



## Software License and Service Agreement (EULA)

THIS SOFTWARE LICENSE AND SERVICE AGREEMENT (“AGREEMENT”) GOVERNS THE LICENSING, INSTALLATION AND USE OF EXASOL SOFTWARE AND THE PROVISION OF SERVICES BY EXASOL.

By downloading and/or installing Exasol Software: you (a) are indicating that you have read and understand this Agreement and agree to be legally bound by it on behalf of the Person for whom or which you are acting (for example, as an employee) or, if there is no Person for whom or which you are acting, on behalf of yourself as an individual; and (b) if you are acting on behalf of a Person, represent and warrant that you have the authority to act on behalf of and bind this Person .

As used in this Agreement, “Exasol,” refers to the Exasol entity identified on the Order, either Exasol UK Limited, 33 Cannon Street, London, EC4M 5SB, United Kingdom or Exasol Europa Vertriebs GmbH, Neumeyerstraße 22-24, 90411 Nuremberg, Germany; and “Customer” refers to the Person on whose behalf you have entered into this Agreement or, if there is no such entity, you as an individual. Exasol and Customer may be referred to herein as the “Parties” and, each, a “Party”.

### 1 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in [Exhibit A](#).

### 2 License Grants

#### 2.1 Perpetual Software License

If the applicable Order specifies Software licensed under a perpetual license, then subject to Customer’s compliance with this Agreement, including Customer’s timely payment of all applicable License Fees, Exasol grants to Customer a worldwide, perpetual, non-exclusive, non-transferable, non-sublicensable, limited license to install and use the Software, solely for Customer’s Internal Business Purposes, within the Licensed Capacity, and in a manner consistent with the applicable Documentation (“Perpetual Software License”). The Customer’s Perpetual Software License is limited to: (i) the then-current release of the Software as of the date of the Order; and (ii) subject to the Customer’s timely payment of the applicable Support Fees, any subsequent release of such Software issued by Exasol during the applicable Support Term.

#### 2.2 Software Subscription

If the applicable Order specifies that specific Software is made available on the basis of a subscription, then subject to Customer’s compliance with this Agreement, including Customer’s timely payment of all applicable Subscription Fees, Exasol grants to such Customer a time-limited, worldwide, non-exclusive, non-transferable, non-sublicensable, revocable license during the applicable Term to install and use the Software solely for Customer’s Internal Business Purposes, within the Licensed Capacity, and in a manner consistent with the applicable Documentation (“Software Subscription”). The Customer’s license to use the Software under a Software Subscription includes the then-current release as of the date of the Order and any subsequent release of such Software issued by Exasol during the Term. Unless expressly otherwise stated in this Agreement, Software Subscriptions will be treated as Licensed Software under this Agreement.

#### 2.3 Evaluation License

If the applicable Order specifies that specific Software is licensed for purposes of evaluation, then subject to Customer’s compliance with this Agreement, Exasol grants to Customer a worldwide, royalty-free, revocable at will, non-exclusive, non-transferable, non-sublicensable, limited license during the applicable Term to install and use the Software within the Licensed Capacity, solely for evaluating the suitability of the Software for Customer’s intended use (“Proof of Concept”) (collectively, “Evaluation License”). Notwithstanding anything to the contrary in this Agreement, Exasol will not provide any maintenance (Section 9), warranty (Section 13), or indemnification (Section 14) with respect to an Evaluation License. To ensure an efficient and

successful proof of concept process, Exasol will guide Customer through the process and support Customer with Evaluation Consulting Service as set forth in Exhibit C, Part 4, 1.3.

## 2.4 Test and Development License

If the applicable Order specifies that any Software is made available for testing and development, then subject to Customer's compliance with this Agreement, Exasol grants to Customer a worldwide, royalty-free, revocable at will, non-exclusive, non-transferable, non-sublicensable, limited license during the applicable Term to install and use the Software, within the Licensed Capacity, in a system used solely for software product migration testing, software product pre-production staging, testing new data sources, types or use cases, or other non-production use ("Test and Development License"). Customer shall not, and shall not permit, Software licensed under a Test and Development License to be used for any revenue generation, commercial activity or other productive business or purpose. Notwithstanding anything to the contrary in this Agreement, Exasol does not provide any warranty (Section 13) or indemnification (Section 14) with respect to Software licensed under a Test and Development License.

## 2.5 Free Software License

Exasol may make available to Customer certain Software free of charge, excluding Software under an Evaluation License or a Test and Development License. Such Software may have limited features, functions, or other limitations of any kind. Subject to Customer's compliance with this Agreement, Exasol grants to Customer a worldwide, royalty-free, revocable at will, non-exclusive, non-transferable, non-sublicensable, limited license during the applicable Term to install and use the Software, within the Licensed Capacity, solely for Customer's Internal Business Purposes ("Free Software License"). Notwithstanding anything to the contrary in this Agreement, Exasol does not provide any maintenance (Section 9), warranty (Section 13), or indemnification (Section 14) with respect to Software made available under a Free Software License.

## 2.6 Exasol Extensions

Subject to Customer's compliance with this Agreement, including Customer's timely payment of all applicable License Fees, Exasol grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable, limited license to use Exasol Extensions solely in connection with applicable Software that Customer has licensed from Exasol, subject to the same limitations and restrictions (including with respect to Term and Licensed Capacity) that apply to the Software with which the Exasol Extensions are used. Notwithstanding the foregoing, if any Exasol Extension is provided to Customer under a separate license agreement that grants Customer more permissive or broader rights with respect to such Exasol Extension (e.g., a separate license agreement that is provided to Customer as part of the download process for such Exasol Extension), then that separate license agreement, and not this Agreement, will govern Customer's installation and use of such Exasol Extension (but, for clarity, this Agreement will apply to all other Exasol Extensions).

## 2.7 Customer Extensions

Subject to Customer's compliance with this Agreement, Exasol grants to Customer a worldwide, revocable at will, non-exclusive, non-transferable, non-sublicensable, limited license (a) to copy, modify and use the Exasol Developer Tools solely to develop Extensions for use with the Licensed Software or Exasol Extension ("Customer Extensions"), including to support interoperability between the Software or Exasol Extension and Customer's system or environment and (b) to distribute the Customer Extensions exclusively for the use with the Licensed Software or Exasol Extension. The foregoing license is subject to the following conditions: (x) Exasol's proprietary legends or notices contained in the Exasol Developer Tools may not be removed or altered when used in or with the Customer Extension; and (y) Customer shall not make any representation that any Customer Extension is certified by Exasol or that Exasol makes any warranty with respect to such Customer Extension. Customer retains title to the Customer Extensions, subject to Exasol's ownership rights set forth in Section 5. Customer hereby grants Exasol a worldwide, perpetual, fully paid-up, royalty-free, non-

exclusive, license to the Customer Extensions. If Customer allows end users of Customer Extensions to modify or distribute the Customer Extensions, Customer shall limit such modification or distribution to use with the designated Software or Exasol Extension only, and will flow down the conditions in (x) and (y) above to end users of Customer Extensions. Customer agrees to assume full responsibility, including without limitation, the indemnification obligation in Section 14, for the performance and distribution of Customer Extensions.

## 2.8 Open Source Software

Customer acknowledges that certain Software may contain or be made available with Open Source Software. Open Source Software may be identified in the Documentation or in a list of the Open Source Software provided to Customer upon Customer's written request. Any Open Source Software that is made available to Customer as part of the Software (which for the avoidance of doubt shall include Software licensed under any of the Sections 2.1 through 2.6) is covered by the warranty and support provisions applicable to Software, so long as Customer does not modify it. Customer acknowledges that specific terms required by the respective licensor of the Open Source Software may apply to the use of Open Source Software, which terms shall be included in the documentation; however, these terms will not: (a) impose any additional restrictions on Customer's use of the Software, or (b) supersede or amend Exasol's or Customer's responsibilities under this Agreement.

## 2.9 Exasol Appliance

If the applicable Order specifies that Exasol will provide a computer appliance with pre-installed Software, then subject to Customer's compliance with this Agreement, including Customer's timely payment of the Purchase Price, including all applicable License Fees, and other fees as may be provided in the Order, Exasol sells and Customer purchases a Cluster for use with the Software ("Appliance"). Before delivery of the Appliance, Exasol will install the Licensed Software on the Appliance, and the terms of the Perpetual Software License set forth in Section 2.1 will apply. In relation to Appliances, Exasol sells hardware from its Preferred Hardware Manufacturer of which Exasol is an authorized reseller.

## 2.10 Evaluation System

If the applicable Order specifies that an Evaluation System is made available to Customer then, subject to Customer's compliance with this Agreement and Exasol's Evaluation System Terms and Conditions, and payment of any applicable Fees as set forth in the Order, Exasol grants to Customer a revocable non-exclusive, non-sublicensable and non-transferable license, limited by a specified time and place as set forth in the Order, to use the Evaluation System within the Licensed Capacity solely for evaluating whether Customer wishes to purchase a commercial license for the Software. The Evaluation System Terms and Conditions are available at <https://www.exasol.com/portal/display/EXA/Terms+and+Conditions> and are hereby incorporated by reference and made a part of this Agreement.

## **3 License Restrictions**

### 3.1 General

Unless otherwise expressly permitted by Exasol or by applicable law without possibility of contractual waiver, Customer will not and Customer has no right and explicitly waives any right to: (a) copy any Exasol Materials (except as required to run the Software and for reasonable backup purposes); (b) modify, adapt, or create derivative works of any Exasol Materials; (c) rent, lease, loan, resell, transfer, sublicense, distribute, disclose or otherwise provide any Exasol Materials to any third party; (d) decompile, disassemble or reverse-engineer any Exasol Materials, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in any Exasol Materials; (e) access or use any Disabled Materials; (f) provide to any third party the results of any benchmark tests or other evaluation of any Exasol Materials without Exasol's prior written consent; (g) attempt to disable or circumvent any license key or other technological

mechanisms or measures intended to prevent, limit or control use or copying of, or access to, any Exasol Materials (including in order to gain access to any Disabled Materials); (h) remove or obscure any copyright, trademark, patent, or other proprietary notices, legends or symbols from any Exasol Materials; (i) exceed the Licensed Capacity; (j) otherwise access or use any Exasol Materials except as expressly authorized in this Agreement; (k) install any other software in the Cluster other than the Licensed Software; (l) use any Software or associated documentation or other Exasol materials to develop or assist in the development of any product that competes with the Software or any other Exasol product or (l) encourage, assist, or knowingly permit any third party to do any of the foregoing. Customer acknowledges that the Software may be configured to display warnings, reduce available functionality, and/or cease functioning if unauthorized or improper use is detected, including if the Term expires or the Licensed Capacity is reached or exceeded.

### 3.2 Exasuite; Cluster Restriction

Notwithstanding the generality of Section 3.1, Customer shall not, and shall not permit, the installation and the use of Exasuite on more than one Cluster.

## 4 **Use by Affiliates and Consultants**

Notwithstanding anything to the contrary in this Agreement, if the Order so provides, Customer may sublicense its Affiliates (or such of its Affiliates as are specified in the relevant Order) to access and use the Software and use an Appliance, subject to the terms of this Agreement and in particular within the Licensed Capacity and solely for the Customer's or the authorized Affiliates' Internal Business Purposes approved by Exasol in writing. Customer may additionally sublicense its authorized consultants, contractors, and agents ("**Service Providers**") to access and use the Software solely on Customer's behalf in connection with providing services to Customer for Customer's Internal Business Purposes, subject to the terms and conditions of this Agreement. Any such access or use by an Affiliate or a Service Provider will be subject to the same limitations and restrictions that apply to Customer under this Agreement, and Customer will be liable for any Affiliate's or Service Provider's acts or omissions, as if they were the acts or omissions of the Customer. For avoidance of doubt, the aggregate use by Customer and all of its authorized Affiliates and Service Providers must not exceed the Licensed Capacity and nothing in this Section 4 is intended to or will be deemed to increase any Licensed Capacity.

## 5 **Ownership**

Customer acknowledges that Exasol, its suppliers and/or licensors own all worldwide right, title and interest in and to the Exasol Materials, including all related Intellectual Property Rights. Except for the licenses expressly granted to Customer in Section 2, Customer does not acquire and shall not claim any right, title or interest in or to any Exasol Materials or related Intellectual Property Rights, whether by implication, operation of law or otherwise. Notwithstanding anything to the contrary elsewhere in this Agreement, the Order, or any other agreement between Exasol and Customer, the Software is licensed, not sold, to Customer and the Customer's only right in or to the Software shall be the right to use the Software in accordance with the terms of this Agreement. To the extent that Customer provides any Feedback, Customer grants to Exasol a perpetual, irrevocable, worldwide, nonexclusive, transferable, sublicensable, royalty-free, fully paid-up right and license to use and commercially exploit the Feedback in any manner Exasol deems fit.

## 6 **Fees and Payment**

### 6.1 License Fee; Purchase Price

The license fee for any Software and any licensed Cluster (the "License Fee") and the purchase price for any Appliance (the "Purchase Price"), will be set forth in the Order.

### 6.2 Shipping, Import Duties

The Fees and Purchase Price quoted by Exasol are exclusive of, and Customer is responsible for, any applicable cost of shipping and import duties.

## 6.3 Taxes

Fees and prices quoted by Exasol are exclusive of any relevant taxes or duties applicable at the time of Delivery. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Exasol's income. If Customer becomes obliged by applicable local laws to withhold any amount of the License Fees by way of withholding tax, it will promptly pay the withheld amounts to the required tax authority and will deliver to Exasol a valid certificate that it has done so, such that Exasol can recover the withheld amount under applicable double taxation treaties. If Customer claims an exemption from any sales, use or similar taxes, Customer shall deliver to Exasol prior to completion of Software Delivery and/or completion of Appliance Delivery a valid certificate of such exemption issued by the relevant taxing authority.

## 6.4 Payment

Customer shall pay the amounts due and owing under this Agreement on or before the due date set forth in the Order or, in the absence of such a due date, not later than fourteen (14) days after the date of Exasol's applicable invoice; provided that the License Fee for any Software Subscription ("**Subscription Fee**") is payable in advance before the beginning of the agreed upon Term. For the avoidance of doubt, the Fees are due and payable to Exasol notwithstanding any failure by the Customer to download or install the Software.

## 6.5 Payment Default

Without limitation of Exasol's other termination rights, if Customer fails to pay the amounts payable under this Agreement when due and remains in default for not less than fourteen (14) days after being notified in writing to make such payment, then

- Exasol may charge interest on the past due amount at the rate of 1.5% above the Bank of England's base rate from time to time per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law, in all cases both before and after judgment; and
- Exasol may terminate this Agreement and the licenses granted hereunder by notice to Customer, effective immediately.

## 7 **Delivery**

### 7.1 Software

Subject to the provisions regarding delivery of an Appliance, the Software will be provided to Customer (a) as set forth in the Order or according to a separate agreement of the Parties or (b) by making available the Software for download from an Internet address provided by Exasol and providing a license key authorizing the use of the Software, or (c) by installation of the Software by Exasol on Customer's Cluster at Customer's premises (collectively, "Software Delivery"). The Software is only licensed and made available in machine code (binary license), not in source code. The Documentation is available for download by Customer at the Internet address provided in the Order in the English language.

### 7.2 Appliance

The delivery date of an Appliance depends on the delivery date communicated to Exasol by the Preferred Hardware Manufacturer, is a reasonable efforts estimate only, and time for delivery of any Appliance shall not in any circumstances be of the essence to this Agreement. Exasol will inform Customer as soon as possible about a possible delivery date. Unless otherwise provided for in the Order, the Appliance will be shipped at the expense of Customer. Exasol will ship an Appliance using a carrier providing for delivery



against receipt. Delivery and transfer of the risk of loss of an Appliance to the Customer will take place when the Appliance is handed over to the carrier ("Appliance Delivery"). The Software installed on any Appliance remains the property of Exasol, subject to the licensing and other terms of this Agreement.

## **8 Retention of Title**

- 8.1 Title in the Appliance does not pass to the Customer until the Purchase Price is paid in full and cleared funds to Exasol. Until such time as title passes to the Customer, the Customer shall
- 8.1.1 store the Appliance separately from all other goods held by Customer so that they remain readily identifiable as Exasol's property;
  - 8.1.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Appliance;
  - 8.1.3 maintain the Appliance in satisfactory conditions and keep it insured against all risks for its full price from completion of the Appliance Delivery;
  - 8.1.4 notify Exasol immediately if it becomes subject to any of the events listed in Section 18.1;
  - 8.1.5 give Exasol such information relating to the Appliance as Exasol may require from time to time.
- 8.2 Prior to title to the Appliance passing to Customer, Customer may only use the Appliance for Internal Business Purposes and if before title to the Appliance passes to Customer, Customer becomes subject to any of the events listed in Section 18.1, then, without limiting any other right or remedy Exasol may have, Exasol may at any time:
- 8.2.1 revoke the license to use the Licensed Software on the Appliance with immediate effect;
  - 8.2.2 require Customer to deliver up the Appliance; and
  - 8.2.3 if Customer fails to do so promptly, enter any premises of Customer or any third party where the Appliance is stored in order to recover it.
- 8.3 The passing of title to the Appliance to the Customer shall not in any circumstances be taken to imply or create any proprietary interest of the Customer in the Software or any of it, nor any right to do any act or thing reserved to the rights holder in respect of any Intellectual Property Rights embodied in the Appliance hardware, firmware or microcode.

## **9 Maintenance**

If Customer has subscribed to Maintenance services for a Perpetual Software License as set forth in the Order, then subject to payment of Support Fees in accordance with [Exhibit C](#), Exasol will provide the level of Maintenance included in the Order in accordance with the terms and conditions set forth in [Exhibit C, Part 2](#). The provision of Maintenance for the Software is included in a Subscription Fees for a Software Subscription and, subject to Customer's payment of the Subscription Fees in accordance with this Agreement, will be provided pursuant to [Exhibit C, Part 2](#) at no additional cost to Customer.

## **10 Professional Services**

Subject to Customer's payment of applicable fees, Exasol will provide Operations Engineering services, Consulting Services, and/or Training Services as may be set forth in the Order (collectively, "Professional Services") in accordance with Exasol's Terms and Conditions for Professional Services set forth in [Exhibit C, Part 3-5](#).

### **10.1 Cluster Information**

Customer shall advise Exasol on which Cluster Exasuite is to be operated (including – if applicable – Cluster information: number of database nodes (active and standby), hardware specification (RAM, CPU and size of

HDDs, RAID) or comparable, specification for AVW-Instances for database nodes and for license server, network settings (private, public, IPMI), switch specification if applicable), location, database information (for each database in the Cluster): RAM settings in the Cluster and for each database in the Cluster, database parameters, usage (Prod. / Test/ etc.). As soon as Exasuite is installed on a Cluster other than the one originally communicated to Exasol, Customer will inform Exasol of the respective changed data. If Customer purchases an Appliance, the obligation pursuant to this Section shall only apply when the Customer transfers the Software installed on the Appliance to another Cluster.

## 10.2 Initial Sizing – Performance Influencing Factors

Any recommendations by Exasol regarding the initial sizing of the license and any hardware are made using reasonable skill and care and based on the conditions and other factors influencing performance known to Exasol at the time the recommendation was made. However, the Software is a complex database whose performance depends on various factors (e.g., hardware environment, other environmental conditions, data model and query structure, data volume, etc.). A change of any such factor may affect the Software's performance; thus Exasol makes no representation and cannot provide any warranty regarding the performance of the Software, in particular if relevant factors are changed after the time of Exasol's recommendation. If Customer wishes advice and assistance regarding the performance in current system conditions, Exasol offers Performance Service or Consulting Services at an additional cost (see Professional Services at [Exhibit C](#)).

## 11 **Hardware Requirements**

Clusters upon which the Software natively runs, typically consist of high-performance Intel® (or equivalent) servers, mounted in 19" racks offered as standard by all large hardware vendors. The minimum requirements for hardware and network with which to use the Software can be found at <https://www.exasol.com/support/browse/SOL-132>. In the course of certification by Exasol Clusters and IT environments may be tested for their functionality and performance with Exasuite. At the end of the certification process Exasol will provide a statement regarding 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 previously Certified Hardware and IT-Environments can be found under [www.exasol.com/hardware.html](http://www.exasol.com/hardware.html). In the case the Software is installed and operated on non-certified or only limited-certified hardware or a non-certified IT environment is used operational malfunctions may occur. For these reasons Customer shall use the Software only on hardware and in IT-environments certified by Exasol or shall request an individual certification at Customer's expense before installation and use. If Customer operates the Software on non-certified hardware or in a non-certified IT-environment (in particular public clouds or virtualizations), Exasol disclaims any warranty for any defects or Errors or any Professional Services.

## 12 **Software Verification and Audit**

At Exasol's request, Customer will furnish Exasol with a certification signed by Customer's authorized representative verifying that the Software is being used in accordance with this Agreement and the applicable Order. Upon at least ten (10) days' prior written notice, Exasol may audit Customer's and/or its Affiliates' use of the Software to ensure compliance with this Agreement and the applicable Order. The Customer shall procure for Exasol an equivalent right to audit any Service Providers' use of the Software, to the extent that such use cannot effectively be audited by auditing the Customer. Any such audits will be conducted during regular business hours at Customer's (or its Affiliates' or Service Providers') facilities (as the case may be), will not unreasonably interfere with Customer's (or its Affiliates' or Service Providers') business and, will comply with Customer's (or its Affiliates' or Service Providers') reasonable security procedures. Customer will (and will ensure that its Affiliates and Service Providers will) provide Exasol with reasonable access to all relevant records and facilities reasonably necessary to conduct the audit. If an audit reveals that Customer (or any Affiliate or Service Provider) has exceeded the Licensed Capacity or the scope

of Customer's license grant during the period audited, then Exasol will invoice Customer, and Customer will promptly pay Exasol any underpaid fees based on Exasol's price list in effect at the time the audit is completed. If the excess usage exceeds ten percent (10%) of the Licensed Capacity, then Customer will also pay Exasol's reasonable costs of conducting the audit.

## **13 Limited Warranty**

### **13.1 Warranty**

Exasol warrants that for a period of thirty (30) days from completion of the Software Delivery ("Warranty Period"), the Software will substantially perform the material functions described in the Documentation for such Software, if used in accordance with the Documentation and provided that Customer as of the date of warranty claim is in compliance with all terms and conditions of this Agreement (including the payment of all License Fees then due and owing).

### **13.2 Exclusions**

Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in Section 13.1 does not apply to problems arising out of or relating to (a) Software, or the media on which it is provided, that is modified or damaged by Customer or anyone acting on its behalf; (b) any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not approved for Customer's use in the Documentation, unless otherwise expressly permitted by Exasol in writing; (c) Customer's or any third party's negligence, abuse, misapplication or misuse of the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by Exasol in writing; (d) Customer's failure to promptly install all maintenance releases that Exasol has previously made available to Customer; (e) the operation of, or access to, Customer's or a third party's system or network; (f) any Open Source Software components, beta software, software that Exasol makes available for testing or demonstration purposes, temporary software modules or software for which Exasol does not receive a license fee (including for the avoidance of doubt Software subject to an Evaluation License, Test and Development License, Free Software License or Evaluation System); (g) Customer's material breach of this Agreement; or (h) any other circumstances or causes outside of the reasonable control of Exasol (including abnormal physical or electrical stress).

### **13.3 Remedy**

The sole liability of Exasol (and its Affiliates and suppliers/licensors), and Customer's sole remedy, for any failure of the Software to conform to the warranty set forth in Section 13.1, is for Exasol to do one of the following (at Exasol's sole discretion): (a) modify, or provide an Enhancement for, the Software so that it conforms to the foregoing warranty, (b) replace Customer's copy of the Software with a copy that conforms to the foregoing warranty, or (c) terminate the license with respect to the non-conforming Software and refund the License Fees paid by Customer for such non-conforming Software.

### **13.4 Warranty Claims**

All warranty claims must be made by written notice to Exasol on or before the expiration of the Warranty Period.

### **13.5 Disclaimer of Warranties**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 13.1 ABOVE, THE EXASOL MATERIALS, OPEN SOURCE SOFTWARE, THIRD PARTY CONTENT, MAINTENANCE SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" TO THE FULL EXTENT PERMITTED BY LAW, ALL OTHER CONDITIONS, WARRANTIES OR OTHER TERMS WHICH MIGHT HAVE EFFECT BETWEEN EXASOL AND THE CUSTOMER OR BE IMPLIED OR INCORPORATED



INTO THIS AGREEMENT, WHETHER BY STATUTE, COMMON LAW, OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, EXASOL MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL OPEN SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

## 13.6 No Warranty on Hardware

EXASOL DOES NOT PROVIDE ANY WARRANTY WITH RESPECT TO THE HARDWARE OF AN APPLIANCE. However, if and as permitted by the terms of any warranty made by the Preferred Hardware Manufacturer ("Manufacturer's Warranty"), Exasol either assigns to Customer any and all of its claims and rights based on any Manufacturer's Warranty with effect from the passing of title in the Appliance to Customer, or if such assignment is not permitted under the terms of the Manufacturer's Warranty then Exasol will exercise its relevant rights under the Manufacturer's Warranty for the benefit of Customer.

## 13.7 No Representations Outside Agreement

The Customer agrees that, in entering into this Agreement, either it did not rely on any representations or warranties (whether written or oral) of any kind or of any person other than those expressly set forth in this Agreement or (if it did rely on any representations or warranties, whether written or oral, not expressly set forth in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Exasol shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

## 13.8 Customer Responsibilities for Data

In addition, the Customer, and not Exasol, is solely responsible for the accuracy, quality and security of the Customer's data and for maintaining a backup of all such data, and for ensuring the security and integrity of Customer's (and its service provider's) data, computers, networks and systems (including with respect to protecting against viruses and malware).

## 14 **Indemnification**

### 14.1 Indemnification by Exasol

Subject to Section 14.2 Exasol will indemnify, hold harmless and defend Customer from and against all Losses incurred by Customer resulting from a Claim by a third party alleging that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's United Kingdom Intellectual Property Rights. This Section 14.1 shall not apply where the Claim in question is attributable to:

- 14.1.1 use of the Software or Documentation by or on behalf of Customer in a manner that is that is outside the purpose, scope, or manner of use permitted under the Agreement or that is inconsistent with the Documentation or otherwise contrary to Exasol's instructions;
- 14.1.2 modifications to the Exasol Materials other than (i) by Exasol in connection with this Agreement or (ii) with Exasol's express written authorization and in strict accordance with Exasol's written directions and specifications;

- 14.1.3 combination, operation or use of the Software with any technology (including hardware, software, firmware, system or network) not provided or approved by Exasol, or with third-party services, processes or materials where the infringement or misappropriation would not have occurred but for such combination;
- 14.1.4 the Customer's continued use of the Software, or other allegedly infringing activity, after receiving notice of an alleged infringement, misappropriation or other violation of third party's rights;
- 14.1.5 Open Source Software which forms part of, is used by or is provided with the Software; or
- 14.1.6 use of a version of the Software other than the most current version or failure to timely implement any maintenance release, modification, updated, or replacement of the Software made available by Exasol;
- 14.1.7 negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Customer, or a third party;
- 14.1.8 events or circumstances outside of Licensor's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or
- 14.1.9 Third-party claims or Losses for which Customer is obligated to indemnify Exasol pursuant to Section 14.2.

## 14.2 Indemnification by Customer

Customer will indemnify, defend, and hold harmless Exasol and its Affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors and permitted assigns (each, an "Exasol Indemnitee") from and against any and all Losses incurred by the Exasol Indemnitee resulting from any Claim by a third party:

- that any Intellectual Property Right or other right of any Person, or any applicable law, is or will be infringed, misappropriated, or otherwise violated as a result of: (i) any use or combination of the Software by Customer or an Affiliate or consultant appointed by Customer with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Exasol nor authorized by Exasol in this Agreement and the Documentation or otherwise in writing; or (ii) any information, materials, or technology directly or indirectly provided by Customer or directed by Customer to be installed, combined, integrated, or used with, as part of, or in connection with the Software or Documentation;
- relating to facts that, if true, would constitute a breach by Customer of any representation, warranty, covenant, or obligation under this Agreement;
- relating to gross negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Customer or an Affiliate or a consultant appointed by Customer with respect to the Software or Documentation or otherwise in connection with this Agreement; or
- relating to use of the Software or Documentation by or on behalf of Customer or any Affiliate or consultant appointed by Customer that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Exasol's instructions.

## 14.3 Indemnification Procedure

Each Party shall promptly notify the other Party in writing of any Claim for which such Party believes it is entitled to be indemnified pursuant to Section 14.1 or Section 14.2. The Party seeking indemnification (the "Indemnitee") shall cooperate with the other Party (the "Indemnitor"), at the Indemnitor's sole cost and expense. The Indemnitee shall promptly (and in any event within any applicable deadlines) inform the Indemnitor of any Claim, and shall not make any admission of liability in respect or it, nor compromise or

settle or enter into any other arrangement in respect of it, without the prior written consent of the Indemnitor (not to be unreasonably withheld or delayed). The Indemnitor shall promptly assume control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Claim on any terms or in any manner that materially adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent (save that nothing in this clause 14.3 shall operate to prevent Exasol taking the mitigation measures described in clause 14.4). If the Indemnitor fails or refuses to assume control of the defense of such Claim, the Indemnitee shall have the right, but no obligation, to defend against such Claim, including settling such Claim after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 14.3 will not relieve the Indemnitor of its obligations under this Section 14, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

#### 14.4 Mitigation

If any Claim is made, or in Exasol's reasonable opinion is likely to be made, against the Customer, Exasol may at its sole option and expense:

14.4.1 modify the affected Software so that it ceases to be infringing;

14.4.2 replace it with software which performs in a substantially similar manner;

14.4.3 procure for the Customer the right to continue to use the Software (or the affected part thereof) in accordance with the terms of this Agreement; or

if Exasol determines in its sole discretion that neither is reasonably feasible, Exasol may terminate Customer's applicable license by notice in writing and refund the Customer a pro rata refund of the Fees previously paid by Customer, which will be calculated using the remainder of the license term (beginning with the date of Exasol's receipt of notice of the applicable Claim), or if the Software is provided under a Perpetual Software License, a refund of Fees previously paid by Customer, less straight-line depreciation on a three-year basis from completion of the Software Delivery.

#### 14.5 Exclusive Remedy

THE OBLIGATIONS SET FORTH IN THIS SECTION 14 CONSTITUTE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND EXASOL'S ENTIRE LIABILITY, WITH RESPECT TO ANY CLAIMS THAT THE SOFTWARE INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

### 15 **Limitation of Liability**

#### 15.1 Exclusion of Damages

Subject to section 13 and section 15.2, in no event will Exasol, or any of its licensors, service providers, or suppliers be liable under or in connection with this Agreement or its subject matter under any legal or equitable theory, including breach of contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

15.1.1 increased costs, diminution in value, lost business, production, revenues or profits, or an account of profits;

15.1.2 loss of goodwill or reputation;

15.1.3 use, inability to use, loss, interruption, delay or recovery of any software or open source components or other third-party materials;

15.1.4 Loss, damage, corruption, or irrecoverability of data, or breach of data or system security;

15.1.5 cost of replacement goods or services; or

15.1.5 consequential, incidental, indirect, exemplary, special, enhanced, or punitive damages.

## 15.2 Cap on Monetary Liability

SUBJECT TO SECTION 15.1 AND SECTION 15.3, THE COLLECTIVE AGGREGATE LIABILITY OF EXASOL AND ITS LICENSORS, SUPPLIERS AND SERVICE PROVIDERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL IN NO EVENT EXCEED a sum equal to (a) all the amounts paid, and amounts accrued and not yet paid, BY CUSTOMER under this Agreement for: (i) Customer's Perpetual Software License or Software Subscription, (ii) plus any Maintenance Services and Professional Services, in each case of (i) and (ii) during the twelve (12) months prior to the event (or last in the series of events) giving rise to the claim, OR (b) \$10,000,000 , WHICHEVER IS LESS..

## 15.3 Exceptions from Exclusions

The exclusions and limitations in Sections 15.1 and 15.2 shall apply to the fullest extent permissible by law, but Exasol does not exclude liability for:

15.3.1 death or personal injury caused by the negligence of Exasol or its agents;

15.3.2 fraud or fraudulent misrepresentation;

15.3.3 liability for indemnification for third-party claims as provided in Section 4; or

15.3.4 any other liability which may not be excluded by applicable law.

## 16 **Confidential Information**

### 16.1 Confidential Information

"Confidential Information" means information consisting of or relating to technology, ideas, materials, know-how, trade secrets, business operations, plans, strategies, customers, pricing and other financial information or projections, that is disclosed by one Party (the "Discloser") or by its Affiliate to the other Party (the "Recipient") or to its Affiliate that: (a) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; (b) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the Discloser to the Recipient within thirty (30) days after any such disclosure; or (c) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information of Exasol includes without limitation the Exasol Materials (including any license keys) and any benchmarking or results of a Proof of Concept under an Evaluation License, and all Derived Information. "Derived Information" means all information (such as notes, analyses, compilations, studies, interpretations, summaries other documents, drawings, prototypes, mock-ups, specimens or samples, irrespective of the medium in which they are embodied) that contains, reflects, or is based upon, in whole or in part, the Confidential Information.

### 16.2 Use and Disclosure Restrictions

The Recipient agrees: (a) to maintain the Confidential Information of the Discloser in strict confidence; (b) not to disclose such Confidential Information to any third parties, except its Representatives (as defined below) in accordance with this Section 16.2; and (c) not to use any such Confidential Information for any purpose other than to exercise its rights or perform its obligations under this Agreement. Recipient will treat Confidential Information of the Discloser with the same degree of care as it accords to its own Confidential Information, but in no event with less than reasonable care. Recipient may disclose the Confidential Information of Discloser to its directors, officers, employees and Affiliates' employees (collectively,

“Representatives”), who have a bona fide need to know such Confidential Information, provided that each such Representative is bound by a legal obligation as protective of the Discloser’s Confidential Information as those set forth herein. Recipient’s obligations under this Section 16 will continue in effect for a period of three (3) years from the date of last disclosure of Confidential Information by Discloser, or for such longer period during which the Confidential Information is considered a Trade Secret. Notwithstanding the generality of the foregoing, Customer’s obligations under this Section 16 will continue in effect with respect to Exasol Materials for so long as those are maintained in confidence by Exasol.

## 16.3 Exclusions

The obligations of Recipient under this Section 16 will not apply to any Confidential Information that: (a) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of Recipient (or any of its Representatives, affiliates, or agents) or any third party subject to any use or disclosure restrictions with respect to such Confidential Information; (b) was known by or lawfully in the possession of Recipient, prior to receiving such information from Discloser, without restriction as to use or disclosure; (c) is rightfully acquired by Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (d) is independently developed by Recipient without access, use or reference to any Confidential Information of Discloser.

## 16.4 Required Disclosures

The provisions of Section 16.2 will not restrict Recipient from disclosing Discloser’s Confidential Information to the extent required by any law or regulation or compelled by a court or administrative agency of competent jurisdiction, provided that, to the extent permissible under law, Recipient uses reasonable efforts to give Discloser advance notice of such required disclosure, and cooperates with Discloser (at Discloser’s cost) in order to enable Discloser to prevent or limit disclosure.

## 16.5 Return or Destruction of Confidential Information

Upon termination of this Agreement and the licenses granted by it or Maintenance, Recipient will promptly return to Discloser or at Discloser’s option destroy all tangible items and embodiments containing or consisting of Discloser’s Confidential Information and all copies thereof and provide written certification of such destruction or return by an authorized person.

## 17 **Term**

### 17.1 General

Except as otherwise provided in Section 17.2 and Section 17.3, this Agreement and the license(s) granted hereunder will commence on the earliest to occur of (a) Exasol’s acceptance of an Order, (b) completion of Software Delivery, (c) completion of Appliance Delivery (as applicable); or (d) Customer’s download or installation of the Software, and will remain in effect until the expiration of the applicable term detailed in the Order or until terminated pursuant to Section 18 (the “Term”). For the avoidance of doubt, failure of Customer to download or install the Software shall not prevent the effectiveness of, nor terminate, this Agreement, and termination of the Term of a license subject to this Agreement shall not affect the Term of any other license or service agreement between Exasol and Customer.

### 17.2 Evaluation License / System

The Term of an Evaluation License, including for any Evaluation System, shall be as set forth in the Order and if no Term is specified in the Order, thirty (30) days from the date the license key is delivered to Customer or from the day the Evaluation System is placed at Customer’s disposal (in each case, the “**Evaluation Period**”). The Evaluation Period can only be extended by mutual agreement, which may be concluded in electronic form.

## 17.3 Software Subscription

The Term of any Software Subscription shall automatically renew for an additional Subscription License Term unless written notice of termination is given to the other Party three (3) months prior to the expiration of the then-current Term.

## 18 **Termination**

### 18.1 By Either Party

Either Party may terminate this Agreement by written notice to the other Party upon occurrence of any of the following events:

18.1.1 The other Party materially breaches this Agreement and does not cure the breach within thirty (30) days of receiving notice of the breach;

18.1.2 The other Party commences a voluntary bankruptcy case (or other judicial or administrative proceeding under any foreign law relating to insolvency), or anyone else commences an involuntary bankruptcy case (or other insolvency case under applicable law) against the other Party, and either (i) the case is not dismissed after 60 days have lapsed from commencement or (ii) the court before which the case is pending issues an order for relief or similar order approving the case or is subject to any procedure, event or circumstance analogous to any of the foregoing in any relevant jurisdiction;

18.1.3 the other Party becomes insolvent, is subject to administration, liquidation or other insolvency procedure, makes any arrangement with its creditors generally, becomes unable to pay or admits its inability to pay its debts when they fall due, or if any security given by it to a creditor crystallises or becomes enforceable, or any lien or power of sale becomes exercisable by reason of any unpaid debt, or is subject to any procedure, event or circumstance analogous to any of the foregoing in any relevant jurisdiction; or

18.1.4 The other Party fails generally to pay its debts as they become due (unless the debts in question are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.

### 18.2 By Exasol

Exasol may terminate this Agreement and the license granted hereunder (in whole or in part, including with respect to any Term) by written notice to Customer, effective immediately, upon occurrence of any of the following events:

18.2.1 Customer breaches Section 3,

18.2.2 Customer defaults on payment as set forth in Section 6.5; and/or

18.2.3 as provided in Section 14.4.

### 18.3 Effect of Termination

Upon any expiration or termination of this Agreement, the rights and licenses granted to Customer hereunder will automatically terminate, and Customer agrees to (a) cease immediately using the Exasol Materials, and (b) return or destroy all copies of the Exasol Materials and other Exasol Confidential Information in Customer's possession or control and certify in writing the completion of such return or destruction in accordance with Section 16.5. Except as specifically provided in this Agreement, upon termination of this Agreement, Exasol will have no obligation to refund any Fees or other amounts received from Customer during the Term, and notwithstanding any early termination above, Customer shall still be required to pay all Fees payable under an Order (*i.e.*, such early termination shall not relieve Customer of its obligations to pay all Fees payable under an Order). Termination of Maintenance Terms and Conditions due



to Exasol's breach is provided in Section 11.2 of [Exhibit C](#), Part 1. Section 1 (Definitions), Section 5 (Ownership), Section 12 (Software Verification and Audit), Section 13 (Limited Warranty), Section 14 (Indemnification), Section 15 (Limitation of Liability), Section 16 (Confidential Information), Section 18 (Termination) and Sections 19 (Export) through 25 (Miscellaneous) will survive any expiration or termination of this Agreement.

## **19 Export**

The Software may be subject to United States and other export control laws, including without limitation the US Export Administration Act and its associated regulations and export control laws of the European Union and the United Kingdom. Customer will not directly or indirectly, and will not knowingly permit, export, re-export, or release the Software to, or make the Software accessible from, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law. Customer will comply with all applicable laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the United States.

## **20 Reference Customer**

Unless otherwise agreed in the Order, Customer grants Exasol and its Affiliates the right to refer to Customer, and display its logo, in the course of its marketing and promotional activities. Such activities may include, for example, articles in professional media, success stories in online and printed publications, references in discussions with journalists, customers and business partners and the visual and content representation on Exasol's website or at public events, such as industry fairs, etc. Exasol agrees to inform Customer of such activities and to coordinate the representation with Customer before publication. Customer shall refuse such activities only for good cause.

## **21 Third-Party Content Disclaimer**

Certain Extensions and other materials available for download on Exasol's user portal are developed and/or provided by third parties ("Third-Party Content"). Exasol makes such Third-Party Content available for download on Exasol's user portal as a convenience to its customers, but Exasol neither controls nor endorses, nor is Exasol responsible for, any Third-Party Content, including the accuracy, integrity, quality, legality, usefulness or safety of Third-Party Content. Certain Third-Party Content may, among other things, be inaccurate, non-functional, infringing or dangerous. Nothing in this Agreement or on Exasol user portal will be deemed to be a representation or warranty by Exasol with respect to any Third-Party Content, even if a particular Extension or other item of Third-Party Content is identified as "certified" for use with Software. Exasol has no obligation to monitor Third-Party Content, and Exasol may block or disable access to any Third-Party Content at any time. In addition, the availability of any Third-Party Content through Exasol's user portal does not imply Exasol's endorsement of, or affiliation with, any provider of such Third-Party Content, nor does such availability create any legal relationship between Customer and any such provider. Customer's use of Third-Party Content is at Customer's own risk and may be subject to any additional terms, conditions and policies applicable to such Third-Party Content (such as license terms, terms of service or privacy policies of the providers of such Third-Party Content).

## **22 Authorized Partners**

If Customer licensed the Software through an authorized reseller, partner or OEM of Exasol ("Authorized Partner") then, notwithstanding anything to the contrary in this Agreement: (a) Customer's use of the Software is subject to any additional terms in its agreement with the Authorized Partner; provided that such additional terms shall not negate or otherwise modify the terms of this Agreement; (b) Customer agrees to pay the Authorized Partner the Fees and other applicable fees, and Customer will have no direct Fee payment obligations to Exasol for such Software; (c) Customer's agreement with the Authorized Partner is between Customer and the Authorized Partner and is not binding on Exasol; and (d) Exasol may terminate

this Agreement (including Customer's right to use the Software) if Exasol does not receive payment for Customer's use of the Software from the Authorized Partner or if Customer breaches any term of this Agreement. If Customer's warranty and support terms stated in its agreement with the Authorized Partner are different from those set forth in this Agreement, then such different terms are solely between Customer and the Authorized Partner and Exasol will have no obligations to Customer under this Agreement with respect to such different terms. Except as set forth in the preceding sentence, if there is any conflict or inconsistency between this Agreement and Customer's agreement with Authorized Partner, then this Agreement will control (and will resolve such inconsistency) as between Exasol and Customer.

## **23 Exasol User Portal**

If Customer is given access to the Exasol user portal, Customer shall at all times use such portal in accordance with applicable instructions and terms of use.

## **24 Applicable Law and Jurisdiction**

### **24.1 Applicable Law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

### **24.2 Jurisdiction**

24.2.1 For Customers incorporated in the United Kingdom, the Parties irrevocably agree that the Courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

24.2.2 For Customers incorporated outside of the United Kingdom, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Section and for that purpose:

24.2.2.1 the number of arbitrators shall be one;

24.2.2.2 the seat, or legal place, of arbitration shall be in London; and

24.2.2.3 the language to be used in the arbitral proceedings shall be English.

### **24.4 Injunctive Relief**

Each Party acknowledges and agrees that a breach or threatened breach by the other Party of any of its obligations under Section 3 or Section 16.2 of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in an injunction, specific performance, and any other equitable relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

## **25 Miscellaneous**

### **25.1 Purchase Order**

Customer's signature under Exasol's quote constitutes acceptance of this Agreement notwithstanding anything to the contrary in any document issued by Customer. If any document issued by Customer contains



any terms or conditions that are different from or additional to the terms and conditions set forth in this Agreement, then Exasol expressly rejects such different or additional terms and conditions, and such different or additional terms and conditions shall not become a part of the agreement between the Parties notwithstanding any subsequent acknowledgement, invoice or license key that Exasol may issue.

## 25.2 Notices

All notices required or permitted under this Agreement shall be in writing and delivered in person, by email, by nationally recognized overnight courier service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt or, if receipt occurs after 5pm, or on a day that is not a Business Day at the location of the addressee, then the notice shall be deemed given on the next following Business Day. Evidence of receipt may be given by signature of a Person acting on behalf of the addressee, certification of delivery by messenger, electronic delivery or read confirmation, return receipt of the USPS or foreign postal service, or delivery confirmation of the courier service. All communications shall be sent to the addresses set forth in the applicable Order or to such other address as may be specified by either Party to the other Party in accordance with this Section 25.2. Notice by email shall not be permitted in respect of any notice to terminate this Agreement or for the service of any document in any proceedings or arbitration.

## 25.3 Assignment

Customer shall not assign, delegate or transfer this Agreement, in whole or in part, by agreement, operation of law or otherwise. Exasol may assign this Agreement in whole or in part to an Affiliate or in connection with an internal reorganization or a merger, acquisition, or sale of all or substantially all of Exasol's assets to which this Agreement relates. Exasol may also assign its rights to receive payment due as a result of performance of this Agreement to a factoring or debt collection business, bank, trust company, or other financing institution. Any attempt to assign this Agreement other than as permitted herein will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties' permitted successors and assigns. Customer shall not unreasonably withhold, condition or delay its agreement to any novation of this Agreement in connection with any of the circumstances in which Exasol may assign its right under this Agreement.

## 25.4 Rights and Remedies

Except as otherwise expressly set forth in this Agreement, the rights and remedies of either Party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity.

## 25.5 Waiver; Severability

The waiver by either Party of a breach of or a default under this Agreement will not be effective unless in writing. The failure by either Party to enforce any provisions of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions. If a court of competent jurisdiction holds any provision of this 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.

## 25.6 Interpretation

For purposes of interpreting this Agreement, (a) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular; (b) unless otherwise specifically stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph; (c) the words "include" and "including" will not be construed as terms of limitation, and will therefore mean "including but not limited to" and "including without limitation";

(d) unless otherwise specifically stated, the words “writing” or “written” mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; (e) the captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement; and (f) the references herein to the parties will refer to their permitted successors and assigns.

## 25.7 Data Collection; Privacy

From time to time, Exasol may collect and process technical and related information about Customer’s use of the Software, which may include Internet protocol addresses, hardware identification, operating system, application software and other usage information, and use this information to support and troubleshoot issues, provide updates, invoice and improve Exasol’s products or services. Such information will be subject to the Exasol Privacy Policy, available at <https://www.exasol.com/portal/display/EXA/Terms+and+Conditions>. Exasol will comply with applicable data privacy laws in respect of such data.

## 25.8 Integration

This Agreement, along with any additional terms incorporated herein by reference, including the Order and any exhibits hereto or thereto, constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, communications and understandings, written or oral. Any terms and conditions contained or referenced by either Party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement will be disregarded and have no effect unless otherwise expressly agreed to by the parties in accordance with the preceding sentence. If there is any inconsistency between the terms of this Agreement and the terms of an Order, the terms of an Order shall take precedence. Each Party acknowledges that, in entering into this Agreement and the documents referred to in it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

## 25.9 Variation

Any amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

## EXHIBIT A: DEFINITIONS

**“Affiliate”**, with respect to any Person, means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or under common control with such Person. For purposes of this definition, “control” means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through ownership, of greater than fifty percent (50%) of the voting securities, by contract or otherwise.

**“Agreement”** has the meaning set forth in the Preamble.

**“Appliance”** has the meaning set forth in Section 2.9.

**“Appliance Delivery”** has the meaning set forth in Section 7.2.

**“Authorized Partner”** has the meaning set forth in Section 22.

**“Business Day”** means a day which is not a weekend or a public holiday in the specified territory (or, if not territory is specified, in England).

**“Claim”** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity, or otherwise.

**“Clients and Drivers”** means Exaplus and any drivers (e.g. ODBC, JDBC, ADO.NET), provided by Exasol.

**“Cluster”** means one or several dedicated server(s) which are tightly connected, work together and can be viewed as a single system.

**“Confidential Information”** has the meaning set forth in Section 16.1.

**“Customer”** has the meaning set forth in the Preamble.

**“Customer Extensions”** has the meaning set forth in Section 2.7.

**“Disabled Materials”** means certain materials (including programs, modules or components, functionality, features, documentation, content or other materials) that may be contained in or provided with the Software as part of the delivery mechanism used by Exasol, but that are disabled or hidden in Customer’s setting, because Customer either: (a) does not have the relevant license or license key, or (b) has not paid the applicable Fees, for those materials.

**“Documentation”** means the documentation that describes how to use the Software and is provided by Exasol in electronic form in English via the Exasol user portal (<https://www.exasol.com/portal/display/DOC/>).

**“Enhancements”** means any updates, upgrades, releases, fixes, enhancements or modifications to the Software made generally commercially available by Exasol to its support customers under the terms and conditions set forth in Exhibit C.

**“Evaluation License”** has the meaning set forth under Section 2.3.

**“Evaluation Period”** has the meaning set forth in Section 17.2.

**“Evaluation System”** has the meaning set forth in Exasol’s Evaluation System Terms and Conditions.

**“Evaluation System Terms and Conditions”** means the terms and conditions governing the use of an Evaluation System (available at <https://www.exasol.com/portal/display/EXA/Terms+and+Conditions>).

**“Exaplus”** is the user interface for dealing with SQL statements in Exasuite.



**“Exasol Developer Tool”** means the standard application programming interface or configuration and related materials identified and provided by Exasol for and with the applicable Software to enable the creation of Extensions or otherwise support interoperability between the Software and Customer’s system or environment.

**“Exasol Extensions”** means Extensions made available through Exasol user portal that are identified on Exasol user portal as published by Exasol (and not by any third party).

**“Exasol Materials”** mean the Software, Software license keys, Exasol Developer Tools, Exasol Extensions and end user documentation relating to the foregoing.

**“Exasol user portal”** means Exasol’s portal, providing documentation, solution center, download area, as well as MyExasol area with access to tickets and other customer specific information.

**“Exasolution®”** is a proprietary database software developed and owned by Exasol.

**“Exasuite”** consists of the Exasolution® database software and the underlying purpose-built operating system (Exacluster OS).

**“Extension”** means any separately downloadable suite, configuration file, add-on, technical add-on, example module, command, function or application that extends the features or functionality of the applicable Software.

**“Fees”** means the License Fees, Subscription Fees and Support Fees, as well as other fees for Exasol’s services as may be agreed upon between Exasol and Customer.

**“Feedback”** means all suggestions for improvement or enhancement, recommendations, comments, opinions, code, input, ideas, reports, information, know-how or other feedback provided by Customer (whether in oral, electronic or written form) to Exasol in connection with Exasol’s Software. Feedback does not include any data, results or output created or generated by Customer using the Software, unless specifically submitted or communicated by Customer to Exasol as part of the Feedback.

**“Free Software License”** has the meaning set forth in Section 2.5.

**“Intellectual Property Rights”** means all patent, copyright, trademark, database and trade secret rights and other intellectual property and proprietary rights, whether registered or unregistered.

**“Internal Business Purpose”** means Customer’s (or, where permitted by the relevant Order, its permitted Affiliates’) use for its or their own internal business operations on Customer’s systems, networks and devices with Customer’s data (or on or with those of its permitted Affiliates). Such use does not include use by Customer on a service bureau basis or otherwise to provide services to, or process data for, any third party.

**“License Fees”** has the meaning set forth in Section 6.1.

**“Licensed Capacity”** means the maximum usage of and the specific content of the Software (e.g., aggregate daily volume of data indexed, number of nodes, amount of features etc.) that is permitted under the type of license included and described in the applicable Order. The available types of license and License Capacity are described in [Exhibit B](#).

**“Licensed Software”** means Software that is licensed to Customer and for which Customer has paid a License Fee to Exasol, whether directly or through an Authorized Partner and which for the avoidance of doubt shall include software licensed under a Perpetual Software License or a Software Subscription.

**“Loss”** or **“Losses”** means any loss, damage, cost or expense.

**“Maintenance”** has the meaning set forth in in [Exhibit C](#).

**“Manufacturer’s Warranty”** has the meaning set forth in Section 13.6.



**“Open Source Software”** means software or similar subject matter that is distributed under an open source license such as (by way of example only) the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, any derivative of any of the foregoing licenses, or any other license approved as an open source license by the Open Source Initiative or as a free software license by the Free Software Foundation.

**“Order”** means Exasol’s quote accepted by Customer or Customer’s purchase order or other ordering document submitted to Exasol (directly or indirectly through an Authorized Partner) to order Exasol Materials or services, which references the products, services, pricing and other applicable terms set forth in an applicable Exasol quote or ordering document.

**“Perpetual Software License”** has the meaning assigned to such term in Section 2.1.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

**“Preferred Hardware Manufacturer”** means Dell, Inc. and its subsidiaries or such other hardware manufacturer as Exasol may in its discretion select from time to time.

**“Professional Services”** has the meaning set forth in Section 10.

**“Proof of Concept”** has the meaning set forth in Section 2.3.

**“Representatives”** means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sub-licensees, and subcontractors.

**“Service Providers”** has the meaning set forth in Section 4.

**“Software”** means the Exasol-proprietary software stack consisting of Exasuite and various clients and drivers (e.g. ODBC, JDBC, ADO.NET), scope of which is listed in an Order and any Enhancements thereto made available to Customer by Exasol.

**“Software Delivery”** has the meaning set forth in Section 7.1

**“Software Subscription”** has the meaning set forth in Section 2.2.

**“Subscription Fee”** has the meaning set forth in Section 6.4.

**“Support Fees”** has the meaning set forth in [Exhibit C](#).

**“Term”** has the meaning set forth in Section 17.1.

**“Third-Party Content”** has the meaning set forth in Section 21.

Product	License Type	Licensed Capacity
<p>Exasol Enterprise Cluster</p>	<p>Paid license (or NFR license*)</p>	<p>Raw data volume (unit TB)</p> <p>The raw data volume corresponds to the data volume that is comparable to the size the data would have if stored as CSV files.</p> <p>If the licensed capacity is exceeded, no additional data can be imported unless data inside the database is being deleted.</p>
		<p>DB RAM (unit GB/TB)</p> <p>DB RAM specifies the maximum amount of main memory (RAM) the database system can make use of for processing data in memory.</p>
		<p>Edition / product features</p> <p>The Edition (Standard or Advanced) determines the included features.</p> <p>All editions include:</p> <ul style="list-style-type: none"> <li>• In-memory technology</li> <li>• Column-based storage and compression</li> <li>• Massively parallel processing (MPP)</li> <li>• High user concurrency</li> <li>• Linear scalability</li> <li>• Tuning-free database that self-optimizes</li> <li>• Industry-standard interfaces</li> <li>• Seamless integration into existing analytic environments</li> <li>• High-speed parallel loaders</li> <li>• Flexible deployment models</li> </ul> <p>Advanced editions include additionally:</p> <ul style="list-style-type: none"> <li>• In-database UDF analytics (R, Java, Python, Lua, etc.)</li> <li>• Support for Hadoop-based environments</li> <li>• Next-generation preference analytics</li> <li>• Geospatial analytics</li> <li>• High availability support</li> <li>• Transparent ecosystem integration framework for any data source</li> <li>• Virtual schema and logical data warehouse framework</li> </ul>
	<p>Paid license</p>	<p>Raw data volume (unit TB)</p>

<p>Exasol Tableau Turbo Enterprise</p>	<p>(or NFR license*)</p>	<p>For details please refer to the corresponding section under Exasol Enterprise Cluster</p> <p>Product features</p> <p>The feature set of the Tableau Turbo Enterprise corresponds to the feature set of the “Standard Edition” of the Exasol cluster.</p> <p>Usage</p> <p>Tableau Turbo Enterprise license can only be used in conjunction with Tableau and no other front-end BI/data visualization tool.</p>
<p>Free Small Business Edition</p>	<p>Free license</p>	<p>Raw data volume and number of database nodes</p> <p>The FSBE is limited to one database node and 1 TB of raw data.</p> <p>For details regarding the definition of raw data please refer to the corresponding section under Exasol Enterprise Cluster</p> <p>Edition / product features</p> <p>The Edition (Standard or Advanced) determines the included features.</p> <p>For details regarding the included feature set please refer to the corresponding section under Exasol Enterprise Cluster</p>
<p>Community Edition</p>	<p>Free license</p>	<p>Raw data volume and number of database nodes</p> <p>The Community Edition is limited to one database node and 1 TB of raw data.</p> <p>For details regarding the definition of raw data please refer to the corresponding section under Exasol Enterprise Cluster.</p> <p>Product features</p> <p>The feature set of the Community Edition corresponds to the feature set of the “Advanced Edition” of the Exasol Enterprise cluster.</p>
<p>Exasol One</p>	<p>Paid license</p>	<p>Raw data volume and number of database nodes</p> <p>Exasol One is limited to one database node and 1 TB of raw data.</p>

	(or NFR license*)	For details regarding the definition of raw data please refer to the corresponding section under Exasol Enterprise Cluster
		<b>Product features</b> The feature set of Exasol One corresponds to the feature set of the “Advanced Edition” of the Exasol Enterprise cluster.

\* Eligible partners may request NFR licenses as stipulated in the partner contract. A NFR-License is a license to use the Software for customer and/or solution center demonstration purposes or internal training. It is not permitted to use NFR-Licenses for any other purposes including, without limitation, use or distribution for any other commercial use or in any billable engagements or for evaluation purposes by Alliance Partner’s prospects without express prior and written approval by Exasol.



## EXHIBIT C: TERMS AND CONDITIONS FOR MAINTENANCE AND PROFESSIONAL SERVICES

Customer agrees that the following terms and conditions (“Terms and Conditions”) will govern the delivery of Maintenance and Professional Services by Exasol (collectively, “Support Services”) listed on an Order entered into pursuant to the Software License Agreement or a separate Service Only Agreement (each, an “Agreement”) to which these Terms and Conditions are attached and made a part of. These Terms and Conditions are effective upon confirmation of acceptance of Customer’s purchase order by Exasol or an authorized reseller (the “Effective Date”).

### Part 1 – General Provisions for any Support Services provided by Exasol

#### 1 Definitions

Unless otherwise defined in these Terms and Conditions, capitalized terms have the meanings set forth in the Agreement.

#### 2 Support Fees

##### 2.1 Services

Subject to Customer’s timely payment of the applicable annual Fees for Support Service set forth in the Order (the “Support Fees”), Exasol will provide the amount and level of Support Service identified in the Order in accordance with the Support Service descriptions set forth below. Exasol will provide such Support Service with reasonable skill and care. The type and scope of any Support Service must be explicitly agreed upon between Exasol and Customer in the Order. For the avoidance of doubt, Support Fees shall not be payable for Maintenance of Software licensed under a Software Subscription and subject to payment of the License Fee for Subscription Software, Exasol will provide the amount and level of Maintenance identified in the Order in accordance with the descriptions set forth in Part 2.

##### 2.2 Support Fees

Support Fees will be due and payable as set forth in the Order. Exasol will notify (electronically or otherwise) Customer of the then-current annual Support Fee for Customer’s level of Support Service in each notice of term renewal. Support Fees are non-refundable once paid. Unless otherwise agreed upon in the Order, Maintenance Fees and service fees for operations engineering services are payable in advance at the beginning of the agreed service period. If Customer delays acceptance without cause, the Support Fees (e.g. for Operations Engineering services or Consulting) are due and payable even though the Software/Support Service was not provided. Unless otherwise agreed upon, Prices – in particular for Consulting Services - are to be understood exclusive of travel costs.

#### 3 Service Times

Exasol’s “Service Times” are Mon-Fri 8AM-6PM (Europe/Berlin), except for German national public holidays. From December 24 until December 31, the following times apply: Mon-Fri 9AM-12PM (Europe/Berlin). Unless stated otherwise, any action and reaction times, including, without limitation, Response Times, Processing Times and Solution Times only run during the Service Times.

#### 4 Service Access to Databases

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 tables other than the system tables of the database is impossible. Support is 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 Customer. For the fulfilment of Exasol’s contractual duties, Customer grants to Exasol the necessary access rights and will provide corresponding account data for the Cluster. In case of correction work and other Maintenance 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.

## 5 Service Prioritization

Where the Agreement stipulates “Priorities” for certain Support Services, the following classification applies:

- **Critical:** Business-critical processes are degraded, e.g. processes of high importance or which are time-critical cannot be executed. There is no possibility to work around the problem; normal work is generally not possible.
- **Major:** Important functions are impaired, e.g. important processes can only be executed by employing complicated work-around solutions; Software operations are substantially degraded.
- **Normal:** Individual, less important functions are unavailable or important functions can only be started by employing work-around solutions; a problem which only affects an individual module or function which the Customer does not require continuously or for which there is no material need. The System functionality is otherwise unimpaired, or at least not substantially degraded.
- **Minor:** An Error which does not materially affect the system or its performance. Other issues or queries with respect to the product with low urgency.

## 6 Supported Software Versions

The scope of the Support Services is each major or minor version for two years starting from its release date (“Supported Software Versions”). 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.Bug fix (e.g. 4.2.6: „4“ – refers to the major, „2“ – refers to the minor and „6“ refers to the bug fix 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 Maintenance for a not Supported Software Version. If Customer requires such additional Maintenance for a not Supported Software Version a separate agreement with Exasol is necessary.

## 7 Obligation to Cooperate, Backups

### 7.1 Authorized Support Contacts

Customer shall appoint – if necessary per Support Service provided – a qualified and sufficiently authorized employee, who shall be available to Exasol during performance 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 shall 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 Part 3, Section 4.6, in case Monitoring service was booked), and who is/are able to support Exasol with the Incident processing according to Part 3, Section 4.

### 7.2 Backups

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.

## 7.3 Updates

Exasol regularly releases bug fix versions. Customer is obliged to update its installed Software in a timely manner.

## 8 **Exclusions**

Exasol will have no obligation of any kind to provide Support Service for issues caused by or arising out of any of the following (each, a "Licensee-Generated Error"): (i) modifications to the Software not made by Exasol; (ii) use of the Software other than as authorized in the Agreement or as provided in the documentation for the Software; (iii) damage to the hardware on which the Software is installed; (iv) Customer's continued failure to use the Software without reference to the Documentation; (v) versions of the Software other than the most recent version or the Supported Software Version (as defined in Section 6); (vi) third-party products not expressly supported by Exasol and described in the Documentation (e.g. unauthorized installation of software in the Cluster); or (vii) conflicts related to replacing or installing hardware, drivers, and software that are not expressly supported by Exasol and described in the Documentation (e.g. operation of the Software on non-certified hardware or in a non-certified IT-environment, in particular public clouds or virtual environments). In case of a limited certification the extent of Maintenance and Operations Engineering services are determined in Exasol's certification statement. If Exasol determines that support for an issue caused by a Licensee-Generated Error, Exasol will notify Customer as soon as reasonably possible under the circumstances. If Customer agrees that Exasol should provide support for the Licensee-Generated Error via a confirming email, then Exasol will have the right to invoice Customer at Exasol's then-current time and materials rates for any such support provided by Exasol.

## 9 **Language**

Support Services are delivered only in English unless Customer is in a location where Exasol has made localized Support Service available.

## 10 **Changes in Support Service and Software**

Subject to Section 6 (Supported Software Versions) Customer acknowledges that Exasol has the right to discontinue the manufacture and development of any Software and the Support Service for any Software, including the distribution of older Software versions, at any time in its sole discretion, provided that Exasol agrees not to discontinue Support Service for the Software during the current annual term of these Terms and Conditions, subject to the termination provisions herein. Exasol reserves the right to alter Support Service from time to time, using reasonable discretion but in no event will such alterations result in (i) diminished support from the level of Support Service set forth herein; (ii) materially diminished obligations for Exasol; (iii) materially diminished Customer's rights; or (iv) higher Support Fees during the then-current term. Exasol will provide Customer with thirty (30) days' prior written notice (delivered electronically or otherwise) of any permitted material changes to the Support contemplated herein.

## 11 **Term and Termination**

### 11.1 Term

The Agreement will commence upon Delivery and, unless terminated earlier in accordance with the terms of the Agreement, will be for a period of one (1) year (or for the agreed upon term) (the "Initial Term"). The Agreement will automatically renew for subsequent terms of the same length (each, a "Renewal Term," and collectively with the Initial Term, the "Support Term"), unless either Party provides the other (or if purchased through a reseller, Customer provides reseller) a written notice of its intent not to renew the Agreement at least three (3) months prior to the end of the then current Support Term. Customer must purchase and/or renew Support Service for all of the licenses for a particular Software product. If the Support Term lapses,

Customer may seek to re-activate Support Service by submitting a purchase order that includes fees for the lapsed period plus a reinstatement fee.

## 11.2 Termination

Either Party may terminate this Agreement by written notice to the other Party upon the occurrence of any of the following events:

11.2.1 The other Party materially breaches this Agreement and does not cure the breach within thirty (30) days of receiving notice of the breach;

11.2.2 The other Party commences a voluntary bankruptcy case, or anyone else commences an involuntary bankruptcy case against the other Party, and either (i) the case is not dismissed after 60 days have lapsed from commencement or (ii) the court before which the case is pending issues an order for relief or similar order approving the case or is subject to any procedure, event or circumstance analogous to any of the foregoing in any relevant jurisdiction;;

11.2.3 the other Party becomes insolvent, is subject to administration, liquidation or other insolvency procedure, makes any arrangement with its creditors generally, becomes unable to pay or admits its inability to pay its debts when they fall due, or if any security given by it to a creditor crystallises or becomes enforceable, or any lien or power of sale becomes exercisable by reason of any unpaid debt, or is subject to any procedure, event or circumstance analogous to any of the foregoing in any relevant jurisdiction; or

11.2.4 The other Party fails generally to pay its debts as they become due (unless the debts in question are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.

11.3 This Agreement shall automatically terminate if the license to which the Support Services relate, is terminated for any reason.

## 12 **Subcontractors**

Exasol is entitled to perform Support Services due under the terms of the Agreement by employees of Affiliates or, in case of trainings, by employees of partners; provided that Exasol will remain responsible for the performance of the services to the Customer. If the services will be rendered by other subcontractors (not Affiliates), Exasol will inform Customer before the services are performed.

## 13 **Force Majeure**

Exasol will not be responsible for any failure or delay in its performance under these Terms and Conditions due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

## Part 2 – Maintenance

### 1 Support Levels

Customer's Order will identify one of three levels of Maintenance:

- In the service level "Basic", Exasol grants access to the support community sites, and updates; any requests can only be communicated via the support ticketing system. Access to hotline, ad hoc technical advice, hands on assistance and VPN connection are explicitly excluded.
- In the service level "Standard", Customer may contact Exasol's support team also via the Exasol hotline. When required, Exasol will assist Customer with implementing workarounds (including via hands-on and VPN assistance). If VPN is provided on a regular basis, Exasol will also retrieve additional information (e.g., log files).
- The service level "Premium 24x7" also includes incident management service 24x7 as to Part 3, Section 4 as well as Performance Service as to Part 3, Section 6. Performance Service means that Exasol will periodically monitor general performance trends (on a monthly basis) and provide performance analysis upon request during its Service Times; a VPN access and access to statistical system tables are mandatory for this service; Performance analysis can also be booked on a time and materials basis within the scope of a consulting service.

### 2 Maintenance Service Description

#### 2.1 General

Maintenance is carried out at the discretion of Exasol and usually by providing software which modifies and/or complements the Software licensed by Exasol. Bugs which occur in the Software are to be categorized by the error priorities as to Part 1, Section 5 above, and then handled according to the appropriate response and processing times as to Section 3 below (response, processing and solution time). 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.

#### 2.2 Customer's Obligation to Assist

If Customer recognizes that the Software does not provide the functionality set forth in the documentation, Agreement or Order ("Error"), then Customer will inform Exasol by either e-mail or the support portal and will describe the Error in a reproducible manner with the following information: cluster information (a list of all hardware and network components), software version information, log files for the relevant period of time, a reproducible test case, CSV export of system tables, session id if applicable ("Qualified Error Report"). As reported Errors are assigned to Priorities, Customer will initially select the priority. 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.

#### 2.3 No Error

If the subject of an Error report is not an Error as defined in section 2.2 above and the processing of such requests has not been contractually agreed, then Exasol may invoice Customer for additional work done; however, it will inform Customer about the nature of the work and its being payable additionally before commencing such services. If no Error exists, then the response, processing and solution times defined below do not apply.

### 3 Response, Processing and Solution Times

#### 3.1 Response Time

Depending on the classification of an Error, the following "Response Times" shall apply:

		Service level		
		Basic	Standard	Premium 24x7
Error	Critical	within 8 hours	within 4 hours	within 2 hours
	Major	within 16 hours	within 8 hours	within 4 hours
	Normal	within 48 hours	within 24 hours	within 12 hours
	Minor	within 96 hours	within 48 hours	within 24 hours

Within the Response Time, Exasol will receive a confirmation about receipt of his Error report (“Simple Response”). Response Time is defined as the time elapsed within the Service Times between receipt of the Error report by Exasol and the Simple Response from Exasol by Customer.

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.

### 3.2 Processing Times

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 Service Times:

- Critical: within 4 hours
- Major: within 8 hours
- Normal: within 24 hours
- Minor: within 48 hours

After receipt of the Error report and, if applicable, necessary additional information, 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 (“Error”) 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 Solution Times

If necessary, Exasol will coordinate next steps with 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 Work-Around (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.

### 3.4 No Running of Times

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. log files), 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.

## 4 Support for Exasol Extensions

Subject to Customer's payment of the applicable annual Support Fees, if Customer is a licensee of an Exasol Extension supported by Exasol, Exasol will provide a Response as described in Section 3.1 above. Updates for the Software will be provided when made available. No other sections in these Terms and Conditions apply to Exasol Extensions.

## 5 Special Maintenance Terms and Conditions for Appliances – Hardware Support Service

In case of errors in the hardware contained in the Appliance, Exasol will coordinate the maintenance work or replacement of defective parts in whole or in part by means of Dell's support organization.

### 5.1 Error Reports / Response Time

Exasol provides the error reporting system described in Section 1, Basic and Standard Level also for the reporting of hardware errors. In addition, the Response Time in Section 3.1 also applies for hardware errors.

### 5.2 Dell's Service Description

For the repair of hardware errors Dell's country specific service description for the selected support level (indicated in the Order) available at <http://www.dell.com/learn/us/en/uscorp1/campaigns/global-commercial-service-contracts?c=us&l=en&s=corp&cs=uscorp1> apply. (e.g. Support-Level „ProSupport Next Business Day“ for US Customers: Select United States, select Support Service, select ProSupport for Client and Enterprise).

### 5.3 Term

Unless otherwise provided in the Order, the maintenance agreement for an Appliance will be concluded for a fixed term of 36 months, starting from the date of provision of the Appliance and ending automatically after the expiration of the term. The maintenance agreement for the switches will be concluded for the fixed term of 33 months, starting from the date of provision of the Appliance. If the manufacturer Dell offers a maintenance renewal after expiration of the term the Parties may negotiate such a renewal.

## Part 3 – Specifications and Terms for Operations Engineering

Exasol offers a variety of operational services to ensure the smooth operation of the system (“Operations Engineering”). Operations Engineering tasks include Installation Service, Operational Service, Incident Management, Monitoring and Performance Service.

### 1 General

- 1.1 Operation engineers usually do not require a privileged log-in to the databases. If a privileged login is required for conducting some tasks (e.g. a major update), Customer will be informed beforehand.
- 1.2 Specific services, in particular, services related to the management of nodes, cannot be provided for shared or virtual environments. Unless otherwise agreed, the operations engineering services are limited to the Exasuite Cluster. Customer is responsible for the provision and maintenance of a suitable cluster infrastructure and infrastructure outside of the Cluster (e.g. for off-site data back-up, staging server, administration of clients).
- 1.3 Unless otherwise explicitly agreed, the services will be provided remotely. Access to the Cluster via VPN is required.

### 2 Installation Service

Installation service typically starts with a comprehensive consultation regarding Cluster configuration and integration of the Software in the specific target environment. After that, the Cluster will be prepared for the operation of Exasuite. In doing so, the following services are usually differentiated:

- Adding and installation of cluster nodes
- Creation of users in Exaoperation for administration and monitoring
- Setup of database instances
- Network setup of cluster nodes
- Integration of nodes in the cluster setup of backup scheduler
- Handover of login data for the database instances

The installation will be completed by the handover of the login-data and an introduction to the most important functionalities of Exaoperation. Installation service may be done via screen sharing.

### 3 Operational Service

#### 3.1 Scope

Operational Service basically includes scheduled maintenance tasks, except for error correction work, which is part of the Maintenance, in particular the following services:

- Update service for major and minor versions
- Node Management
- Adding and installation of nodes
- Adding and removal of spare nodes to a data base instance
- Cluster upgrade
- Database instance management
- Creation / removal of database instances
- Starting / stopping of database instances
- Setup of a system-internal backup of the data base instances
- Support for the setup of an external backup of the data base instances
- Database restoration upon request
- Monthly system usage reporting (available on the support-portal)



Customer shall reserve sufficient storage space for the backup in the Cluster or on external storage media.

Reports about system usage require access to the statistics system tables in Exasuite.

### 3.2 Request for Services:

Customer shall make an appointment with Exasol for Operational Services and coordinate the scope of the services with Exasol. The appointment must be made at least three Business Days for small to medium tasks (less than 0.5 days effort) and 15 Business Days for large tasks (more than 0.5 days effort) before the planned service actions.

### 3.3 Operational Service Times

Operational Service Times correspond to the Service Times. If Operational Service “24/7” is agreed then the Operational Service Times are nonstop. If no Operational Service package is booked or if the services are to be performed outside of the Operational Service Times, the above-mentioned services can be ordered individually.

## 4 **Incident Management**

Insofar Incident Management is booked, if an “Incident” occurs within the agreed Incident Management hours, Exasol will initiate all necessary actions to restore the standard operation of the Exasuite Cluster as quickly as possible.

### 4.1 Incident

An “**Incident**” is an occurrence which poses a deviation from the standard operation of the Exasuite Cluster and which causes an interruption/disturbance of the operation, e.g. a database instance does not accept connections; the backup cannot be generated or one or more hardware components are defective, etc.

### 4.2 Incident Priorities, Response Time and Processing

Incidents are differentiated according to the priorities set out in Part 1, Section 5. According to the Incident priority, the following Incident Response Times shall apply:

- Critical: within 2 hours
- Major: within 4 hours
- Normal: within 12 hours
- Minor: within 24 hours

Within the Incident Response Time, Customer will receive a simple response. The response time is defined as the time elapsed within the Incident Management Times between Customer’s incident report and the simple response from Exasol to Customer.

### 4.3 Processing

If Exasol has all necessary information about the Incident and a VPN-connection to the system exists, Exasol immediately begins with the tasks to remedy the disturbance; otherwise the tasks cannot start before the provision of access to the system or the provision of necessary additional information about the Incident (“qualified error report”). If tasks to remedy the disturbance do not fall within Exasol’s responsibility, the processing of an incident will be completed by a recommendation of action (e.g. provision of enough storage space for the backups, repair of hardware, execution of SQL-commands in the data base in the context of a workaround, etc.). If the interruptions/disturbances are due to an incorrect use of the Software or the use of an unsuitable infrastructure (e.g. Customer has not reserved enough storage space in the Cluster for backups, an accepted solution was not implemented), Exasol reserves the right to invoice Customer for the additional work.

## 4.4 Error

If the reason for the interruption/disturbance is an Error in the Software as set out in Part 2, Section 2.2, Exasol provides a Qualified Error Report during the course of Incident Management; however, error correction is not a subject of Incident Management but of Maintenance. The preparation of the Qualified Error Report may require the assistance of Customer (e.g. provision of client-logs, provision of the session-ID).

## 4.5 Incident Management Times

Incident Management Times correspond to the Service Times. If Incident Management Service “24/7” is agreed then the Incident Management Times are nonstop. If no Incident Management is booked or if Customer wants Incident Management service to be performed outside of the Incident Management Times, the Incident processing or the on-call service will be invoiced. Exasol reserves the right to invoice a monthly lump sum compensation for months during which Incident processing has taken place.

## 4.6 Incident Report

Customer reports Incidents through the Exasol support portal or via e-mail to service@exasol.com. Outside the Incident Management Times, the report must be additionally provided through the hotline. If Monitoring Service is booked for the respective installation and if Exasol therefore receives an automated “Incident Notification”, Exasol will begin processing the Incident within the Incident Management Times in accordance with the Incident Priorities.

## 5 **Monitoring Service**

Exasol will install a software-based health-monitoring with an automated Incident report system in the Exasuite Cluster, which includes a multistage escalation strategy. The extent of the monitoring is oriented toward typical error sources in the Exasuite Cluster. The booking of the Monitoring Service always requires the booking of the Incident Management Services as well. If recurring disturbances occur due to an incorrect use of the Software or the use of an unsuitable infrastructure (e.g. Customer has not reserved sufficient storage space in the Cluster for backups, or an accepted solution was not implemented), Exasol reserves the right (i) to turn off the relevant Incident reports until the causes for the disturbance have been eliminated and (ii) not to forward the incident reports as a disturbance or Incident to Incident Management. Monitoring Times are nonstop. Incident processing is carried out in the context of the agreed Incident Management.

## 6 **Performance Service**

Within the scope of Performance Service EXAS Exasol OL monitors performance trends in the data base and reports them Customer on a regular basis (e.g. monthly). In addition, Exasol analyses performance issues in the Cluster, which are not recognized as Errors according to Part 2 section 2.2 and provides Customer with suggestions for improvement. Such effort is limited to one man-day per month. Exasol may undertake additional effort within the scope of the consulting portfolio. Exasol requires access to the system tables in the data base through a special data base user. This user only has access to the system tables and statistic system tables. Thus, a direct access to the data tables of the data base is excluded. Performance Service Times correspond to the Service Times.

## Part 4 - Specifications and Terms for Consulting Services

### 1 Scope of Services

#### 1.1 Consulting Service

Exasol will provide advice and support to Customer as may be described in the Order ("**Consulting Services**"). Such Consulting Services may, for example, include:

- Sizing & Planning Service
- Requirements analysis
- Consultation regarding cluster sizing, setup and integration of Exasol in your environment
- Solution Engineering
- Consulting during migration or integration projects
- Optimization of EXASolution-based concepts and tools
- Individual development, e.g. SQL-based analysis
- Database scripts, e.g. ETL processes

#### 1.2 No Obligation for Certain Result

Unless otherwise agreed in writing, Exasol is not required to provide a certain result within the scope of Consulting Services and does not have any obligation to achieve any objectives the Customer may be pursuing.

#### 1.3 Evaluation Consulting Service

In case of an Evaluation License, Customer's Proof of Concept ("**PoC**") will be supported by an Exasol PreSales consultant who will be designated by Exasol before the PoC. After the PoC, Customer and Exasol will hold a final meeting (which may be held by telecommunications) discussing process and results of the PoC and next steps. The aforementioned PreSales consultant will be the exclusive contact person regarding any communication related to the PoC, including error reports, support queries, etc. Section 1.4 and 1.6 below do not apply with regard to Evaluation Consulting Service.

#### 1.4 Time of Service

Customer must make an appointment with Exasol to schedule Consulting Services. The appointment must be made at least four weeks before the planned service actions. Any changes to the appointment must also be communicated before the previously agreed-upon appointment. If no appointment has been agreed upon, Customer has no claim for the provision of the services. If Customer does not claim the services at the agreed-upon appointment, the claim to the agreed consulting services is forfeited. In this case, 80% of the agreed-upon Fee will be charged.

#### 1.5 Delivery of the Service

Unless presence at Customer's premises is required to provide the Consulting Service, the Service can be provided remotely. Exasol is entitled to utilize qualified subcontractors for the purposes of fulfilling the contract. In case of subcontractors which do not belong to Exasol Group, Customer will be notified in advance.

#### 1.6 Invoicing

Unless expressly agreed otherwise, the information provided in the Order about the time required, represents a non-binding time estimate only. Fees will be invoiced according to actual man-days and consulting hours provided at the rates specified in the Order. If Exasol notices during the provision of services that the time estimated in the Order will be presumably exceeded, Customer will be informed. Customer shall then decide without delay on further proceedings and inform Exasol in written form. One

man-day consists of 8 hours on average. Man-days which were provided to a lesser or higher extent of 8 hours, will be invoiced proportionately per hours or minutes. If it was agreed that payment is due after service provision, Exasol is entitled to invoice parts of the services after 2 or more man-days have been completed. In addition to the time and material for the service itself, Customer will also bear travel costs and expenses incurred.

## 1.7 Work Results

If nothing was otherwise agreed upon, Customer receives a simple, non-exclusive, non-transferable right to use work results. Subject to agreements to the contrary, 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.

## 1.8 Storage and Return of Documentation

Exasol will properly store all documentation provided in the framework of Consulting Services and will especially make sure that third parties cannot gain access to it. The provided documentation is to be returned at any time on Customers demand.

## Part 5 – Specifications and Terms for Training

Exasol provides courses and training („Training“) according to the provisions set forth below.

### 1 Training Content and Conditions

Subject, duration and price of Trainings and Training packages are set forth in the Order. If, in deviation from the standard Training offer, customer-specific or special topics shall be covered, the Parties shall agree separately, in advance and in written form, on content, duration, number of participants and prices. The specification of the individual Training program must be completed at least two weeks before the Training. Training is held in English language. Any Training material is in English.

### 2 Training Package

#### 2.1 Definition

If a Training package was ordered, Customer is entitled to send a defined number of persons (as stated in the Order) during a defined service period (as stated in the Order) to either specific Training modules (as stated in the Agreement or Order) or any Training modules offered by Exasol during the service period (flat rate). Dates for the individual Training modules are announced on Exasol's website. The Training participants have to be identified by name at the beginning of the service period. A replacement of one of the aforementioned named participants is only possible if the replaced participant has not yet attended a training module.

#### 2.2 Service Period

The service period is stated in the Order. If during the service period less than three Training courses take place for a Training module which forms part of the ordered Training package, the service period shall automatically extend to the date when the third Training course of the respective Training module takes place. Unless otherwise explicitly agreed, the service period starts from the signature of the Agreement. Unless explicitly stated otherwise in the Order, the Training contract is concluded for a definite period (no auto-renewal).

### 3 Location

Training is typically conducted in Exasol's Training rooms. Exasol reserves the right to change the location, as far as is reasonable for the participants. In case of special agreements, in-house Training can be conducted at Customer's premises. In this case Customer shall provide suitable rooms and facilities, in particular a separate room with a projection surface for a projector. If a projector is not available, Exasol must be informed in advance. If Customer does not meet the aforementioned conditions, Training cannot be conducted, however, the cost will be charged. The costs for travelling, overnight stays and other expenses of the course instructor(s) will be invoiced separately, according to the actually incurred expenses as evidenced by respective records and receipts.

### 4 Training Times

The Training durations are a maximum of 8 hours per day. Unless otherwise agreed the courses start at 9 AM and end at 5 PM. Lunch breaks will be held as agreed.

### 5 Registration Fee

The amount of the registration fee will be set forth in the Order. Stated prices are non-binding until Exasol confirms them. The registration fee is to be understood as per participant or group. The registration fee includes course papers, certification fee, a certification document from Exasol (if the course is duly passed) and provisions during the coffee breaks. All other costs incurred by the participant in connection with the Training, e.g. board and lodging, must be paid by the participants.

## 6 Registration

Registrations for Training are to be made in writing, by e-mail to [training@exasol.com](mailto:training@exasol.com) or via the Internet to Exasol at the following address:

<https://www.exasol.com/portal/display/TRAINING/Planned+Training+Courses>. The registration for Training must be made at least 3 weeks before the start of the Training. The registration is only valid if confirmed by Exasol. The registration confirmation by Exasol is subject to a minimum number of 3 participants.

Registrations will be processed in the order they are received. The requirement for successful participation in the Training is the previous knowledge described in the training description.

## 7 Cancellation and Rebooking

In case of a cancellation or rebooking of a course, Exasol must be informed in writing. If a course participant is prevented from attending the Training, a substitute person can attend instead. The full registration fee will be charged, even if the participant does not attend the entire course. In case of a cancellation or rebooking by Customer, the following shall apply:

- until 21 calendar days before the start of the course, no fees will be charged.
- until 14 calendar days before the start of the Training a fee in the amount of 50 % of the total registrations fees will be charged.
- less than 14 calendar days before the start of the course, the total amount of the registration fees will be charged. Credit for a course will not be given.

Exasol reserves the right to cancel a course under reasonable conditions, if the minimum number of 3 participants for a public Training is not reached or if organizational or technical issues arise. This is in particular the case if the instructor is unable to attend for any reason or in any cases of force majeure. Exasol will inform Customer about any cancellation. If a postponement of the appointment is not possible, Exasol will refund the already paid registration fees. Further claims are excluded, unless they are based on intended or grossly negligent conduct on the part of Exasol or its agents. Exasol can appoint a replacement instructor, modify and enhance the content of the Training and, with timely prior notice, postpone the Training date and change the Training location.

## 8 Liability

Exasol shall not be held liable for the loss or damage of items which are brought to courses, unless the loss or damage is the result of intentional or grossly negligent conduct on the part of Exasol or its agents. In the Training breaks, valuables or important documents are not to be left in the training rooms. House rules must be respected. Furthermore, the provisions of the Agreement regarding liability apply.

## 9 Property Rights

Training documentation and presentations by Exasol are copyright protected. Audio and video recordings during the training by Customer or a participant are prohibited without express written consent by authorized Exasol representatives. All training documentation remains the sole property of Exasol. Customer receives the copies and is permitted to use them for its own use only; they are not to be disclosed to third parties and they shall neither be copied, nor processed or distributed without the written consent of Exasol. Exasol reserves all rights.

## 10 Access to Exacademy

If Customer gets access to Exacademy via the Exasol user portal, the following use terms shall apply:

- 10.1 The content, videos and other trainings material ("**Content**"), available at the portal "Exacademy", are copyright protected. Customer is entitled to use the access to Exacademy and the available content for the purpose for training its employees.

- 10.2 Customer and the respective user of Customer's account will not and has no right to (i) copy available Content either in whole or in part, i.a. by filming the content or producing comparable training products etc.; or (ii) store; (iii) edit; (iv) transfer; or (v) to publish available Content or make Content otherwise available to third-persons (e.g., by distribution of the link, leading to the Content etc.).
- 10.3 In case Content becomes available to the public by a misconduct of Customer, Customer has to pay a contractual penalty in the amount of EUR 100.000.

## **11 Data Protection**

- 11.1 Exasol will save and process a participant's data for the sole purpose of fulfilling the contract and caring for the customer relationship in compliance with applicable data privacy laws (being, as the case may be, the German Federal Data Protection Act (BDSG) or the UK Data Protection Act 2018, the GDPR, or (where relevant) other equivalent data privacy laws in the applicable jurisdiction).
- 11.2 For enhancing the learning content of the training, access to a training database will be provided. Customer is aware and accepts and informs his employees who participate that any operations taken within such database will be recorded (auditing). Such record of data takes place for the sole purpose of enhancing participants' training effect. Such recorded data are available for all training participants and they must not - together with other data in the training database – be copied or exported from the database. Exasol will not further process the aforementioned data.