector. If a projector is not available, EXASOL must be informed in advance. The costs for travelling, overnight stays and other expenses of the course instructor(s) will be invoiced separately, according to the actually incurred expenses as evidenced by respective records and receipts.
- 6.3.3 The training durations are a maximum of 8 hours per day. Unless otherwise agreed the courses start at 9 AM and end at 5 PM. Lunch breaks will be held as agreed.

### 6.4 Registration Fee

- 6.4.1 The amount of the registration fee can be found in the price list or will be separately stipulated in writing. Stated prices are non-binding until EXASOL confirms them. The registration fee is to be understood as per participant.

6.4.2 The registration fee includes course papers, certification fee, a certification document from EXASOL (if the course is duly passed) and provisions during the coffee breaks. All other costs incurred by the participant in connection with the training, e.g. board and lodging, must be paid by the participants.

## 6.5 Registration

6.5.1 Registrations for training are to be made in writing, by e-mail, telefax or via the Internet to EXASOL at the following address:

EXASOL Europa Vertriebs GmbH, Neumeyerstraße 22-26, D-90411 Nürnberg

E-mail: [training@exasol.com](mailto:training@exasol.com)

Telefax: +49 (0) 911 23991-241

6.5.2 The registration for training must be made at least 3 weeks before the start of the training. The registrations must be confirmed by EXASOL. The registration confirmation by EXASOL is subject to a minimum number of 3 participants. Registrations will be processed in the order they are received. The requirement for successful participation in the training is the previous knowledge described in the training description.

## 6.6 Cancellation and Rebooking

6.6.1 In case of a cancellation or rebooking of a course, EXASOL must be informed in writing. If a course participant is prevented from attending the training, a substitute person can attend instead. The full registration fee will be charged, even if the participant does not attend the entire course. In case of a cancellation or rebooking by the Customer, the following shall apply:

- until 21 calendar days before the start of the course, no fees will be charged.

- until 14 calendar days before the start of the training a fee in the amount of 50 % of the total registrations fees will be charged.

- less than 14 calendar days before the start of the course, the total amount of the registration fees will be charged.

Credit for a course will not be given.

6.6.2 EXASOL reserves the right to cancel a course under reasonable conditions, if the minimum number of 3 participants is not reached or if organizational or technical issues arise. This is in particular the case if the instructor is unable to attend for any reason or in any cases of force majeure. EXASOL will inform Customer about any cancellation. If a postponement of the appointment is not possible, EXASOL will refund the already paid registration fees. Further claims are excluded, unless they are based on intended or grossly negligent conduct on the part of EXASOL or its agents. EXASOL can appoint a replacement instructor, modify and enhance the content of the training and, with timely prior notice, postpone the training date and change the training location.

## 6.7 Liability

EXASOL shall not be held liable for the loss or damage of items which are brought to courses, unless the loss or damage is the result of intentional or grossly negligent conduct on the part of EXASOL or its agents. In the training breaks, valuables or important documents are not to be left in the training rooms. House rules must be respected. The provisions in Sec. 1.6 shall apply.

## 6.8 Property Rights

Training documentation and presentations by EXASOL are copyright protected. Audio and video recordings during the training by Customer or a participant are prohibited without express written consent by authorized EXASOL representatives. The training documents that are handed out by EXASOL become the property of the participant; however, they shall neither be copied, nor processed or distributed without the written consent of EXASOL. EXASOL reserves all rights.

## 6.9 Data Protection

EXASOL is entitled to save and process a participant's data for the sole purpose of fulfilling the contract and caring for the customer relationship in compliance with the German Federal Data Protection Act (BDSG).

Stand 10/10/2016