## Terms and Conditions for Software License Agreements, Appliances and Services of Exasol Europa Vertriebs GmbH and Exasol AG ("Exasol")

Exasol's quotes and offers for software licenses (perpetual or subscription), Appliances and/or the provision of services are subject to the following Terms and Conditions ("T&C") in addition to the provisions and service descriptions in the quote. When and insofar as provisions in the quote deviate from those in the T&C, such provisions in the quote shall take precedence over the T&C. Upon acceptance of the offer in the quote ("Agreement") by the customer ("Customer"; Exasol and Customer individually "Party" and collectively the "Parties") or upon inclusion as an annex to an agreement, these T&C become part of the Agreement.

For Exasol's quotes for Software evaluation the present T&C do not apply. For Software evaluation, the special Terms and Conditions for Software Evaluation (PoC) apply exclusively.

**1       General Provisions**

1.1     <u>Application of the Contractual Terms and Conditions</u>

For Agreements with Exasol as well as for pre-contractual obligations, these T&C 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 T&C form only part of the Agreement if the provision of the respective services is explicitly agreed upon between the contracting Parties.

1.2     <u>Confidentiality and Data Protection</u>

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, 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"). The Parties hereby agree to store and secure all Confidential Information in a manner as to prevent any unauthorized access by third parties.

1.2.2   The Parties will make Confidential Information available only to those employees (including employees of their affiliates) and other third parties who require access to perform 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 applicable data protection regulations.

1.3     <u>Remuneration, Terms of Payment</u>

1.3.1   Unless otherwise provided for in the Agreement, payment obligations are due in full immediately after Customer's receipt of invoice and are payable within fourteen (14) days of the invoice date. If Customer delays acceptance without cause, the license or subscription fee and support service fees (e.g. for operational tasks or individual consulting service) are due and payable even though the Software/service was not provided. Unless otherwise agreed, subscription fees, and fees for permanent services are payable in advance at the beginning of the agreed accounting period (e.g. yearly, quarterly etc.). In the case of Services, Exasol shall be entitled to demand a down payment up to 50 % of the ordered service from the Customer. Exasol is entitled to issue partial invoices for services at any time after performance.

1.3.2   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. Unless expressly agreed otherwise, prices quoted for services are to be understood plus any travel costs and expenses incurred.

1.3.3   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 Section 354a HGB of the 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.

1.4     <u>Liability</u>

1.4.1   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 the Agreement, but to the maximum amount of 50 % of the license fee (in case of a subscription license: 50 % of the yearly subscription fee) per claim and 100% of the license fee (subscription: 100 % of the yearly subscription fee) for all claims from and in connection with the contract overall.

1.4.2    Exasol is entitled to claim contributory negligence of Customer. In particular, Customer has the responsibility for data protection taking into account the value and relevance of the data for Customer's business and the responsibility for blocking of malware in accordance with the latest technical standards.

1.4.3    In case of injuries to life, body and health and for claims under the German Product Liability Act, the statutory provisions shall apply without restrictions.

1.5     Reference Customer

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

1.5.2    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.

1.6     Reselling / End User Terms

If an end user acquires or rents the Software through a license agreement ("License") with an authorized Exasol partner company ("Reseller"), these T&C shall apply in addition to the License, unless expressly provided otherwise in the License. If the end user purchases Exasol services, the following provisions shall apply in addition to the Service Agreement between the end user and the Reseller ("Service Agreement"). Unless expressly agreed otherwise, Exasol is a subcontractor of the Reseller with respect to software maintenance and the provision of other services and there is no contractual relationship between Exasol and the end user. For the subcontracting relationship between Reseller and Exasol, these T&C shall apply *mutatis mutandis*, unless expressly agreed otherwise.

**2     Terms and Conditions for Software Purchase (Perpetual License) and Software Rental (Subscription)**

2.1     Definition of Software and Documentation

„Software" means the software stack consisting of Exasuite and clients and drivers provided by Exasol as well as every modification, bugfix, patch etc. provided by Exasol to Customer in whatever form.

„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 license fee (in case of subscription: subscription fee) Customer is granted a non-exclusive, non-transferable, non-sublicensable, and unlimited in time right (in case of a subscription license: 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 Agreement (raw data volume/DB RAM etc.). If only the parameters of an already existing license are extended, the use of this extension is limited to the already existing cluster. Splitting the license into more than one cluster or setting up a new cluster as part of a license extension requires Exasol's prior consent. Unless otherwise agreed in the Agreement, the license can be used for commercial purposes. If and in as far as Customer is granted a development 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. The product ExaOne is limited to one database node and 1 TB of raw data.

2.2.2    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. The Software may be used by companies affiliated with the Customer pursuant to Section 15 et seq. of the German Stock Corporation Act ("Aktiengesetz", hereinafter "AktG") (no third parties within the meaning of these T&C). Customer is obliged to contractually oblige the affiliated companies using the Software to comply with these T&C. Customer shall be liable to Exasol for violations of these T&C by its affiliated companies.

2.2.3    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 Section 69d of the German Copyright Act (hereinafter "UrhG"). A decompilation is only permitted in accordance with the provisions of Section 69e UrhG.

2.2.4    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. Third Party Components and respective license terms are available in the

installation package of the Software. Nothing in the 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 Exasol address provided in the Agreement.

2.2.5    In case of a breach of Sections 2.2.1 and 2.2.2 as well as a breach of Section 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 (in case of Software purchase) respectively contractual yearly subscription fee (in case of Software subscription). The right to claim further damages is reserved.

2.2.6    Exasol is entitled, after prior written notification, to audit whether the Software is used in accordance with the Agreement (in particular, with regards to - but not limited to - the scope of the license). The audit shall take the operational interests (business hours, security requirements, etc.) of the Customer into account.

2.3    Transfer to a third party (possible only in case of a Software purchase)

2.3.1    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. The temporary or partial transfer of use to a third party is prohibited, regardless of whether this is done in return for payment or free of charge and in what form (tangible or intangible) the Software was transferred.

2.3.2    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.

2.4    Delivery

2.4.1    The delivery of the Software to Customer will be executed by mailing of the license key which authorizes the use of the downloadable Software or by installation by Exasol on Customer's system in case installation service (Cluster Setup) was agreed upon.

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

2.4.3    The user documentation for the Software is available for download by Customer on the homepage of Exasol in English language.

2.5    Material Defects

2.5.1    The Software's characteristics and functions are conclusively described in the user documentation and the Agreement. 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 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). 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 Agreement with regard to the Software concerned. In cases required by law (cf. Section 323 para. 2 of the German Civil Code) the setting of a deadline may be omitted. Claims for damage compensation or reimbursement for expenses shall be governed by Section 1.4.

2.5.6   In case of a subscription license the obligation for maintenance as part of the statutory warranty rights 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. In case of a subscription license, compensation, regardless of fault, for defects that already existed when the contract was signed is excluded.

2.5.7   For defects in third party products (hardware and software; not applicable for appliance hardware) 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. Section 1.4 of these T&C remains unaffected thereby.

2.5.8   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.

2.6   Defects of Title

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 defense and give Exasol the opportunity to initiate proceedings against the third party/parties. 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   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. Customer acknowledges that 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 Performance Service or Professional Services.

2.8   Software Subscription: Maintenance (*Instandhaltung*), Duration, Termination

2.8.1   Within the scope of software subscription, software maintenance is generally part of the software subscription agreement, without a separate service agreement being concluded. The details of the maintenance are specified in the Service Description. Maintenance is a mandatory part of the software subscription agreement and can only be terminated together with the software subscription agreement. Otherwise, the services are determined according to the booked service level.

2.8.2   Section 3.2 shall apply *mutatis mutandis* to the term and termination of agreements for software subscription and maintenance.

2.8.3   After termination of the subscription agreement, any right to use the Software shall expire and the 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.

2.9   Special Terms and Conditions for Appliances

2.9.1   Definition: An Appliance is a configured system consisting of the Software installed on a server cluster of the manufacturer Dell („Hardware").

2.9.2   Delivery: Instead of Section 2.4.1 the following provision shall apply: The delivery of the Appliance to Customer will be executed according to a separate agreement of the Parties. As soon as Exasol knows the possible delivery date of the hardware manufacturer, Exasol will communicate with Customer.

2.9.3   Shipment and retention of title: Unless otherwise provided for in the Agreement, the Hardware/Appliance will be shipped at the expense and risk of Customer. The risk will be transferred to the Customer as soon as the Hardware/Appliance is handed over to the person in charge of its transportation. Exasol retains ownership of the Hardware/Appliance until full payment of the agreed purchase price.

2.9.4   Hardware defects: Exasol assigns to Customer all claims and rights due to defects in the Hardware (Section 437 of the 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 (i) Exasol has fraudulent concealed a defect, (ii) Exasol, their legal

representatives or agents have breached their duties either intentionally or through gross negligence, and (iii) in case of injury to life, body or health.

**3       Terms and Conditions for Services**

3.1     Service Description

If the subject of the Agreement is

- the provision of services of the support-level Silver, Gold or Platinum;
- supplementary services like Cluster setup, Cluster Administration Service, Professional Services or Performance Service;
- Training like Team Training, Online-Training, Individual Training and/or an Exasol Certification;
- ExaCloud Hosting Service and/or
- Appliance Hardware Support

the Service Description available at https://www.exasol.com/terms-and-conditions/ shall apply.

3.2     Service Contract: Duration, Termination

3.2.1   In case of permanent services, the term (indefinite, definite) and the accounting period (e.g. annually, quarterly etc.) for the service contract shall be defined in the Agreement. If nothing otherwise is agreed upon, the service terms shall be deemed to begin with delivery of the Software to Customer, in case of ExaCloud Hosting Service with the provision of the service. If no fixed term was agreed upon, the service contract automatically renews for the accounting period stated in the Agreement if not terminated in writing with 3 months' notice towards the end of the initial/further accounting period. In case a monthly accounting period was agreed upon, the service contract can be terminated with one month notice towards the end of the monthly accounting period. If a minimum term is agreed, then the service contract may only be terminated at the earliest towards the end of the minimum term.

3.2.2   Appliance Hardware Support: The duration of the Appliance Hardware Support (except for switches) is 36 months, unless otherwise agreed in the Agreement. The term begins at the time the Appliance is deployed. The Appliance Hardware Support for the switches has a fixed term of 33 months from the time of deployment. If Dell offers a hardware support service extension at the end of the term, which is expected to be one-time for two years, the Parties may negotiate an extension to the maintenance agreement by mutual agreement.

3.2.3   The right of both Parties to terminate for cause remains unaffected.

3.2.4   The termination shall require the written form in order to become effective.

**4.       Final Provisions**

4.1     Miscellaneous

4.1.1   Exasol is entitled to perform services due under the terms of the Agreement by employees of associated companies as defined in Section 15 et seq. AktG or, in case of trainings, by employees of certified Exasol training partners. However, in such case, Exasol remains responsible for the performance towards the Customer. If the services will be rendered by other subcontractors (not by an affiliated company), Customer will be informed beforehand.

4.1.2   Amendments and additions to the Agreement must be made in writing (electronic signature is sufficient), including amendments to or a waiver of this written form requirement shall be made in writing.

4.1.3   In the event that one or more provisions of the 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.

4.2     Applicable Law and Jurisdiction

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.