



MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

(Exasol UK Limited and Exasol, Inc.)

1. **Scope.** This Master Software License and Services Agreement (“**MSA**”) set forth the terms on which a natural or legal person (“**Customer**”) may purchase a subscription to certain proprietary software as further detailed in Section 3 (“**Software**”), purchase certain hardware with pre-installed Software as further detailed in Section 5 (“**Appliance**”) and order certain maintenance, support and supplementary services relating to the Software or the Appliances, as further detailed in Section 6 (“**Services**”) from Exasol. “**Exasol**” means the Exasol company described in Section 24.4 “Contracting Entity, Applicable Law and Jurisdiction.” The Software, Services and Appliances are collectively referred to as “**Products**” and Exasol and Customer individually as “**Party**” and collectively as the “**Parties**”.
2. **Order Process.** A “**Quote**” is a written offer by Exasol, describing the type, quantities, licensed capacity, any specific delivery locations, and other parameters of the relevant Products provided by Exasol, the fees or price payable to Exasol, payment period(s), any specific obligations of Customer, the duration of the Agreement (“**Term**”), and other relevant details, and referencing this MSA. By accepting a Quote before the “valid until” date specified in it or by otherwise ordering or using any Products, Customer and Exasol agree to this MSA and the Quote (“**Agreement**”) beginning as of the date of Customer’s signature on the Quote or the earlier date when Customer ordered or started using the Products (the “**Effective Date**”). Only this MSA and the Quote and any documents referenced therein will govern the relationship of Customer and Exasol. Any different or additional terms proposed by Customer are hereby rejected, regardless of when and how communicated by Customer to Exasol, even if they are attached to requests for an offer, orders, declarations of acceptance or similar and whether or not Exasol expressly objects to them in any individual case. They shall only apply insofar as they have been explicitly accepted by Exasol in writing. Special individual agreements or other written agreements between Exasol and the Customer shall take precedence over this MSA.
3. **Software.** “Software” means a software stack consisting of the Exasol database software and clients and drivers provided by Exasol as well as any modification, error correction, patch, bug fix etc. that Exasol makes available to the contractual partner in any form whatsoever. The Software, the product life cycle including end-of-life dates, its technical limitations and additional specifications are further described in certain documentation created and maintained by Exasol accessible at <https://docs.exasol.com/> (the “**Documentation**”).
4. **License.**
 - 4.1. **Software Subscription.** Subject to Customer’s compliance with the Agreement and timely payment of all license fees, Exasol grants to Customer a worldwide, time-limited, non-exclusive, non-transferable, non-sublicensable, subscription to use the Software only during the Term, subject to the common license provisions in Section 4.3. A Software subscription includes release of Software as of the date of delivery.
 - 4.2. **Non-production License.** If the Software is made available for non-production use (i.a. Test, Development, Acceptance, Devops, Hot and Cold Standby License, each of them a “**Non-production License**”), then subject to Customer’s compliance with this Agreement and timely payment of all license fees, Exasol grants to Customer a worldwide, royalty-free, revocable at will, non-exclusive, non-transferable, non-sublicensable, subscription to use such Software only during the Term, subject to the common license provisions in Section 4.3, provided that the Software shall be installed and used in a system used solely for software product migration testing, software product pre-production staging, user acceptance testing, hot and cold standby use, testing new data sources, types or use cases, and shall be used only for such non-production use.
 - 4.3. **Common License Provisions.** Each Software license is limited to one installation. The Software license may be used on any supported platform. Splitting the Software into more than one installation requires Exasol’s prior written consent. The Documentation is available for download by Customer on the homepage of Exasol in English language. If and as provided in the Quote, Customer may permit specified third parties, and companies controlling, controlled by or under common control (“**Affiliates**”) by Customer to use the Software only for Customer’s or the Affiliates’ internal business purposes in accordance with the Agreement. Customer must enforce the conditions of the Agreement against permitted third party users, including its Affiliates and will be fully liable for the use by any third party of the Software licensed to Customer.



- 4.4. **Software Delivery.** Unless otherwise stated in the Quote, the Software will be delivered by emailing of the license key which authorizes the use of the downloadable Software by Customer. Except as provided in Section 7, Software will be made available in executable object code form only.
5. **Appliance.** If and as stated in a Quote, Exasol sells Customer a computer appliance with pre-installed Software and Third-Party Components (“**Appliance**”). The Software installed on the Appliance will be subject to the applicable license. Any delivery time for an Appliance is an estimate only. The Appliance will be shipped by a carrier selected in Exasol’s reasonable discretion at Customer’s expense. Delivery and transfer of the risk of loss of an Appliance to Customer will take place when the Appliance is handed over to the carrier.
6. **Services.** Exasol may provide to Customer certain support, maintenance, hosting, training and other supplementary services, as described in the Service Description, available at <https://www.exasol.com/terms-and-conditions/>. The Service Description that is current at the time of entering into the Agreement is incorporated into the Agreement by reference. The provision of Services may include the delivery of reports or other materials in any form (“**Deliverables**”). The specific type of Services, the booked support level, their Term, any Deliverables, and other conditions for their provision will be stated in the Quote. Services are required as part of the Software license and may only be terminated together with the Software subscription according to the provisions of Section 17. Exasol grants Customer a perpetual, worldwide, non-exclusive, non-transferable, non-sublicensable license to use the Deliverables for Customer’s internal business purpose in connection with the applicable Services.
7. **Third-Party Components.** Software, code or related materials from third parties, including, without limitation, “open source” or “freeware” software that is distributed, provided with, or otherwise made use of by the Software (“**Third-Party Components**”) may be licensed under additional or other license terms that accompany such Third-Party Components, and Customer acknowledges and agrees that these accompanying license terms govern their use. The Third-Party Components and respective license terms are available in the installation package of the Software. Nothing in this Agreement limits Customer’s rights under, or grants rights that supersede, the license terms that accompany any Third-Party Components. If required by any license for a particular Third-Party Component, Exasol makes the source code of such Third-Party Component, and any of Exasol’s modifications to such Third-Party Component, as required, available by written request to Exasol at the address identified in Section 24.4.
8. **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 Quote. 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 Quote. 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 of Customer) 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 license fees payable for the excess usage exceed 10% of the license fees already paid by the Customer for the corresponding period, then Customer will also pay Exasol’s reasonable costs of conducting the audit.
9. **Payment.**
- 9.1. **Fees, Purchase Price, Wire Transfer.** The license fee for any Software, the purchase price for any Appliance, and the fee for any Services will be set forth in the Quote. Fees and prices quoted by Exasol are exclusive of, and Customer is responsible for, cost of shipping, taxes or duties. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, other than any taxes on Exasol’s income. If Customer claims an exemption from sales, use or similar taxes, Customer shall deliver to Exasol a valid certificate of such exemption issued by the relevant taxing authority. All Fees must be paid by wire transfer.
- 9.2. **Expenses.** If Exasol agrees to provide Services (not remote) at a location designated by Customer, Customer shall reimburse Exasol’s actual and reasonable travel expenses.



- 9.3. **Payment.** Unless otherwise stated in the Quote, fees for Services are payable in advance, within thirty (30) days of invoice date, before Services are provided or before a new Term for Services begins. Customer is not permitted to offset any amounts claimed by or due to Customer against payment of amounts due to Exasol.
- 9.4. **Overdue Amounts.** If Customer fails to pay any amounts payable under the Agreement when due and remains in default for thirty (30) days or more Exasol may charge interest on the past due amount at the rate of 1.5% per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law, and Exasol may suspend the license until all amounts due have been paid, and if Customer fails to pay such amounts for more than 7 days after notice of overdue amounts terminate the Agreement, any licenses, and the Services by notice to Customer, effective immediately.
10. **Ownership.** Except for the licenses expressly granted to Customer in the Agreement, Exasol, its suppliers and licensors own all worldwide right, title and interest in and to the Software, the Documentation, and Deliverables, including all related intellectual property rights (collectively, “**Exasol Materials**”); provided however, that no Third-Party Component is considered part of Exasol Materials and the authors for such Third-Party Components retain all worldwide right, title and interest to such Third-Party Components. Customer has no right, title or interest in or to any Exasol Materials or related intellectual property rights. Notwithstanding any use of words such as “purchase” or similar in any document issued by Exasol or Customer, the Exasol Materials are licensed, not sold, to Customer and Customer only has the licensed rights in accordance with the terms of the Agreement. If Customer or its representatives provide suggestions for improvements or enhancements, recommendations, comments, opinions, code, input, ideas, reports with respect to the Software (“**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.
11. **Prohibited Conduct.** Customer will not and will not knowingly permit any third party to: (a) copy the Exasol Materials except as permitted by the Agreement or applicable law which is not capable of contractual waiver; (b) modify, adapt, or create derivative works of the Exasol Materials; (c) rent, lease, loan, resell, transfer, sublicense, distribute, disclose or otherwise provide the Exasol Materials to any third party except as explicitly authorized herein; (d) decompile, disassemble or reverse-engineer the Exasol Materials, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Exasol Materials, except as permitted by applicable law which is not capable of contractual waiver; (e) access or use any Exasol Materials that were disabled by Exasol; (f) use any Exasol Materials for any benchmarking purposes or to create competitive product offering; (g) provide to any third party the results of any benchmark tests or other evaluation of the Exasol Materials; (h) disable or circumvent any license key or other technological measures intended to prevent, limit or control access, use or copying of the Exasol Materials; (i) remove or obscure any copyright, trademark, patent, or other proprietary notices, legends or symbols from any Exasol Materials; (j) exceed the licensed usage parameters; (k) use or attempt to use any Exasol Materials after the expiration of the Term for its use; (l) otherwise access or use any Exasol Materials except as expressly authorized in the Agreement; (m) use any Exasol Materials, any Product or any Third-Party Component in any manner that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person or entity or that does not comply with applicable laws and regulations; (n) install any other software in the system other than the Software unless approved by Exasol; (o) use, or allow use of, Software licensed under a Non-production License for any revenue generation, commercial activity or other productive business or purpose; or (p) attempt any of the foregoing. 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 of the Software subscription expires or the licensed usage parameters are reached or exceeded.
12. **Warranties.**
- 12.1. **Software Warranty.** Exasol warrants that for a period of thirty (30) days from delivery of the Software license keys, the Software will substantially perform the material functions described in the Documentation, if used in accordance with the Documentation and provided that Customer as of the date of warranty claim is in compliance with all terms of this MSA and the Quote (“**Limited Warranty**”). The Limited Warranty does not apply to problems arising out of or relating to (a) Software or transporting media that is modified or damaged by Customer; (b) use of the Software other than as



specified in the Documentation, including in or with, any technology or service not approved in the Documentation or by Exasol in writing; (c) Customer's negligence or misuse of the Software, including but not limited to breach of Section 11 (Prohibited Conduct); (d) Customer's failure to promptly install all of Exasol's maintenance releases; (e) operation of Customer's or a third party's system or network; (f) any Third-Party 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; (g) Customer's breach of the Agreement; or (h) any other circumstances or causes outside of the reasonable control of Exasol, such as abnormal physical or electrical stress. Customer's sole remedy for any failure of the Software to conform to the Limited Warranty, and Exasol's sole liability in Exasol's sole discretion is: to (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.

- 12.2. **No Appliance Warranty.** Exasol does not provide any warranty with respect to the hardware of an Appliance and such Appliance is provided by Exasol "as is". If and as permitted by the terms of any warranty made by the hardware manufacturer ("**Manufacturer's Warranty**"), Exasol assigns to Customer any and all of its claims and rights based on any Manufacturer's Warranty.
- 12.3. **Services and Training Warranty.** Exasol warrants that all Services, including trainings, will be performed with qualified personnel, using reasonable skill and care ("**Services Warranty**"). Customer must notify Exasol of any breach of this Services Warranty within thirty (30) days of the performance of the relevant Services. Exasol's entire liability and Customer's exclusive remedy will be for Exasol to re-perform the Services so that the Services Warranty is met. If Exasol is unable to perform the Services so that the Services Warranty is met within thirty (30) days from Customer's notice of the breach, Exasol's sole liability, and Customer's sole remedy, will be to refund the fees for the relevant Services.
- 12.4. **Warranty Claims.** All warranty claims hereunder must be made within the applicable warranty period.
- 12.5. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 12, THE PRODUCTS ARE PROVIDED "AS IS". EXASOL SPECIFICALLY DISCLAIMS ALL STATUTORY AND IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ALL CONDITIONS AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. SAVE AS PROVIDED IN THIS SECTION 12 EXASOL MAKES NO WARRANTY AND ACCEPTS NO CONDITION OF ANY KIND THAT THE PRODUCTS OR EXASOL MATERIALS, OR ANY 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 THIRD-PARTY COMPONENTS AND ANY SOFTWARE PROVIDED UNDER A NON-PRODUCTION LICENSE ARE PROVIDED "AS IS".
- 12.6. **Customer Responsibility for Data.** Customer alone is responsible for the accuracy, quality, integrity and security of Customer's data, computers, networks and systems.
- 12.7. **Compliance with Law.** Each Party warrants that its performance under the Agreement will comply with all applicable laws, including laws regarding the processing of personal data.
- 13. Indemnification.**
- 13.1. **By Exasol.** Exasol will indemnify, hold harmless and defend Customer from and against all losses, including reasonable attorney's fees, incurred by Customer resulting from a claim by a third party alleging that the Exasol Materials, used in accordance with the Agreement, infringe a third party's UK or US intellectual property right. Exasol will not indemnify if the claim is attributable to:
- (a) use of the Exasol Materials outside the purpose, scope, or manner of use permitted by this MSA or inconsistent with the Documentation or contrary to Exasol's reasonable instructions;
 - (b) modifications to the Exasol Materials or other than (i) by Exasol in connection with the Agreement or (ii) with Exasol's express written authorization and in strict accordance with Exasol's written directions and specifications;
 - (c) use of the Exasol Materials with any technology not provided or approved by Exasol, or with third-party services or technology where the infringement would not have occurred but for such combination;



- (d) Customer's continued use of the Exasol Materials, or other allegedly infringing activity, after receiving notice of an alleged infringement or other violation of third party's rights;
- (e) any Third-Party Components;
- (f) 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;
- (g) provision or use of Software under a Non-production License;
- (h) negligence or misuse of the Exasol Materials by Customer;
- (i) events or circumstances outside of Exasol's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or
- (j) claims or losses for which Customer is obligated to indemnify Exasol hereunder.

13.2. **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, including reasonable attorneys' fees, incurred by the Exasol Indemnitee resulting from any claim by a third party:

- (a) that any intellectual property right or other right of any third party, or any applicable law, is or will be infringed or violated as a result of: (i) Customer's use or combination of the Exasol Materials with any hardware, software, system, network, service, or other matter not approved by Exasol; or (ii) any information, materials, or technology provided by Customer or directed by Customer to be used with the Exasol Materials;
- (b) relating to facts that, if true, would constitute a breach by Customer of any representation, warranty, covenant, or obligation under the Agreement;
- (c) relating to Customer's abuse, use other than in accordance with the Documentation and this Agreement, negligence or culpable act or omission (including recklessness or willful misconduct) with respect to the Exasol Materials or in connection with the Agreement; or
- (d) relating to Customer's use of the Exasol Materials outside the purpose, scope or manner of use authorized by the Agreement or the Documentation, or contrary to Exasol's reasonable instructions.

13.3. **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 under this MSA. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**"), at the Indemnitor's sole cost and expense. 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 adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent. The Indemnitee shall make no admission of liability or quantum nor agree any settlement or disposal of any claim without the Indemnitor's prior written consent. 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 13 will not relieve the Indemnitor of its obligations under this Section 13, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

13.4. **Mitigation.** If any claim is made, or in Exasol's reasonable opinion is likely to be made, against the Customer in respect of which the Customer could claim under the indemnification set out in Section 13, Exasol may at its sole option and expense:

- (a) modify the affected Exasol Materials so that it ceases to be infringing;
- (b) replace the affected Exasol Materials with software or a document or item that performs in a substantially similar manner without being infringing;
- (c) procure for the Customer the right to continue to use the Exasol Materials in accordance with the terms of the Agreement; or



- (d) if Exasol determines in its sole discretion that none of (a), (b) or (c) above is reasonably feasible, Exasol may terminate the Agreement by notice in writing and refund the Customer a pro rata refund of the Fees or price 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 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 the time the Software was delivered to Customer.

13.5. **Exclusive Remedy.** Exasol's obligations set forth in this Section 133 constitute Customer's sole and exclusive remedy, and Exasol's entire liability, with respect to any claims that a Product, Deliverable or Third-Party Component infringes any third party's intellectual property rights.

14. Limitation of Liability.

14.1. **Exclusion of Damages.** EXCEPT AS SET FORTH IN SECTION 14.3, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS MSA OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. SPECIFICALLY, IN NO EVENT WILL EXASOL, OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE FOR (A) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (B) LOSS OF GOODWILL OR REPUTATION, (C) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY SOFTWARE OR THIRD-PARTY COMPONENTS, (D) DATA LOSS, OR BREACH OF DATA OR SYSTEM SECURITY, (E) COST OF REPLACEMENT OF GOODS OR SERVICES.

14.2. **Cap on Monetary Liability.** EXCEPT AS SET FORTH IN SECTION 14.3, THE COLLECTIVE AGGREGATE LIABILITY OF EITHER PARTY AND IN THE CASE OF EXASOL, ITS LICENSORS, SUPPLIERS AND SERVICE PROVIDERS, ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL IN NO EVENT EXCEED A SUM EQUAL TO (A) 1.2 (ONE POINT TWO) TIMES AN AMOUNT EQUAL TO ALL THE AMOUNTS PAID, AND AMOUNTS ACCRUED AND NOT YET PAID, BY CUSTOMER UNDER ANY ACCEPTED QUOTE DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM, OR (B) \$25,000 (twenty five thousand dollars), WHICHEVER IS MORE.

14.3. **Exceptions.** The exclusions and limitations in this Section 144 shall apply to the fullest extent permissible by law, provided that the liability of Customer shall not be excluded or limited by this Section 144 in respect of its payment obligations hereunder nor in respect of its infringement of Exasol's intellectual property rights or those of its licensors, and provided that the liability of either Party shall not be excluded or limited by this Section 14 for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) indemnification as provided in Section 13; or
- (d) payment of fees hereunder;
- (e) prohibited conduct as provided in Section 11;
- (f) breach of confidentiality obligations as provided in Section 15;
- (g) any other liability which may not be excluded by applicable law.

14.4. **Basis of Bargain.** With respect to Exasol, the exclusions and limitations in Sections 14.1 and 14.2 apply without regard to whether the remedies under this MSA have proven ineffective, or have failed of their essential purpose, and are fundamental and specific requirements of the basis of the bargain between Exasol and Customer. Exasol would not be able to provide the Products, Services or Deliverables, or Third-Party Components without these exclusions and limitations.

15. Confidential Information.

15.1. **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 or its Affiliate (the "Discloser") to the other Party or its Affiliate



(the “**Recipient**”) 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 information regarding the Software (including any license keys) and any benchmarking or results of a proof of concept, 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.

- 15.2. **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 15.2 and (c) not to use any such Confidential Information for any purpose other than to exercise its rights or perform its obligations under the Agreement. The 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. Consent for third party access to confidential information is not needed. Third parties will be subject to the same confidentiality and non-disclosure obligations as outlined in this Agreement. Exasol shall ensure that the third party is aware of and agrees to abide by the terms of this Agreement. The Recipient may disclose the Confidential Information of the Discloser to the Recipient’s directors, officers, employees, Affiliates and third parties who require access to perform the obligations under this Agreement (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. The Recipient’s obligations under this Section 15 will continue to be in effect during the Term of the Agreement and for a period of three (3) years after its termination or expiration, or for such longer period during which the Confidential Information is considered to be a trade secret under applicable law. Customer’s obligations under this Section 15 will continue in effect with respect to information relating to the Software for so long as such information is maintained in confidence by Exasol.
- 15.3. **Exclusions.** The obligations of the Recipient under this Section 155 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 the Recipient, prior to receiving such information from the Discloser, without restriction as to use or disclosure; (c) is rightfully acquired by the 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 the Recipient without access, use or reference to any Confidential Information of the Discloser.
- 15.4. **Required Disclosure.** The provisions of Section 15.2 will not restrict the Recipient from disclosing the 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, the Recipient shall make commercially reasonable efforts to give the Discloser advance notice of such required disclosure, and cooperate with Discloser (at Discloser’s cost) in order to enable the Discloser to prevent or limit disclosure.
- 15.5. **Return or Destruction.** Upon termination of this MSA and the licenses granted by it, the Recipient will promptly return to the Discloser or at Discloser’s option destroy all tangible items and embodiments containing or consisting of Discloser’s Confidential Information and all copies thereof, delete such Confidential Information from computer systems owned or controlled by the Recipient and provide written certification of such destruction, return or deletion by an authorized person. The Recipient is not required to delete any Confidential Information of the Discloser stored in the Recipient’s data backup systems; provided that the Recipient shall not access such information for any purposes except in the case of a data recovery and then shall delete such information from the recovered data.
16. **Term.** Unless otherwise agreed, the Term for any Product (except for one-time items) begins with the fixed date specified in the Quote. Non-activation of license keys will not toll or extend the Term. Any Product (except for one-time items) automatically renews only if stated in the Quote. If there is an unlimited Term for the Product (except for one-time



items), the Agreement may be terminated with a three (3) months' notice period. If the Quote provides for a fixed Term, the Agreement may not be terminated before the expiration of that Term except for cause.

17. Termination.

17.1. By either Party. Either Party may terminate the Agreement for cause by written notice to the other Party upon occurrence of any of the following events:

- (a) The other Party materially breaches the Agreement and has not cured the breach thirty (30) days after receiving notice of the breach, unless the breach is incapable of being cured (any material breach of Section 11 and 15 shall be deemed to be incapable of being cured unless the non-breaching Party notifies the breaching Party otherwise);
- (b) 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;
- (c) A custodian, trustee, receiver, administrator or liquidator is appointed or authorized by law or under a contract to take charge of the property of the other Party for the benefit of its creditors; or the other Party makes a general assignment for the benefit of its creditors; or
- (d) 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.

17.2. By Exasol. Exasol may terminate the Agreement and any 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:

- (a) Customer breaches Section 11 (Prohibited Conduct); or
- (b) Customer defaults on payment of any amount when due hereunder and such default continues for seven (7) days after Exasol has provided notice to Customer of the default; or
- (c) as provided elsewhere in the Agreement.

17.3. Effect of Termination. Upon any expiration of the Term or termination of the Agreement, the rights and licenses granted to Customer will automatically terminate, and Customer shall (a) immediately cease using the Software, 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. Except as specifically provided herein, Exasol has no obligation to refund any fees or other amounts received from Customer during the Term and Customer must pay all fees and the purchase price payable under the Agreement. Provisions of the Agreement and the rights and obligations of the Parties hereunder which by their nature are reasonably inferred to continue after termination of the Agreement will survive any expiration or termination of the Agreement.

18. Export. Customer will not, and will not knowingly permit, export, re-export, or release the Exasol Materials to, or make the Exasol Materials or any Appliance accessible from, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law, including without limitation the U.S. Export Administration Regulations and International Traffic in Arms Regulations. Customer will comply with all applicable laws and obtain required permits prior to exporting, re-exporting, releasing, or otherwise making the Exasol Materials or any Appliance available outside the country where the Exasol Materials or Appliance have been licensed or sold.

19. Anti-Bribery Laws. Each Party agrees to comply with all applicable anti-bribery laws, which may include, without limitation, the U.S. Foreign Corrupt Practices Act or the U.K. Bribery Act.

20. User Portal; Third-Party Content Disclaimer. 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. Certain materials available for download on Exasol's user portal are developed or provided by third parties ("Third-Party Content"). Exasol makes Third-Party Content available as a convenience, "as is" and without any warranty, including regarding accuracy, integrity, quality, legality, usefulness or safety of Third-Party Content. Exasol has no obligation to monitor and may block or disable access to any Third-Party Content at any time. Availability of Third-Party Content through Exasol's user portal does not



imply Exasol's endorsement of, or affiliation with, any provider of Third-Party Content, or 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 established by the provider.

21. **License through Reseller.** If Customer licensed the Software through an authorized reseller, partner or OEM of Exasol ("Reseller") then, notwithstanding anything to the contrary in the Agreement: (a) Unless otherwise expressly agreed to in writing, Exasol is a subcontractor of Reseller with respect to Software Services and the provision of other services. The Parties acknowledge and agree there is no direct contractual relationship between Exasol and the Customer; (b) Customer's use of the Software is subject to any additional terms in its agreement with the Reseller; provided that such additional terms shall not negate or otherwise modify the terms of the Agreement; (c) Customer agrees to pay the Reseller the license fees and other applicable fees, and Customer will have no direct fee payment obligations to Exasol for such Software; (d) any agreement between Customer and the Reseller is not binding on Exasol; provided that Customer agrees that Exasol has the right to enforce the terms of that agreement including without limitation such terms that protect Exasol's interests and with respect to which Customer agrees Exasol is a third-party beneficiary; and (e) Exasol may terminate the Agreement (including Customer's right to use the Software) if Exasol does not receive payment for Customer's use of the Software from the Reseller or if Customer breaches any term of the Agreement. If Customer's warranty and support terms stated in its agreement with the Reseller are different from those set forth in the Agreement, then such different terms are solely between Customer and the Reseller and Exasol will have no obligations to Customer under the Agreement with respect to such different terms. Except as set forth in the preceding sentence, if there is any conflict or inconsistency between the Agreement and Customer's agreement with Reseller, then the Agreement will control (and will resolve such inconsistency) as between Exasol and Customer.
22. **Retention of Title.** In respect of Appliances, until the purchase price for the Appliances and/or other goods and the corresponding License fee is paid in full, Exasol retains all rights and title to the Appliances and other goods and the right to revoke any License at any time, and Exasol shall have the right (and Customer shall procure that it shall have the right) during business hours and upon reasonable notice of peaceable entry into any premises where such Appliances may be kept in order to take possession of and remove the Appliance and/or other goods (as applicable). Notwithstanding the foregoing, Customer assumes the risk in Appliances upon delivery and shall ensure that it insures all such Appliances for their full replacement value until the purchase price is paid in full.
23. **Taxes.**
 - 23.1. **Prices Exclusive of Taxes.** Prices are exclusive of all Taxes imposed by any Governmental Authority on any amounts payable by Customer under this Agreement. Exasol's invoices shall state all applicable Taxes, if any, imposed by a Governmental Authority. If and to the extent any Tax is reduced or eliminated during the Term, Exasol shall reflect the Tax reduction or elimination.
 - 23.2. **Exasol's Obligation to Remit Taxes.** Any Taxes that are currently assessed or that may be assessed in the future must be paid by Customer. Exasol must timely remit all Tax payments to the appropriate Governmental Authority in each respective jurisdiction. In the case of an Appliance, Exasol will deliver the hardware, where applicable, to a location specified by Customer which may affect the assessment of Taxes. In the event Customer relocates the hardware to a different state after delivery, Customer must promptly notify Exasol at deal-desk@exasol.com.
 - 23.3. **Refunds and Rebates.** Each Party is entitled to any tax refund or rebate granted, to the extent the refund or rebate is of Taxes that were paid by or on behalf of the Party.
 - 23.4. **Exemptions and Withholdings.** If Customer provides a direct pay certificate, certification of an exemption from Tax or reduced rate of Tax imposed by an applicable Governmental Authority, then Exasol must not invoice or pay this Tax unless and until the applicable Governmental Authority assesses this Tax, at which time Exasol shall invoice and Customer agrees to pay this Tax that is legally owed. Customer shall withhold taxes as required under applicable law on payments made to Exasol hereunder and shall be required to remit to Exasol only the net proceeds thereof. Customer agrees to remit in a timely manner all Taxes withheld to the appropriate Governmental Authority in each respective jurisdiction.
 - 23.5. **Cooperation to Minimize Taxes.** The Parties agree to cooperate to minimize, wherever possible and appropriate, any applicable Taxes, and provide reasonable notice and cooperation in connection with any audit by a Governmental



Authority. Each Party shall, from time to time at the other Party's request, furnish the other Party any direct pay or resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials or services, and other exemption certificates or similar information reasonably requested by other Party.

24. Miscellaneous.

- 24.1. **Independent Contractors.** The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties and no Party is permitted to act as the other Party's agent or otherwise empowered to enter into any obligation on behalf of the other Party.
- 24.2. **Third Parties.** Except as set forth in Section 22, there are no third-party beneficiaries to the Agreement.
- 24.3. **Subcontractors.** Exasol may, in its sole discretion, use subcontractors to fulfill its obligations under the Agreement, provided that Exasol will remain responsible for compliance of its subcontractors with the terms of the Agreement.
- 24.4. **Contracting Entity, Applicable Law and Jurisdiction.** The Exasol entity entering into this Agreement depends on which Exasol entity is mentioned in the Quote. If Exasol, Inc., a Delaware corporation with an address at 268 Bush Street #3841, San Francisco, CA 94104-3503 is mentioned in the Quote and thus contracting entity, the Agreement and all matters arising out of or relating to it shall be governed by and construed in accordance with the laws of the State of Georgia, excluding the conflicts-of-laws principles thereof shall apply and the federal courts located in and/or having jurisdiction over the City of Atlanta, Georgia, shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with, this evaluation or its subject matter or formation. If Exasol UK Limited, Parkshot House, 5 Kew Road, Richmond, TW9 2PR London, Greater London, United Kingdom is mentioned in the quote and is thus contracting entity, the laws of England and Wales shall apply without regard to the UN Convention on the International Sale of Goods (CISG) and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter. This MSA is not applicable for Quotes from or agreements with Exasol entities other than Exasol UK Limited or Exasol Inc.
- 24.5. **Force Majeure.** Neither Party shall be liable to the other for failure to perform any of its obligations (except payment obligations) under the Agreement during any period in which performance is hindered, delayed or made impossible or commercially impracticable by circumstances beyond the Party's reasonable control, such as fire, flood, war, embargo, epidemic, strike, riot, acts of a governmental authority, or cyber warfare (e.g., Internet-based attacks on information systems intended to or resulting in the disabling of websites and networks) (each, a "Force Majeure Event"). In such event, however, the delayed Party must promptly provide the other Party with written notice of the Force Majeure Event.
- 24.6. **Notices.** The Parties may exchange routine communications under the Agreement via email or other means. All other notices required or permitted under the Agreement shall be in writing and delivered in person, by email, by nationally recognized overnight courier service, or by recorded delivery first class post. Notices 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, delivery record of the United States Postal Service (for Customers of Exasol, Inc.), Royal Mail (for Customers of Exasol UK Limited), or delivery confirmation of a commercial courier service. All communications shall be sent to the addresses set forth in the applicable Quote or to such other address as may be specified by either Party to the other Party in accordance with this Section 24.6.
- 24.7. **Assignment.** Customer shall not assign, delegate or transfer the Agreement, in whole or in part, by agreement, operation of law or otherwise. Exasol may assign the 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 the Agreement relates. Any attempt to assign the Agreement other than as permitted herein will be null and void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties' permitted successors and assigns.
- 24.8. **Data Collection; Privacy.** From time to time, Exasol may collect and process technical and related information regarding 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. To the extent that such information may constitute personal data it will be subject to the Exasol Privacy Policy, available at [https:// www.exasol.com/terms-and-conditions/](https://www.exasol.com/terms-and-conditions/).

- 24.9. **Integration.** The Agreement, along with any additional terms incorporated herein by reference, including the Quote 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. If there is any inconsistency between the terms of the Agreement and the terms of a Quote, the terms of a Quote shall take precedence. Each Party acknowledges that, in entering into the 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 the Agreement or not) other than as expressly set out in the Agreement.
- 24.10. **Waiver.** The waiver by either Party of a breach of or a default under the Agreement will not be effective unless in writing. The failure by either Party to enforce any provisions of the Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions.
- 24.11. **Amendment.** Any amendment of any provision of the Agreement will be effective only if in writing and executed by duly authorized representatives of both Parties.
- 24.12. **Severability.** If a court of competent jurisdiction holds any provision of the 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.
- 24.13. **Third Party Rights.** A person who is not a party to this Agreement has no right to enforce any term of it, whether under the laws of the United States, the United Kingdom Contracts (Rights of Third Parties) Act 1999, or otherwise.
- 24.14. **Amendments to the Terms and Conditions.** Amendments to these Terms and Conditions will be provided in text form (in writing, no signature required, e.g. via e-mail) to the Customer not later than two months before the proposed effective date. If Customer does not object to the amendment to Exasol until the proposed effective date, consent shall be deemed to be given. The revocation shall be addressed to Exasol, Neumeyerstraße 22-26, 90411 Nuremberg, Germany or via e-mail to legal@exasol.com. In case of a revocation, the existing T&C without the proposed amendment continue to apply. In the notice informing about the amendment, Exasol will particularly emphasize Customer's right to revocation and the respective time limit.
- 24.15. **Execution.** This MSA may be made applicable to the Parties' relationship by reference in the Quote or other agreement between the Parties. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one agreement. Each Party agrees to be bound by its facsimile or electronic signature, whether transmitted by fax, email or other electronic means, and each Party agrees that it shall accept the signature of the other Party transmitted in such a manner. The Agreement may be accepted by Customer in other ways, including by click-wrap or other electronic transaction, or by commencing use of the Software.