

Bull Agreement for Temporary Power On Demand

This Agreement for Temporary Power On Demand ("Agreement") is signed between Bull SAS, hereinafter referred as "Bull" or "Supplier", and its Escala customer, hereinafter referred as "Customer". It governs Bull's provision and Customer use of this offering. Both Parties accept these terms by signing below. These terms are in addition to the terms of the agreement under which Customer acquires a POD Machine.

This Agreement replaces any prior oral or written communications, concerning Temporary Power On Demand. By signing below, both Parties agree to the terms of this Agreement without modification. Once signed, 1) unless prohibited by applicable law or specified otherwise, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Temporary Power On Demand provided under this Agreement is subject to it.

Agreed to: **(Indicate Customer Company name below)**

Agreed to: **(Indicate Bull Affiliate name below)**

By

By

Authorized Signature

Name (type or print):

Date:

Agreement number:

Customer address:

Authorized Signature

Name (type or print)

Date:

Agreement number:

Bull address:

After signing please return a copy of this amendment to the local "Bull address" shown above

1. Definitions

Machine	A machine, its features, conversions, upgrades, elements, or accessories, or any combination of them.
Machine Code	Microcode, basic input/output system code ("BIOS"), utility programs, device drivers, and diagnostics delivered with an Bull Machine.
Licensed Internal Code ("LIC")	Machine Code used by certain Machines Bull specifies ("Specific Machines").
TPOD Machine	A Bull Machine that supports Temporary Power On Demand also referred to in Bull literature or otherwise known as "On/Off Power On Demand," "On/Off POD," and for which Bull offers Temporary Power On Demand features.
On-Demand Power	Amount of resources, such as processors, storage, memory, channel, that is installed on a TPOD Machine but that is not enabled for use (e.g., On-Demand Processors).
Activation / Activated / Activate	Enabling On-Demand Power for use.
Temporary Power	On-Demand Power that may be Activated for a specified duration.
TPOD Unit	The duration and amount of Temporary Power that is Activated. For example, "Processor Days" (number of processors multiplied by the number of 24- hours periods and partial 24-hour period Activated) are the TPOD Units measuring Activation of processors. TPOD Units include both Requested Units and Unreturned Units.
Requested Units	TPOD Units Customer specifies when activating Temporary Power.
Unreturned Unit(s)	TPOD Units that remain Activated after expiration of the duration specified by Customer when activating Temporary Power.

Monitoring Program	A Software that Bull licenses to Customer and that monitors requests for Temporary Power On Demand and reports Activated Temporary Power On Demand to Bull through a telecommunication connection, e.g. RSF or Mail
TPOD Enablement MI	A sales reference to order to Bull, which authorises Customer to use Temporary Power On Demand according to the terms of this Agreement, and provides a key ("TPOD Enablement Code") to enable Activation and manage Temporary Power On Demand on the TPOD Machine.
TPOD Unit Maximum	A TPOD Enablement MI's maximum number of TPOD Units available for Activation. Once this maximum is reached, Customer must obtain a new TPOD Enablement MI in order to Activate additional Temporary Power On Demand
TPOD Billing Quarter	A calendar quarter for which Activation of Temporary Power On Demand is monitored for billing purposes.
TPOD Billing MI	A sales reference used for billing purposes that specifies the Bull price for a TPOD Unit. The reference is orderable in the quantity of TPOD Units that are Activated during the TPOD Billing Quarter.

2. Agreement Structure

Customer accepts the terms in this Agreement by 1) signing them, 2) using Temporary Power, or allowing others to do so, or 3) making any payment for Temporary Power.

A TPOD Machine becomes subject to this Agreement when Bull accepts an order by 1) sending a signed original of this Agreement to Customer or 2) shipping the Machine or making On-Demand Power available to Customer.

3. Bull Business Partners

Bull has signed agreements with certain organizations ("Bull Business Partners") to promote, market, and support certain products. When Customer orders Temporary Power On-Demand from a Bull Business Partner, this Bull Business Partner or Bull is responsible for providing On-Demand Power to Customer as described in and under the terms of this Agreement. Bull is not responsible for 1) the actions of Bull Business Partners, 2) any additional obligations they have to Customer, or 3) any product or service that they supply to Customer under their agreements. Bull Business Partners set the prices at which they sell Temporary Power On Demand.

Designation of Participating Business Partner

TPOD Features may be offered by Bull directly, or by participating Bull Business Partners. To participate, the Business Partner must have registered with Bull and agreed to Bull program terms. If Customer has chosen to order through a participating Bull Business Partner, Bull is authorized to provide the information received through the Monitoring Program to such Business Partner each Billing Quarter to allow such Business Partner to bill Customer for such features. Customer agrees that unless revoking such authorization or designating a different participating Business Partner with at least 60 days' notice to Bull (in the manner Bull specifies) Bull remains authorized to provide this information to the designated participating Business Partner. In the event Customer revokes authorization without designating another participating Business Partner, Bull will bill Customer directly for the features.

4. Use of Temporary Power On Demand

Customer agrees:

- 1) to be liable to Bull for payment for each TPOD Unit (both Requested Units and Unreturned Units) on their TPOD Machine. This liability is discharged when Customer pays Bull or its designated participating Bull Business Partner for the TPOD Units as invoiced and documented by Bull or its designated participating Bull Business Partner. The amount due will be at Bull's or its Business Partner's, as applicable, then current prices and payment terms for the TPOD Billing MI for the applicable TPOD Billing Quarter;
- 2) to install (unless pre-installed), configure, and maintain the Monitoring Program on the TPOD Machine in a manner specified by Bull to regularly (at intervals as Bull specifies) report Activated TPOD Units to Bull;
- 3) in the event the Monitoring Program becomes disabled, disconnected or otherwise unable to accurately report TPOD Units to Bull, to promptly notify their Bull service contact, and allow Bull or its agent to access the TPOD Machine to attempt to determine the TPOD Units for which Customer is liable;
- 4) in the event that
 - (a) the Customer removes, disables, disconnects, or otherwise prevents the Monitoring program from accurately reporting TPOD Units to Bull, or
 - (b) the Monitoring Program becomes disabled, disconnected or otherwise unable to accurately report TPOD Units to Bull and Customer fails to notify Bull service and allow access as described in the previous paragraph,
 then Customer will be liable for, and agrees to pay for, TPOD Units based on the assumption that 100% of Temporary Power On Demand was Activated during the entire period for which the Monitoring Program did not report TPOD Units. Bull retains all other remedies it may have in the event of such actions, including termination of Customer right to use Temporary Power;
- 5) to provide access to the TPOD Machine for Bull to perform random audits pertaining to Activation of TPOD Units.
- 6) to not circumvent technological measures intended to prevent use of unauthorized On-Demand Power, or use a third party or third party product to do so, or otherwise activate or use unauthorized On Demand Power.
- 7) to send or allow Bull representative to send at each end of month, to podstats@bmt.bull.net a mail with a monthly report of Customer consumption

5. Customer Additional Responsibilities

Customer agrees to the following:

- 1) Customer represents and warrants, at the time Temporary Power On Demand is requested, to be the owner of the TPOD Machine for which the request is made, or to have the permission from the owner and any lien holders for the use of Temporary Power On Demand to be conducted as specified in this Agreement.
- 2) Customer agrees to notify any suppliers (for example, other software suppliers who license their product on a per processor basis), as appropriate and necessary, when making a request for Temporary Power.
- 3) Bull reserves the right to change the process by which Temporary Power On Demand is made available for Customer use. Customer agrees to install and implement such a change on each applicable TPOD Machine.
- 4) In the event Bull changes the Monitoring program or the means by which it monitors Activated TPOD Units, Customer agrees to implement any such change, as necessary.
- 5) This offering is comprised solely of the computer resource identified as On-Demand Power. Customer is responsible for providing all other computing resources (for example, memory, storage, channels) that they may require, adequate in type and quantity, to satisfy the needs of their computing environment.
- 6) Customer agrees to allow Bull and its subsidiaries to store and use Customer business contact information, including names, business phone numbers, and business e-mail addresses, anywhere they do business according to with all data protection, privacy or similar laws and regulations applicable at European Community or national level as may be required. Such information will be processed and used in connection with the business relationship between Bull and Customer, and may be provided to contractors acting on Bull's behalf, Bull Business Partners who promote, market, and support certain Bull products and services, and assignees of Bull and its subsidiaries for uses consistent with the business relationship between Bull and Customer.

6. Prices

- 1) The prices indicated in Exhibit 1 are fixed prices during the terms of the Agreement. They exclude any tax, any withholding tax, any sales, use, value added, levies, import and custom duties, excise or other similar or equivalent taxes imposed on the supply of the TPOD Units
- 2) These prices may be reviewed once a year by mutual agreement between the parties. If reviewed, any new prices shall automatically replace the corresponding conditions set out in Exhibit 1.
- 3) In the case that this review results in an increase of more than 5% vs current year, Customer is entitled to terminate the Agreement in the conditions set forth in paragraph 7b ("Termination").

7. Termination

- 1) Customer's right to use Temporary Power On Demand terminates for a specific TPOD Machine upon occurrence of any of the following:
 - a. Customer transfers possession of the TPOD Machine, or any part of the TPOD Machine containing On-Demand Power to a third party (for example, return of the TPOD Machine to the leasing company at lease end). Customer agrees to provide Bull at least one month written notice prior to such transfer.
 - b. At Customer option, with one month's written notice to Bull.
 - c. At Bull's option, if Bull is prevented from, or unable to:
 - 1) monitor (through use of the Monitoring Program) TPOD Units or
 - 2) perform random audits of the TPOD Machine.
- 2) In addition to the foregoing, either Party may terminate this Agreement if the other Party does not comply with any of its terms, provided the Party who is not complying is given written notice and reasonable time, not to exceed 30 days, to comply.
- 3) Customer's right to use Temporary Power On Demand terminates for all TPOD Machines upon
 - 1) termination of this Agreement, or
 - 2) any petition or proceeding being filed by or against Customer under any bankruptcy or insolvency applicable law in pursuance of section 10.13.
- 4) In the event of termination of Temporary Capacity On Demand for one or more TPOD Machines, Customer agrees to provide Bull access to each such TPOD Machine to disable the TPOD Enablement Feature. **If Customer transfers possession of a TPOD Machine without providing Bull access to disable the TPOD Enablement Feature, Customer agrees**
 - a. **to immediately pay to Bull, at the time of transfer, for all Temporary Power On Demand that remains available for Activation by means the TPOD Enablement Feature transferred with the TPOD Machine up to the TPOD Unit Maximum.**
 - b. **to pay for any Unreturned Units, in excess of the TPOD Unit Maximum, that may result from the TPOD Enablement MI, transferred with the TPOD Machine, that has not been disabled by Bull.**

8. Warranty

Standard Bull warranty terms apply. The warranty period for On-Demand Power, including all associated parts, is based on the date Power is physically installed on a TPOD Machine, regardless of when or whether requests for Temporary Power On Demand are ever made.

9. Limitation of Liability

Circumstances may arise where, because of a default on Bull's part or other liability, Customer is entitled to recover damages from Bull. In each such instance, regardless of the basis on which Customer is entitled to claim damages from Bull (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Bull is liable for no more than:

- 1) damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 2) the amount of any other actual direct damages up to the greater of \$100,000 or the amount Customer paid Bull (not to exceed 12 months recurring charges) for the Machine that is the subject of the claim. For purposes of this item, the term "Machine" includes Machine Code and Licensed Internal Code.

This limit also applies to any of Bull's subcontractors and program developers. It is the maximum for which Bull and its subcontractors are collectively responsible.

Items for which Bull is Not Liable

Under no circumstances is Bull or its subcontractors or program developers liable for any of the following even if Bull is informed of their possibility:

- 1) loss of, or damage to, Customer records or data; or
- 2) special, incidental, or indirect damages or for any economic consequential damages;
- 3) lost profits, business, revenue, goodwill, or anticipated savings.

10. General Terms

Both Parties agree that:

- 1) if Customer is the owner of the TPOD Machine, title to the On-Demand Power transfers in accordance with the terms of the agreement under which you acquire the On-Demand Power.
- 2) each of us may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity;
- 3) each of us will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations;
- 4) any terms of this Agreement which by their nature extend beyond the Agreement termination remain in affect until fulfilled, and apply to both of our respective successors and assignees;
- 5) neither of us will bring a legal action more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation;
- 6) neither of us is responsible for failure to fulfil any obligations due to causes beyond its control;
- 7) you may not assign this Agreement, in whole or in part, without the prior written consent of Bull, which will not be unreasonably withheld. Any attempt to do so is void. However, the assignment of this Agreement within the enterprise of which either of us is a part or to a successor organization by merger or acquisition does not require the consent of the other;
- 8) this Agreement will not create any right or cause of action for any third party, nor will Bull be responsible for any third party claims against you except as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which Bull is legally liable;
- 9) Bull may change the terms of this Agreement by giving you three months' written notice. However, these changes are not retroactive. They apply, as of the effective date we specify in the notice, only to new orders of TPOD features (including new Activation of Temporary Power On Demand). Otherwise, for a change to be valid, both of us must sign it. Additional or different terms in any written communication from you are void;
- 10) in the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and affect;
- 11) if you acquired the TPOD Machine from Bull, and the terms under which you acquired the TPOD Machine conflict with this Agreement, then the terms of this Agreement prevail to the extent to which they conflict;
- 12) all of your rights and all of Bull's obligations are valid only in Europe. With respect to this Temporary Power On Demand offering, Bull is under no obligation to process any order for delivery to (or fulfilment at) an address that is not validly located within Europe; and
- 13) both you and Bull consent to the application of the laws of the concerned country, interpret, and enforce all of your and Bull's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

Exhibit 1 – References and Prices

Server 1 : Serial Number : XDU-__

Reference / MI	Designation	Net Price (€)

Server 2 : Serial Number : XDU-__

Reference / MI	Designation	Net Price (€)

Server 3 : Serial Number : XDU-__

Reference / MI	Designation	Net Price (€)

Server 4 : Serial Number : XDU-__

Reference / MI	Designation	Net Price (€)

Agreed by:

Agreed by:

Customer Authorized Signature
Name (type or print):
Date:

Bull Authorized Signature
Name (type or print):
Date: