# Evaluation License Agreement

between

## EXASOL Europa Vertriebs GmbH

## ("EXASOL")

Neumeyerstr. 22-26

90411 Nuremberg

and

## zzz_test_admin

## ("XYZ" or "Customer")

| | |
|---|---|
| Status | Entwurf |
| Contract No | 00015197.1 |
| Valid until | 4/6/2016 |
| Contact person | Gunther Schweer |
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# 1 Preamble

1.1 EXASOL develops, markets and supports the EXASOL database, a high-performance relational database management system and associated tools and drivers ("Software"). For evaluating the Software, EXASOL provides evaluation licenses, so that customers can run queries for evaluation purposes ("PoC").

To ensure an efficient and successful PoC process, EXASOL will guide Customer through the process and support Customer with services such as consulting, etc.

1.2 Contract partner description

1.3 Purpose of contract

# 2 Subject

2.1 Service description

2.2 The mere provision of the Software is free of charge. For the expenses associated with the provision of the Software, in particular the service of guidance through the PoC, and - where applicable - further agreed services, Customer has to pay fees as stated in the Annex(es).

2.3 Special Terms

# 3 Further Provisions

3.1 The PoC will be supported by the "EXASOL Presales Consulting" department. After the PoC, Customer and EXASOL will hold a final meeting (in person or online) to discuss the process and results of the PoC and the next steps.

3.2 Prerequisites for an efficient execution of the POC are adequate preparation and planning with a definition of test data sets including transfer data formats, objectives and test scenarios. EXASOL Presales Consulting will already support Customer in this regard.

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

# 4 Final Provisions

4.1 Amendments and additions to this Agreement must be made in writing, including amendments to or a waiver of this written form requirement shall be made in writing.

4.2 In the event that one or more provisions of this Agreement should be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be deemed to be replaced with such legally permissible provision which comes as close as possible to the economic purpose of the invalid or unenforceable provision.

Date: _____    Date _____

zzz_test_admin                          EXASOL Europa Vertriebs GmbH

Signature: _____    Signature: _____

Name: _____    Name: _____

## Annex 1. General Contract Terms and Conditions „Evaluation License" of EXASOL Europa Vertriebs GmbH

1      General Provisions

1.1    Application of the Contractual Terms and Conditions

For the provision of the Software, for further agreed services and for pre-contractual obligations, these General Contract Terms of EXASOL shall apply exclusively. Customer's general terms and conditions shall not apply, even if they are attached to requests for an offer, orders, declarations of acceptance, etc., and regardless of whether or not EXASOL expressly objects to them in any individual case.

1.2    Confidentiality and Data Protection

1.2.1  The parties hereby agree to treat all information, including but not limited to software, documents, presentations, etc. as confidential, of which they became aware or received from the other party prior to the conclusion of or during the term of the contract which are protected by law, or which evidently contain business or company secrets or are marked as confidential, notwithstanding the expiration of the contract, unless such information is publicly known in the absence of a breach of this confidentiality obligation ("Confidential Information"). Parties hereby agree to store and secure all Confidential Information in a manner so as to prevent any misuse by third parties or the parties themselves.

1.2.2  Parties will make Confidential Information available only to those employees (including employees of parties' affiliates) who require access to them in the performance of their job-related duties ("need to know"). Parties shall instruct these persons regarding the confidentiality of the objects and documents in question and have written agreements in place which ensure the observance of this confidentiality obligation. Access to third parties shall not be permitted except with the express written consent of the other party.

1.2.3  Customer may not disclose or publish any benchmarking or results of the PoC without EXASOL's prior written consent.

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

1.3    Applicable Law, Place of Performance

The laws of the Federal Republic of Germany shall apply without regard to the Convention on the International Sale of Goods (CISG). The place of performance and legal venue for any dispute in connection with this contract is Nuremberg, Germany.

1.4    Expenses, Fees, Payment

1.4.1  Unless otherwise agreed between the parties, all kind of payment obligations are due in full immediately after Customer's receipt of invoice. If Customer delays acceptance without cause, the expenses and fees are still due and payable. Unless otherwise agreed between the parties, expenses and fees have to be paid up front.

1.4.2  Prices quoted by EXASOL are to be understood as exclusive of any relevant taxes or duties applicable at the time of shipping and/or delivery.

1.4.3  Only claims which are undisputed by EXASOL or have become final and legally binding may be offset by Customer. Except for claims in connection with § 354a HGB (German Commercial Code), Customer may not assign, delegate or otherwise transfer any of its rights or obligations under this contract without the prior written consent of EXASOL. Customer shall only have a right of retention or the right to claim non-performance of the contract within this contractual relationship.

1.5    Liability

1.5.1 EXASOL is only liable for compensation and reimbursement for expenses (including, without limitation, lost profits, lost expenses, etc.) irrespective of the legal basis (e.g., pre-contractual, contractual and similar obligations, product liability, violation of duty or tort) to the following extent:

a) Liability based on intent or guarantees given by EXASOL shall be without limitation.

b) In the event of gross negligence, EXASOL shall be liable for typical, and upon the conclusion of the contract foreseeable damage.

c) In case of a breach of cardinal duties (such as default) that endangers the purpose of the contract and which does not constitute gross negligence, EXASOL shall be held liable only for such damage which is typical for this kind of business and was foreseeable upon the execution of this Agreement, but to the maximum amount of 50% of the agreed fee per claim and 100% of the agreed fee for all claims from and in connection with the contract overall.

1.5.2 EXASOL is entitled to claim contributory negligence of Partner. In particular, Partner has the responsibility for data protection and blocking of malware in accordance with the latest technical standards.

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

## 2 Contractual Terms for the Provision of the Test License

### 2.1 Definition of Software

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

„Software" means the software stack consisting of EXASuite and clients and drivers provdided by EXASOL (e.g. ODBC, JDBC, ADO.NET).

„EXASuite" consists of the EXASOL database software as well as a tuned operating system (EXACluster OS).

„Clients- and Drivers" are the client EXAplus as well as drivers provided by EXASOL (e.g. ODBC, JDBC, ADO.NET).

### 2.2 Extent of Use

2.2.1 With payment of the expenses Customer is granted a non-exclusive, non-transferable, non-sublicensable, and limited in time right to use EXASuite on one or several, dedicated servers ("Cluster") and to use EXASOL Clients and Drivers. This right of use is limited according to the parameters stated in the service description. The Software may only be used for test purposes.

2.2.2 Customer shall communicate on which system EXASuite is to be operated (including – if applicable - the respective serial numbers, instance types, size of the Cluster, RAM size, CPUs, hard disk and network configuration, including switch, cloud provider and data processing center). As soon as EXASuite is transferred to a system other than the one originally communicated to EXASOL, EXASOL is to be informed of the respective changed data. If EXASuite is to be transferred to a system that is located outside of the European Union, EXASOL reserves the right to object.

2.2.3 The Software shall not be rented, subleased or otherwise distributed in tangible or intangible form. The use by and for third parties (e.g., by outsourcing or application service providing) without prior consent of EXASOL is not permitted.

2.2.4 Without consent of EXASOL, the Partner is not allowed to change, edit or copy the provided Software to an extent that is not in accordance with the designated use of Sec. 69 UrhG (German Copyright Act). A decompilation is only permitted in accordance with the provisions of Sec. 69e of the German Copyright Act (UrhG).

2.2.5 Certain Software components are subject to the GNU General Public License (short "GPL components"). These and comparable license terms are in each case listed in the EXASuite software part concerned (Software + Driver + Clients etc.). At Customer's request, EXASOL will send such list in digital form to the Customer prior to the conclusion of the contract.

2.2.6 In case of a breach of the above-mentioned provisions by the Customer, insofar that the Software was given to a non-authorized third party, Customer shall pay EXASOL a contractual penalty in the amount of half the total amount the third party would have had to pay if the third party had licensed the Software for productive purposes directly from EXASOL according to the then-current price list. The right to claim further damages is reserved.

### 2.3 Provision of the Software

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

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

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

## 2.4   Error Correction, Communication

2.4.1   EXASOL will correct reported errors in the Software at its discretion within reasonable time. As the mere provision of the Software is free of charge, there is no entitlement of Customer for any error correction or maintenance of the Software.

2.4.2   The PoC, including the possible correction of any errors, will be supported by the EXASOL Presales Consulting department. The aforementioned department will be exclusively responsible regarding any communication related to the PoC including error reports, support queries etc.

## 2.5   Evaluation Period

2.5.1   Except as otherwise agreed between the parties, the Evaluation Period is limited to a maximum of 4 weeks. The Evaluation Period starts from the moment the Software is provided. The Evaluation Period can only be extended by mutual agreement. If an indefinite period was agreed between the parties - respectively after expiry of a minimum term agreed - the Agreement can be terminated by both parties by giving written notice within one month to the end of a month.

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

2.5.3   Upon termination of the agreement Customer has to return any data carriers and created back-up copies. In addition, Customer has to uninstall the Software and to delete irreversibly any remaining pieces of the Software from his IT-system. Upon request of EXASOL, Customer has to confirm in writing the performance of the aforementioned obligations.

Stand 9/1/2016