

## HARDWARE PURCHASE AGREEMENT

between

zzz\_test\_admin

("XYZ" or "Customer")

and

EXASOL AG

("EXASOL")

Neumeyerstr. 22-26

90411 Nuremberg

Status	Entwurf
Contract No	00015197.1
Valid to	4/6/2016
Contact person	Gunther Schweer
	Sales Manager
	+49 172 8376719
	gunther.schweer@exasol.com

## 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 and hardware.

In addition, EXASOL sells also pure hardware solutions to its customers as reseller of selected hardware partners.

Dell is one of the world's leading computer manufacturers. EXASOL is hardware partner of Dell and thus an authorized reseller of Dell hardware.

1.2 Contract partner description

1.3 Purpose of contract

## 2 Subject

2.1 As further described in the service descriptions in the Annex(es), the following products and services are subject to this Agreement:

- the sale of hardware ("Hardware") from the manufacturer Dell
- the provision of hardware support service ("Hardware Support Service") through Dell as EXASOL's subcontractor.

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 and Dell's service descriptions

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

6 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.

6.1 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.

6.2 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 AG

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

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

## Annex 1. General Contract Terms and Conditions “Dell Hardware Purchase” of EXASOL AG

### 1 General Provisions

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

For the sale of the Hardware, 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 and the hardware support service fee are due and payable even though the Hardware/service was not provided. Unless otherwise agreed, the Hardware Support Service fee 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 qualified and sufficiently authorized employees, who shall be available to EXASOL or Dell's employees during execution of Hardware Support Service and who is authorized to make necessary decisions and initiate measures.

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.

## 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 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.

## 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).

## 2 Terms and Conditions for the Purchase of the Hardware

### 2.1 Delivery

2.1.1 The delivery of the Hardware 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.

2.1.2 Unless otherwise provided for in the Agreement or service description, the Hardware 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 is handed over to the person in charge of its transportation.

2.1.3 EXASOL retains ownership of the Hardware until full payment of the agreed purchase price.

2.1.4 The user documentation of the Hardware is available for download on the homepage of the manufacturer Dell.

### 2.2 Material Defects

2.2.1 The Hardware 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.

- 2.2.2 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.
- 2.2.3 For defects in third-party 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.
- 2.2.4 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.
- 2.2.5 Recommendations – if any - regarding initial sizing of the Hardware 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 performance of software in connection with the purchased Hardware depends 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 of a hardware/software system, thus EXASOL cannot provide any guarantee for specific performance of the Hardware, in particular if respective factors were subsequently changed.

### 3 Terms and Conditions on Hardware Support Service

#### 3.1 Hardware Support Service

- 3.1.1 The Hardware Support Services provided will be described in detail in a service description for the relevant service level. Service descriptions for Hardware Support Services are available at <http://www.dell.com/learn/de/de/decorp1/service-contracts-support-services>. Customer agrees that EXASOL, not Dell, is the contracting entity in relation to Customer's purchase of the Hardware Support Service from EXASOL.
- 3.1.2 "Third Party Products" means any third-party hardware, services or software which is not labelled with the trademark Dell. Some manufacturers' warranties or service contract terms and conditions for Third Party Products may become void if EXASOL or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services).
- 3.1.3 Hardware Support Services shall be those repair services that are necessary to fix a defect in materials or construction of any Dell-branded Products. Preventive maintenance is not included and EXASOL shall not be responsible for repairs of Dell-branded Products caused by problems with software or Customer provided third party products. Unless expressly stated in a service description, Services do not include repair of any Products or Product component that has been damaged as a result of (1) work carried out by anyone other than Dell or its representatives on behalf of Seller (2) accident, misuse, or abuse of the Product or Product component (such as, without limitation, use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell or its representatives on behalf of EXASOL; (3) the moving of the Product from one geographic location or entity to another; or (4) an act of nature, including without limitation, lightning, flooding, tornado, earthquake, or hurricane. Parts used in repairing or servicing Products may be new, equivalent-to-new, reconditioned or remanufactured.

- 3.1.4 Customer hereby authorises EXASOL and/or Dell or any other subcontractor of Dell ("Service Provider") to use or access any Customer provided Third Party Products as necessary or as requested by Customer in the performance of the Services, including without limitation, copying, storing, and reinstalling a backup system or data. Customer shall defend, indemnify, and hold EXASOL and the Service Provider harmless from any third party claim or action arising out of Customer's failure to provide such authorisation (including without limitation, obtaining appropriate licenses, Intellectual Property Rights, or any other permissions, regulatory certifications, or approvals associated with technology, software, or other components).
- 3.1.5 Software license provided by Dell. Customer use of Software in connection with the Services is pursuant to the terms accompanying the Software. "Software" includes software locally installed on customer's systems and software remotely accessed by the customer through the Internet or other means (including, but not limited to websites and Internet portals). In the absence of such terms, Customer use of Software is pursuant to the Dell Services License Agreement & Acceptable Use Policy ("AUP") available at [www.Dell.com/AUP](http://www.Dell.com/AUP). By accessing, downloading, installing, activating or otherwise using such Software, Customer agrees to be bound by the terms of the AUP.
- 3.1.6 Customer shall provide personal data to EXASOL and Service Provider and Dell Personnel together with such other information as may reasonably be required in order to provide the Services. Customer shall provide personal data to EXASOL and Service Provider and Dell Personnel together with such other information as may reasonably be required in order to provide the Services.
- 3.1.7 Dell may, in the normal course of business, make worldwide transfers of Personal Data on its corporate systems, to other entities, agents or subcontractors in the same group of companies, or to other relevant business partners who may have incidental access to Personal Data. When making such transfers, Dell shall ensure appropriate protection is in place to safeguard Personal Data transferred under this Agreement, and has entered into an agreement with each such third party regarding ongoing compliance with applicable data privacy laws.

## 3.2 Term of the Hardware Support Service

- 3.2.1 Unless otherwise provided in the Agreement or service description, the Hardware Support Service contract for the Hardware will be concluded for the fixed term of 36 months, starting from the date of provision of the Hardware 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 Hardware. 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.
- 3.2.2 The right of both parties to terminate for cause remains unaffected.
- 3.2.3 The termination shall require the written form in order to become effective.

Stand 11/15/2016