



## Terms and Conditions for the Evaluation (PoC) of the Exasol Database Software

Evaluation of the Exasol database software including related consulting services shall be governed by the following Terms and Conditions (“Terms”) additionally to the terms and service description in the quote. When and insofar as provisions in the quote deviate from those of the Terms, the provisions in the quote shall take precedence. If Customer later agrees to purchase a license for the Exasol Software (“Agreement”), the following Terms become part of the Agreement between Exasol and Customer.

### 1 Service Description

1.1 To evaluate the Software, Exasol provides the Software for a limited period:

- as a pure software license (Evaluation License); or
- in connection with an Evaluation System which can be set up and operated at a location agreed with the Customer via MTC, or which is hosted by Exasol and can be accessed by Customer via HTC or HPC.

1.2 The PoC will be supported by Exasol’s sales engineering department. After the PoC, Customer and Exasol will hold a final meeting to discuss (in person or remote) the evaluation results.

1.3 Preparing the evaluation requires the determination of test data and its transfer format, defining the evaluation scope, test scenarios and success criteria. Exasol’s sales engineering department will support Customer with such a preparation.

### 2 Definitions

“Customer” means the user or licensee of the Evaluation License.

“CIS” means Commonwealth of Independent States and is a regional intergovernmental organization. The members are Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Uzbekistan.

“Clients and Drivers” are the client Exaplus as well as drivers provided by Exasol (e.g. ODBC, JDBC, ADO.NET) and the Exasol SDK.

“Documentation” means the documentation that describes how to use the Software, which is available on the homepage of Exasol in English language.

“Evaluation License” means the right to use the Software according to the restrictions in the quote and the Terms.

“Evaluation Period” has the meaning as set out in Section 8.

“Evaluation System” is the Software in connection with infrastructure as Mobile Trial Cluster (“MTC”), Hosted Trial Cluster (“HTC”), or as Hosted Public Cloud (“HPC”). In the quote, it is indicated, which system Customer has chosen.

“Exasol” means

- Exasol Europa Vertriebs GmbH if Customer is located in Europe (Germany, Austria, Nordics, France, Spain, Italy, Benelux etc.) except for the UK and Switzerland; or if Customer is located in the CIS region;
- Exasol Schweiz AG if Customer is located in Switzerland;
- Exasol UK Limited if Customer is located in the UK, Middle East or Africa;
- Exasol, Inc. if Customer is located in the United States of America or the rest of the world (Asia, Australia, Canada and South- and Central America) except for Europe (including UK), the CIS region, Middle East and Africa.

“HPC”, Hosted Public Cloud, means the infrastructure Cluster located in the Amazon Web Service cloud platform (“AWS Cloud”), Microsoft Azure cloud platform (“Azure Cloud”) or Google cloud platform (“GCP”) which can be accessed in each case by the Customer for evaluation purposes via a remote connection. Restrictions regarding consumption of resources apply as stated in the quote.

“HTC”, Hosted Trial Cluster, means the infrastructure Cluster located at Exasol’s premises (including premises of subcontractors), which can be accessed by Customer for evaluation purposes via a remote connection.

“MTC” means a Mobile Trial Cluster which consists of several servers belonging to Exasol, switched in parallel in a flight case with provided network switches, which are made available to the Customer for evaluation purposes.

“PoC” (Proof of Concept) means testing the Software for evaluation purposes.

“Software” means a software stack consisting of the Exasol database software and clients and drivers provided by Exasol as well as any modification, error correction, patch, bug fix etc. that Exasol makes available to the contractual partner in any form whatsoever. The



Software, the product life cycle including end-of-life dates, its technical limitations and additional specifications are further described in certain documentation created and maintained by Exasol accessible at <https://docs.exasol.com/> (the “Documentation”).

### 3. Scope of Use

3.1 Customer is granted a non-exclusive, non-transferable, non-sublicensable right, limited by time and place, to use the Software for evaluation purposes on one or several dedicated servers (“Evaluation License”), and if stated in the quote also the Evaluation System either at the location agreed upon with Exasol (in case of an MTC) or via remote connection (in case of a HTC or HPC). Customer is responsible for the remote connection security.

This right of use is, inter alia, limited to the agreed parameters (raw data size etc.) indicated in the quote.

3.2 Customer may not: (i) use the Evaluation System or Software in a way not agreed upon with Exasol, or (ii) use the Evaluation System or Software for production purposes, lend, rent, lease, modify or otherwise use or share the Evaluation System or Software for third parties, or (iii) copy or change, reverse engineer, decompile, integrate into another software program or otherwise change the Software except as permitted by law without the possibility of contractual waiver.

3.3 In addition, if the test system (HPC) is located in (i) the AWS Cloud, Customer must comply with the terms of the AWS Customer Agreement, available at <https://aws.amazon.com/agreement/>; (ii) the Azure Cloud, Customer is obliged to comply with the terms of the Microsoft Customer Agreement, available at <https://azure.microsoft.com/en-us/support/legal/>, (iii) the GCP, Customer must comply with the Google Cloud Terms available at <https://cloud.google.com/product-terms/>.

3.4 Third-Party Components. Software, code or related materials from third parties, including, without limitation, “open source” or “freeware” software that is distributed, provided with, or otherwise made use of by the Software (“Third-Party Components”) may be licensed under additional or other license terms that accompany such Third-Party Components, and Customer acknowledges and agrees that these accompanying license terms govern their use. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the license terms that accompany any Third-Party Components. If required by any license for a particular Third-Party Component, Exasol makes the source code of such Third-Party Component, and any of Exasol’s modifications to such Third-Party Component, as required, available by written request to Exasol at the address provided in the quote.

### 3.5 Additional Terms of Use for Evaluation Systems

3.5.1 Customer shall take all commercially reasonable precautions to prevent the unauthorized use of the Evaluation System or interference with the Evaluation System by third parties. Customer is responsible for the data inserted into the Evaluation System and may not insert any data violating any laws. Customer shall ensure its employees, representatives, officers, and agents authorized to use the Evaluation System comply with these Terms.

3.5.2 All rights to Customer data shall remain with Customer. Unless otherwise agreed between the parties, Customer data loaded in the Evaluation System will be stored unencrypted.

### 4. Delivery

4.1 Evaluation License: The delivery of the Software to Customer will be executed by emailing of the license key which authorizes the use of the provided Software.

4.2 Shipment of the MTC: Unless otherwise provided in the quote,

- within Europe the MTC will be shipped at the expense of Exasol (including return shipment after the PoC).
- to a location outside Europe, the MTC will be shipped at the expense of Customer (including return shipment after the PoC).

Additional charges might apply as stated in the quote for customs duties, taxes, insurance and other applicable charges. For shipments outside of Europe and the USA, the risk shall be transferred to Customer as soon as the MTC is handed over to the person in charge of its transportation. Customer acknowledges and accepts that the MTC is and will at all times remain the property of Exasol.

4.3 The Software is only provided in executable object code form (binary license), not in source code.

### 5 Expenses, Fees, Payment

5.1 For the expenses associated with the provision of the Evaluation System / Evaluation License, in particular the service of guidance through the PoC, delivery of a MTC, any fees from public clouds in the case of HPC and - where applicable - further agreed services, Customer shall be responsible for paying fees as stated in the quote.



5.2 Unless otherwise agreed between the parties, payment obligations are due in full 14 days after Customer's receipt of invoice and shall be paid in advance. Prices quoted by Exasol are exclusive of any applicable taxes or duties applicable at the time of shipping and/or delivery. No travel costs and expenses will be charged. However, if due to the customer's request, exceptional high expenses on the part of Exasol occur, these will be invoiced after consultation with the Customer.

## **6 Error Correction, Communication, No Warranty**

6.1 Customer shall report any errors in the Evaluation System / Software promptly and, if necessary, reasonably support Exasol in correcting reported error(s).

6.2 Exasol will correct reported errors in the Software at its discretion within a commercially reasonable time. Because the Software is free of charge, there is no warranty for the Software and no entitlement to any error correction or maintenance.

6.3 During the Evaluation Period, Customer will be supported by Exasol's sales engineering department which is responsible for any communication regarding technical aspects of a PoC including error reports, support queries, etc.

## **7 Consulting**

7.1 If not stated otherwise, 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 Customer may be pursuing. The local presence at Customer's premises is not required to provide the consulting service, the service can be provided remotely.

7.2 For consulting services, a package price is charged according to the service package agreed upon in the quote.

7.3 Work results: If nothing was otherwise agreed upon, the Customer receives a simple, non-exclusive, non-transferable right to use work results. 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.

## **8 Evaluation Period and Termination**

8.1 Except as otherwise agreed between the parties, the Evaluation Period is limited to the term indicated in the quote. The Evaluation Period starts from the moment the Evaluation System / Software is delivered. If an indefinite period was agreed between the parties - respectively after expiry of a minimum term agreed - the Agreement can be terminated by both parties by giving written notice within one month.

8.2 The right of both parties to terminate for cause remains unaffected. The termination shall require the written form in order to become effective.

8.3 Evaluation System: Before termination or expiration of the Evaluation Period, Customer shall be responsible for removing or deleting its test data. If Customer fails to remove or delete its data, Exasol will send Customer one reminder in case Exasol has access to the system (HTC, HPC). If Customer does not respond within 5 calendar days, Exasol may delete the test data with industry standard tools for the deletion of data. If a MTC was shipped to the Customer, Exasol will coordinate with Customer to collect the MTC by the carrier. If test data on the MTC was not deleted by Customer before shipment, Exasol may delete such test data and assumes no liability for such data.

8.4 Evaluation License: Upon termination of the Agreement Customer shall return all infrastructure delivered by Exasol (in case of MTC), any data carriers and created back-up copies. In addition, Customer shall uninstall the Software and to delete irreversibly any remaining pieces of the Software from his IT-system. Upon request of Exasol, Customer shall confirm in writing the performance of the aforementioned obligations.

## **9 Limitation of Liability**

9.1 Limitation of Liability (if US law and UK law applies, see Section 11.2)

EXASOL AND ITS AFFILIATES AND LICENSORS WILL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER EXASOL NOR ANY OF ITS AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE EVALUATION LICENSE/EVALUATION SYSTEM, INCLUDING AS A RESULT OF ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT, (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF THE EVALUATION LICENSE/EVALUATION SYSTEM; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, EXASOL AND EXASOL'S AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT CUSTOMER ACTUALLY



PAYS EXASOL UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE. THE LIMITATIONS IN THIS SECTION 9.1 APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 9.2 Limitation of Liability (if German law applies, see Section 11.2)

9.2.1 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 may be liable for typical, and upon the conclusion of the contract foreseeable damages after the Evaluation.
- c) In case of a material breach, that 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 agreed fee per claim and 100% of the agreed fee for all claims from and in connection with the contract overall.

9.2.2 Exasol is entitled to claim contributory negligence of Customer. In particular, Customer is responsible for data protection and blocking of malware in accordance with the latest technical standards.

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

## 10 Confidentiality

10.1 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.

10.2 Parties will make Confidential Information available only to those employees (including employees of parties' affiliates) and subcontractors who require access to them in the performance of their job-related duties ("need to know"). Parties 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.

10.3 Customer covenants not to engage in, disclose or publish any benchmarking or results of the PoC without Exasol's prior written consent.

## 11. Amendments to the Terms and Conditions.

Amendments to the PoC will be provided 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, Neumeyerstraße 22-26, 90411 Nürnberg or via e-mail to legal@exasol.com. In case of a revocation, the existing PoC Terms 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.

## 12. Miscellaneous

12.1 Exasol is entitled to perform services due under the terms of the Agreement by employees of affiliated companies (affiliates). However, in such case, Exasol remains responsible for performance.

12.2 The laws of

the Federal Republic of Germany shall apply without regard to the UN Convention on the International Sale of Goods (CISG) and the place of performance and legal venue for any dispute in connection with Agreement is Nuremberg, Germany, if Customer is located in Europe (Germany, Austria, Nordics, France, Spain, Italy, Benelux etc.) except for the UK and Switzerland; or if Customer is located in the CIS region;

Switzerland shall apply without regard to the UN Convention on the International Sale of Goods (CISG) and the place of performance and legal venue for any dispute in connection with this Agreement is Zurich 1, if Customer is located in Switzerland;



England and Wales shall apply without regard to the UN Convention on the International Sale of Goods (CISG) and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter, if Customer is located in the UK, Middle East or Africa; or

In the United States, the laws of the State of Georgia, excluding the conflicts-of-laws principles thereof shall apply and the federal courts located in and/or having jurisdiction over the City of Atlanta, Georgia, shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with, this evaluation or its subject matter or formation, if Customer is located in the United States of America or the rest of the world (Asia, Australia, Canada and South- and Central America) except for Europe (including UK), the CIS region, Middle East and Africa.

12.3 Amendments and additions to the Agreement must be made in writing, including amendments to or a waiver of this written form requirement. Each Party agrees to be bound by its facsimile or electronic signature, whether transmitted by fax, email or other electronic means, and each Party agrees that it shall accept the signature of the other Party transmitted in such a manner.

12.4 If a court of competent jurisdiction holds any provision of the Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

12.5 Parties may not assign, delegate or otherwise transfer any of its rights or obligations under this contract without the prior written consent of the other Party.

12.6 Export Control. Politically Exposed Person (“PEP”) as defined by the Financial Action Task Force and which definition is located in the document, available at <https://www.fatf-gafi.org/documents/documents/peps-r12-r22.html>. Anyone (persons, organizations, companies) under sanction, prohibition, or restriction from any jurisdictions, the United Nations, the EU, any EU member states, Canada, or the United States.

12.7 For agreements with Exasol and for pre-contractual obligations in connection with a PoC, these Terms shall apply exclusively. Customer covenants its general terms and conditions shall not apply under any circumstances.