

SOFTWARE SUBSCRIPTION LICENSE & SERVICES AGREEMENT

between

EXASOL Europa Vertriebs GmbH

("EXASOL")

Neumeyerstr. 22-26, 90411 Nuremberg

and

zzz_test_admin

("XYZ" or "Customer")

,

Status	Entwurf
Contract No	00015197.1
Valid to	4/6/2016
Contact person	Gunther Schweer
	Sales Manager
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	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”). The Software was developed specifically for use in the business intelligence process. Thanks to its optimum support of complex utilization profiles, the Software is used in all areas for enterprise data warehouse applications. EXASOL offers either a perpetual license or a subscription license of its Software.

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).

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 “Subscription” of EXASOL Europa Vertriebs GmbH

1 General Provisions

1.1 Application of the Contractual Terms and Conditions

For the subscription of the Software, 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 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 subscription fee and service fees (e.g. for operations engineering services or consulting) are due and payable even though the Software/service was not provided. Unless otherwise agreed, the subscription fee and service fees for operations engineering services are payable in advance at the beginning of the agreed subscription license term / service period (as stated in the service description in the Annex, e.g. quarterly, annually).

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 data base service and who is authorized to make necessary decisions and initiate measures.

With regard to data base service the following contact person has to be designated:

- „MyEXASOL User Manager“ for the management of the access to customer-specific support-sites

- 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 annual subscription fee per claim and 100% of the annual subscription fee 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. 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 Service Levels (e.g. Response and Processing Times) and the versions subject to data base service.
- 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).

2 Terms and Conditions for Software Subscription

2.1 Definition of Software

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

„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

2.2.1 With payment of the subscription fee Customer is granted a non-exclusive, non-transferable, non-sublicensable, and limited in time right to use EXASuite on one or several, dedicated servers („Cluster“) 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 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.

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 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 purchased the Software directly from EXASOL according to the then-current purchase price list but at least to the amount of the annual subscription fee. The right to claim further damages is reserved.

2.3 Delivery

2.3.1 The transfer of the Software to Customer will be executed according to a separate agreement of the parties, by mailing of the license key which authorizes the use of the Software, by installation by EXASOL on Customer’s premises or via provision of a license server used for the operation of EXASuite in the Cluster. If a license server is supplied, Customer shall pay the amount that has been agreed in the service description. Customer agrees not to install any other software in the Cluster other than the licensed Software.

2.3.2 The Software is only provided in machine code (binary license), not in source code.

2.3.3 The user documentation for the Software is available for download by Customer on the homepage of EXASOL in the German and English languages.

2.4 Material Defects

2.4.1 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.

2.4.2 The Software shall be suitable for the contractually intended use and otherwise be of a quality that is customary for this kind of software; however it is agreed that it is not error-free.

- 2.4.3 EXASOL shall provide the Software in a suitable condition for the contractual use and maintain it. The obligation for maintenance does not include the adjustments of the Software to changed operation conditions or technical and functional developments such as modification of the IT environment, in particular modification of the hardware, operating system, adjustments according to the functional scope of competing products or achieving compatibility with new data formats. 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.
- 2.4.4 Compensation, regardless of fault, for defects that already existed when the contract was signed is excluded.
- 2.4.5 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 He/she 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.
- 2.4.6 For defects in third-party products 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.
- 2.4.7 With the exception of compensation claims, warranty claims are possible within a maximum time period of one year after delivery, unless the defect was fraudulently concealed. In the case that a license server is provided or the installation is performed by EXASOL, the warranty period starts with actual delivery at the place of delivery; in the case of an Internet download (after sending the license key), the warranty period starts after the log-in credentials for the download have been unlocked.

2.5 Defects of Title

- 2.5.1 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.
- 2.5.2 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.

2.6 Initial Sizing – Performance Influencing Factors

Recommendations – if any - regarding initial sizing of the license and 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 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, 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 service or individual consulting.

2.7 Duration, Termination of Subscription

- 2.7.1 "Subscription License Term" means the subscription period stated in the service description in the Annex and commences on delivery of the Software to the Customer. EXASOL will provide the license including data base service during the Subscription License Term. Thereafter, the term of the subscription shall automatically renew for an additional Subscription License Term unless notice of termination is given to the other party 30 days prior to the expiration of the then-current Term. If a minimum subscription period was agreed upon between the parties, termination cannot be given before the end of such minimum subscription period.
- 2.7.2 The right of both parties to terminate for cause remains unaffected.
- 2.7.3 The termination shall require written form in order to become effective.

2.7.4 After termination of the contract, Customer has to return the license server – if received –, as well as other data mediums or backup copies created. In addition, Customer has to uninstall the Software and to delete irreversibly any parts of the Software remaining in the IT system. Upon request of EXASOL, Customer has to confirm compliance with the aforementioned duties in written form.

3 Terms and Conditions on Data Base Service Basic (On Premise)

3.1 Data Base Service Basic

3.1.1 Beyond its liability for defects, EXASOL provides the following data base service:

- Bugs fixing in the Software
- 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 for data base service who are familiar with the functionality of the Software. Data base service is carried out at the discretion of EXASOL and usually by providing software which modifies and/or complements the Software specified in Sec. 2.1.

3.1.3 EXASOL provides data base service in accordance with the care customary in its business area and in accordance with the following provisions: bugs which occur in the Software 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 Software.

3.1.4 The scope of the contractual data base service 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 data base service for a version which is older than the aforementioned versions. If Customer requires such additional data base service for an older version a separate agreement with EXASOL is necessary.

3.2 Error Priorities

3.2.1 If Customer recognizes that the Software 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 Data Base Service 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 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 shall apply, calculated as of the moment of receipt of the Qualified Error Report until sending a Qualified Response and within EXASOL's Data Base Service 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 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.

3.4 Implementation of Data Base Service

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 data base service 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 Data Base Service Times

Data Base Service Times correspond to the Service Times according to Sec. 1.8. During Data Base Service Times, Error reports can be provided via e-mail to 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 Data Base Service Times.

3.6 Hardware

3.6.1 The Cluster, upon which the Software natively runs, typically consists of high-performance Intel servers, mounted in 19" racks offered as standard by all large hardware vendors. The minimum requirements for the hardware and network can be found under <https://www.exasol.com/support/browse/SOL-132>. In the course of certification by EXASOL such servers or IT-environments can be tested for their functionality and performance with EXASuite. At the end of the certification process EXASOL provides a statement about the type and extent of possible support for the tested environment (please refer to <https://www.exasol.com/support/browse/SOL-197> for more details on the certification process). An up-to-date list of already certified hardware and IT-environments can be found under www.exasol.com/hardware.html. In the case that a non-certified or only limited certified hardware or IT-environment is used for the Software, operational malfunctions are possible. Therefore Customer shall use the Software on certified hardware or IT-environments or shall request an individual certification at Customer's expense beforehand.

3.6.2 If Customer operates the Software on non-certified hardware or in a non-certified IT-environment, no warranty will be accepted for any defects or Errors or any further booked services like Operations Engineering. In addition, the Response-, Processing- and Solutions Times (Sec. 3.3) do not apply and correction work will be invoiced after notification. In case of a limited certification the extent of data base administration service are determined in EXASOL's certification statement, cf. 3.6.1.

Stand 9/22/2016