

## SOFTWARE LICENSE AND SERVICES AGREEMENT

between

EXASOL Europa Vertriebs GmbH

("EXASOL")

Neumeyerstr. 22-26

90411 Nuremberg

and

zzz\_test\_admin

("XYZ" or "Partner")

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

## 1 Preamble

1.1 EXASOL develops, markets and supports the EXASOL database, a high-performance relational database management system. Together with other software components (operating system, clients and drivers etc.) the EXASOL database ("Software") is offered to customer and partners for use 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

Partner is Reseller of EXASOL products (Software and services).

### 1.3 Purpose of contract

## 2 Subject

### 2.1 Service description

2.2 XYZ will pay to EXASOL fees as agreed in the Annexes. All prices are exclusive of value added tax ("VAT").

2.3 If Partner resells products and/or services described in Sec. 2.1, Partner is obliged to pass "General Terms and Conditions for EXASOL Europa Vertriebs GmbH's Software and Services" ("EUGTC"), available at <https://www.exasol.com/support/browse/SOL-508>, to the end customer. If Partner does not resell the aforementioned products and services, but uses them itself, the EUGTC apply to the Partner.

## 3 General Terms and Conditions

Unless expressly otherwise agreed between the parties, this Agreement shall be governed by EXASOL's General Contract Terms and Conditions (Anlage 1).

## 4 Special Terms

Special Terms

## 5 Reference Customer

EXASOL is entitled to refer to Partner 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 Partner, written quotes of the Partner or presentation slides about the Partner, the aforementioned advertising material will be coordinated with Partner before publication.

## 6 General Provision

6.1 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.

6.2 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.

6.3 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 of EXASOL Europa Vertriebs GmbH

### 1 Application of the Contractual Terms and Conditions

For the sale or subscription of the Software, for further agreed services and for pre-contractual obligations, these General Contract Terms and Conditions of EXASOL shall apply exclusively. Partner'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.

### 2 Confidentiality and Data Protection

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.

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.

2.3 EXASOL processes the necessary customer data relevant for business transactions with due consideration of the data protection regulations.

### 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.

### 4 Remuneration, Payment

4.1 Unless otherwise provided for in the Agreement or Statement of Work, payment obligations are due in full immediately after Partner's receipt of invoice. If Customer delays acceptance without cause, the license fee, maintenance 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 maintenance fee, subscription fees and service fees for operations engineering services are payable in advance at the beginning of the agreed service period.

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.

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), Partner may not assign, delegate or otherwise transfer any of its rights or obligations under this contract without the prior written consent of EXASOL. Partner shall only have a right of retention or the right to claim non-performance of the contract within this contractual relationship.

### 5 Obligation to Cooperate, Backups

5.1 Partner shall appoint – if necessary per service provided - a qualified and sufficiently authorized employee, who shall be available to EXASOL during execution of maintenance, operations engineering, consulting and training services and who is authorized to make necessary decisions and initiate measures.

With regard to maintenance and operations engineering services the following contact persons have to be designated:

- „MyEXASOL User Manager“ for the management of the access to customer-specific support-sites
- „Decision Maker“, who is/are entitled to place orders and book EXASOL's services, e.g. update to the current version, restore a backup, etc.
- „Incident Manager“, who shall inform EXASOL in case of an Incident (according to Sec. 4.4 of EXASOL Europa Vertriebs GmbH's General Terms and Conditions for Software and Services, in case Monitoring service was booked), and who is/are able to support EXASOL with the Incident processing according to Sec. 4.3 of EXASOL Europa Vertriebs GmbH's General Terms and Conditions for Software and Services.

5.2 Partner shall ensure that data backups are conducted in a manner and frequency which takes the value and relevance of the data for Partner's/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.

5.3 EXASOL regularly releases bugfix versions. Customer is obliged to update his installed Software timely.

## 6 Liability

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 license fee per claim (in case of a Software subscription: 50% of the annual license fee) and 100% of the license fee (in case of a Software subscription: 100% of the annual license fee) for all claims from and in connection with the contract overall.

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.

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.

Stand 8/31/2017