

Cooperation Agreement

between

EXASOL Europa Vertriebs GmbH

(hereinafter referred to as „Exasol“)

Neumeyerstr. 22-26

90411 Nuremberg

and

zzz_test_admin

(hereinafter referred to as „Partner“)

Status	Entwurf
Contract No.	00015197.1
Valid until:	4/6/2016
Account Manager	Gunther Schweer
	Sales Manager
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1 Preamble

- 1.1 Exasol has developed the Exasol Database, a high performance databank management system for precise data analysis. The Exasol Database is offered on a license basis to customers and partners. For a successful use and operation of the Exasol database, Exasol offers various training courses and certifications thereof.
- 1.2 Partner is in the business of providing consulting services in the IT sector and especially conducts training as concerns various IT programs and topics.
- 1.3 Partner and Exasol plan a cooperation whereby Partner, after the appropriate training of its employees, shall act as an authorized Exasol Training Partner offering local training and certification services in accordance with Exasol training materials, procedures and guidelines.

2 Definitions

This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany without regard to the UN Convention on the International Sale of Goods (CISG). The courts of Nuremberg shall have exclusive jurisdiction over any dispute arising out of or in connection with this Agreement.

- 2.1 „End User“ designates each person or entity which, individually for their own purposes or on behalf of an entity, participates in training courses and/or pursues the certification process and/or as an entity only uses the services internally and not for the purpose of resale.
- 2.2 „Exasol-Training“ designates the various training courses developed by Exasol concerning the Exasol Database, which are listed on the website <https://www.exasol.com/portal/display/TRAINING/Training+and+certification+-+learn+how+to+get+the+most+out+of+EXASOL> („Standard-Exasol-Training“) as well as individually developed and conclusively authorized trainings („Individual Training“) concerning the Exasol Database.

2.3 „Exasol-Training Materials“ designates all materials which are required for Exasol-Training. Such includes:

- Training folios
- SQL-Statements for preparation of Training
- Interactive SQL-Statements which are utilized during Training. Such includes solutions to interactive exercises.
- Handout materials for participants

Exasol-Training Materials are authorized when they are approved and released by Exasol for usage in accordance with Paragraph 4.

2.4 „Exasol-Trainer“ designates one or more employees of Partner which are authorized by Exasol in accordance with the provisions of Paragraph 3 to conduct Exasol-Training.

2.5 „Exasol-Certification“ designates the process to acquire a specific certificate and/or qualification certification. Certification shall occur online within the framework of Multiple Choice Tests. The login details for such tests shall be made available to the End Users by Exasol.

2.6 „Intellectual Property“ designates copyrights, patents, inventions, designs, circuit layouts, know-how, software, registered and unregistered trademarks of Exasol, regardless of which nations such are registered in and regardless if such existed at the beginning of the contractual period or not.

2.7 „Party“ and/or „Parties“ designate one or both of the parties which have executed this agreement, namely Exasol and Partner.

2.8 „Miscellaneous Training Materials“ is the collective definition, exclusive of Exasol-Training Materials, for each and every tangible product and/or those electronic contents, procedures, work methods, data, etc. including – but not limited to – presentation folios, program codes (e.g. SQL, Java, etc.), training materials, manuals, notes, sample examinations, drawings, illustrations, designs, models, calculations, work methods, user documentation concerning Exasol-Software, know-how, databanks and any other data which is made available by Exasol to Partner in connection with performance of this agreement.

2.9 „Contractual Term“ designates the duration of this agreement which is defined in Paragraph 14 hereof.

2.10 „Confidential Information“ designates (1) all Training Materials protected by copyright in each and every version and/or form of expression, regardless of whether or not such have been patented or enjoy copyright registration, and regardless of whether such are pending patent registration or are the basis of a patentable invention or not; (2) all manuals, notes, documentation, technical information, drawings, diagrams, specifications and formulas which are not intended for transfer or usage by the End User, inclusive of know-how concerning the above named materials; (3) all information concerning ongoing or planned product developments, customers, contracts, business methods, financial data and marketing analyses which are not intended to be marketed or transferred to the End Users; (4) all written information which is clearly and unmistakably designated as confidential or legally protected by a contractual Party; and (5) the terms and conditions of this agreement. “Confidential Information“ includes unwritten information which is designated at the time of disclosure as confidential by a contractual Party.

3 Authorization as an Exasol-Trainer

3.1 The authorization to become an Exasol-Trainer shall require successfully passing a practical examination. An Exasol employee shall participate in a test training to be coordinated with Exasol, which test training shall be conducted by the employee of Partner as Trainer. Where the Exasol employee is convinced that the corresponding employee of Partner not only governs the Exasol-Training content, but also the didactic methodology of teaching the contents, said employee of Partner shall become an authorized Exasol-Trainer.

3.2 The authorization to act as an Exasol-Trainer is limited to an one year term. Current plans are underway to renew such authorization. The Parties shall reach a consensual agreement as concerns the renewal process at the latest four months prior to conclusion of the Minimum Contractual Term.

3.3 Exasol retains the right to cancel the authorization of an Exasol-Trainer where good cause exists, for example in the event of repeated complaints as to the Training quality of the concerned Exasol-Trainer, misconduct of an Exasol-Trainer during the course of training, etc.

4 Exasol-Training Materials, Authorization

4.1 Authorized Exasol-Trainers shall receive electronic access to Exasol-Training Materials, which shall be administrated by means of version tracking tool program.

4.2 Exasol-Training Materials are authorized when they correspond to the current version accessible in the version tracking tool program at least three days prior thereto. Changed Exasol-Training Materials shall lose their authorization. Where changes to Exasol-Training Materials are approved and released by Exasol employees, such Exasol-Training Materials shall become authorized.

4.3 Authorized Training Materials can be used for individual Exasol-Training where such usage is coordinated with Exasol.

4.4 All Exasol-Training Materials as well as Miscellaneous Training Materials shall be exclusively used to provide services to End Users of Partner. Exasol-Training Materials and/or Miscellaneous Training Materials shall not be marketed or sold by Partner to any other third parties.

5 Rights and Duties of Partner to Conduct Exasol-Training

5.1 Partner is authorized, after coordinating schedule and training contents with Exasol, to conduct Exasol-Training in its own name and for its own account through authorized Exasol-Trainers.

5.2 Partner is obliged to bind the End User at the minimum to the Training Terms and Conditions as specified in Annex 1 as part of the respective Training contract.

5.3 Partner is obliged to provide each participant the authorized Exasol-Training Materials for the appropriate Exasol-Training (see Paragraph 4). The Exasol-Training Materials shall only be provided to End Users in the paper form or in the digital form as a pdf data format (not as a ppt data format, etc.), and such provision shall be conditioned upon each End User(s) having in advance agreed to the Training Terms and Conditions specified in Annex 1 prior to their being provided such Training Materials.

5.4 Partner is obliged to pay a fee to Exasol for each End User per Paragraph 7 in accordance with the Fee Schedule specified in the Annexes.

5.5 In order to warrant correct planning, processing and settlement accounting, Partner shall have the following informational and notification obligations to Exasol to be made via training@exasol.com:

- Two weeks prior to conducting the planned Exasol-Training: Training contents (the title is sufficient for Standard-Exasol-Training, where Individual Training is concerned the content must be outlined), as well as planned use of which Exasol-Training Materials, planned certifications, training duration, and the number of End Users.
- Three days prior to conducting the planned Exasol-Training: Names of the End Users who intend to undergo certification.
- Three days after the planned Exasol-Training was conducted: The actual number of End Users.

5.6 Where Partner plans certification for an Individual Training, Partner shall coordinate the general feasibility as well as the certification contents with Exasol at least three weeks before the scheduled Training date.

6 Obligations of Exasol

6.1 Exasol shall reach consensual agreement with Partner as concerns conducting authorization Training (see Paragraph 3.1) and shall adhere to the agreed upon Training dates.

6.2 Partner shall have access to current Training Materials via the version tracking tool program. Should Exasol make essential changes to the Exasol-Training Materials, Exasol shall notify Partner thereof in writing (e-mail is sufficient) within a maximum period of 30 days after such is published in the version tracking tool program. Exasol is obliged to maintain the updated current versions of Exasol-Training Materials in the version tracking tool program.

6.3 Exasol shall exercise its business activities in such form and manner that such will have a favourable effect upon Partner as well as the business relationship between Exasol and Partner.

6.4 Exasol shall avoid deceptive, misleading or unethical practices which could have an unfavourable effect upon the sales of training services through Partner.

7 Fees and Invoicing

7.1 Partner is obliged to pay a fee to Exasol for each End User participating in an Exasol-Training in accordance with the Fee Schedule specified in the Annexes.

7.2 The training fees which Partner charges its End Users shall be the sole responsibility, and at the sole discretion, of Partner.

7.3 Exasol reserves the right to change the Fee Schedule specified in the Annexes at any time. Partner shall be notified of any such changes at least 60 days prior to the date such become effective.

7.4 After notification of the actual number of End Users per Paragraph 5.5, Exasol shall prepare an appropriate invoice and forward same to Partner.

7.5 Partner is obliged to make payment to Exasol of the due amount within 14 days after invoice reception.

8 Commissioning of Exasol-Trainers of Partner for Trainings Conducted by Exasol

Based upon availability, Exasol can commission Exasol-Trainers of Partner for Trainings Exasol intends to independently conduct against payment of fees to be negotiated between the Parties on a case-by-case basis. Respective travel expenses shall be principally borne by Exasol to a reasonable extent, but such expenses must be agreed upon with Exasol in advance. Payments shall become due in accordance with Paragraph 7.5.

9 Disclaimer

UNLESS EXPRESSLY SPECIFIED IN THIS AGREEMENT, NEITHER PARTY MAKES WARRANTIES OF ANY NATURE. BOTH PARTIES HEREBY EXPRESSLY EXCLUDE ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUSIVE, BUT NOT LIMITED TO, THE EXPRESS OR IMPLIED WARRANTIES CONCERNING MERCHANTABILITY OR FITNESS FOR AN INTENDED PURPOSE.

10 Intellectual Property

All data, including – but not limited to – Exasol-Training Materials as well as other Miscellaneous Training Materials of Exasol, whether in the electronic or paper form, which are made available to Partner by Exasol directly or through third parties on behalf of Exasol, remain the exclusive property of Exasol. In the event Exasol is granted license rights from a third party as concern certain data and/or materials, such concerned data and/or materials remain the exclusive property of such licensing third party. Under no circumstances may such be disclosed or made available to third parties, and in no event may such be used for purposes other than those purposes as specified in this agreement.

11 Confidentiality

11.1 Confidentiality and Non-Usage. Both Parties agree not to disclose, disseminate or to provide in any other form, directly or indirectly, any Confidential Information of the other Party to any individual or entity which is not bound to confidentiality to the disclosing Party without the prior written consent of the non-disclosing Party. Both Parties agree not to use Confidential Information of the other Party for any purpose other than those purposes specified in this agreement; any such usage shall only occur through employees, employees of affiliates or other authorized independent agents of the Party using such solely within the scope of performance of this agreement. Both Parties agree to implement the same protective measures, just as they use for their own Confidential Information, to guarantee that the Confidential Information of the other Party is not disclosed or disseminated by their employees, employees of affiliates, authorized independent agents or representatives in violation of the provisions of this agreement; in no case shall any such implemented protective measures be less than those measures generally deemed appropriate.

11.2 Exceptions. These obligations do not apply to information: (1) which was lawfully possessed by a Party before its disclosure by the other Party and which the non-disclosing Party did not receive from the disclosing Party directly or indirectly; (2) which was disclosed to a Party lawfully without any disclosure/confidentiality restrictions by a third party; (3) which was independently developed by a Party without reference to the Confidential Information of the other Party; or (4) which was made public by a third party. Should a Party become subject to enforcement proceedings or any other type of lawfully issued administrative or judicial proceeding, which requires the disclosure of confidential information of the other Party, the subject Party shall immediately notify the other Party and make a proposal to said Party to defend against any such disclosure demands.

11.3 Publicity and Announcements. Both parties shall maintain the confidentiality of this agreement and its provisions and neither shall make written or verbal press releases or public announcements as concerns the transactions specified in this agreement without the prior written approval of the other Party, which approval shall not unjustifiably be withheld; such shall have no bearing as concerns statutory requirements, stock exchange requirements, or the requirements of entities which trade the securities of either of the Parties.

12 Release of Liability

Exasol-Training Materials and Miscellaneous Training Materials are provided „as is“. The obligations of Exasol within the scope of this agreement are limited to its best efforts. Any and all warranty obligations of Exasol as concerns the suitability of the above named materials and services for an intended purpose are precluded.

13 Data Protection

13.1 The Parties herewith guarantee that in case of processing data (i.e. customer data) to the other Party they are authorized to do so according to applicable data protection regulations (f.ex. because of received approval by End User to the processing of its data).

13.2 The Parties undertake to process data received from the other party in accordance with agreed purpose and applicable data protection regulations.

14 Contractual Term, Termination

14.1 Contractual Term. This agreement becomes effective upon signature of both Parties. The contractual term shall initially be for (1) year (Minimum Contractual Term) beginning when the agreement goes into effect. This agreement shall automatically be extended for additional one year periods, if such is not terminated by a Party giving written notice to the other Party at least three months prior to the Minimum Contractual Term or three months to end of any respective extended annual period, or if it is not prematurely terminated for cause in accordance with Paragraph 13.2.

14.2 Immediate Termination. This agreement can be terminated with immediate effect by either Party giving written notice thereof to the other Party where such other Party remains in breach of material provisions of this agreement and such breach has continued for 60 days after the breaching Party has been notified by the other Party of such breach. This agreement can be terminated with immediate effect: (1) where a bankruptcy administrator is appointed for the other Party or its assets; (2) where the other Party makes an assignment for the benefit of creditors; (3) in the event of insolvency proceedings or other type of action within the scope of other laws to protect creditors from, on behalf of, or against the other Party; (4) if the other Party enters into liquidation or is dissolved (except in the circumstance of takeover of such other Party or substantially all of its assets through an entity which shall continue the business of such other Party after liquidation and dissolution proceedings), (5) upon the consent of both Parties; (6) if the other Party willfully makes a false claim, makes a false statement or asserts a false claim in a legal action which is connected to the business relationship of the Parties; or (7) if such is based upon malice or bad faith, intentional misconduct, criminal offenses or fraud of the other Party, which is connected to the business relationship of the Parties.

15 Final Provisions

15.1 Modifications or supplementations to this agreement require the written form. Such likewise applies to modification or rescission of this provision.

15.2 Should any provisions of the agreement be deemed invalid or unenforceable in whole or part such shall not affect the validity of the other provisions of this agreement. Any such provisions shall be replaced by provisions which come as close as possible to the intended business purposes of the Parties to this agreement.

15.3 Insofar as this agreement or mandatory statutory provisions do not provide otherwise, neither Party is authorized to assign its rights under this agreement in whole or in part to a third party or to otherwise transfer such without the prior written approval of the other Party. Either Party can however assign or transfer its rights or obligations under this agreement at any time to an enterprise associated with such Party in accordance with § 15 AktG et seq. (German stock corporation laws), whereby the respective assigning/transferring contractual Party shall remain jointly and severally liable under this agreement.

15.4 This agreement (including appendices) fully constitutes the agreements entered into by the contractual Parties as concerns the contractual subject matter. Collateral agreements do not exist. Any previous agreements between the Parties as relate to the contractual subject matter herein have been superseded by this agreement.

15.5 This agreement is governed by the laws of the Federal Republic of Germany. Place of performance and legal venue/place of jurisdiction for all legal disputes in connection with this agreement shall be Nuremberg (Germany).

16 Special Terms

Special Terms

Date: _____ Date _____

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EXASOL Europa Vertriebs GmbH

Signature: _____ Signature: _____

Name: _____ Name: _____

Annex 1. Training Terms and Conditions

- 1 Training and presentation materials, which the training participants receive within the scope of training are protected by copyright. Training participants are prohibited from making visual and/or sound recordings during training. The copy of the training materials which are provided to participants within the scope of the training become their property. Such may not be reproduced, duplicated, processed or distributed without the written authorization of Exasol Europa Vertriebs GmbH („Exasol“). All rights in training and presentation materials remain reserved for Exasol.
- 2 For enhancing the learning content of the training, access to a training database will be provided. Training participant is aware and accepts 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 or Partner will not further process the aforementioned data.

Stand 3/16/2018