

## GENERAL TERMS AND CONDITIONS FOR EXASOL PARTNERS

These General Terms and Conditions for Exasol Partners (“**Partner T&C**”) apply to the Exasol Partner Agreement (“**the Agreement**”), including Annex A and Annex B thereto, executed between Exasol Inc. a Delaware corporation, and the Partner, as defined on the title page of the Agreement. References herein to “this Agreement” include the Agreement, these Partner T&C, Annex A and Annex B as well as any other Annexes entered into by the Parties in writing.

### 1. Definitions

Unless indicated otherwise, all capitalized terms in these Partner T&C have the meaning set forth in Schedule A to these Partner T&C. References to “Sections” are to sections of these Partner T&C unless otherwise indicated.

### 2. Partner Benefits

Besides the benefits listed in the Agreement, Partner will receive the following benefits:

#### 2.1. Marketing Support

Each Partner:

- will be allocated a Partner Account Manager for all issues in connection with the relationship between the Parties;
- will have access to ongoing marketing support in generating leads, organizing events and to Exasol’s Digital Content, subject to Section 7.3;
- will be eligible to receive Marketing Materials Exasol promulgates to Partners from time to time;
- will be mentioned on the Exasol website with the Partner's logo and a jointly agreed description of the Partner; and
- will be entitled to use the Exasol Partner Logo, subject to Section 4.1.

#### 2.2. Access to Sales & Technology

Each Partner:

- will receive access to sales and technical enablement content, technical architecture best practices and advanced topics as and when made available by Exasol;
- will have access to the Exasol Partner Portal;
- will have access to e-learning tutorials (Exacademy) for purposes of training and to prepare for technical and sales certification; and
- will be entitled to register Opportunities.

#### 2.3. Additional Benefits for Elite Partners

Exasol will provide an Elite Partner with:

- assistance in creating a business plan with quarterly business reviews;
- access to the Exasol sales organization for discussing and working on joint opportunities and developing sales strategies;
- privileged access to Exasol’s product roadmap & development; and
- access to Exasol’s Marketing Development Fund, if and as provided in Annex A, Section 8.

### 3. Partner's Obligations

#### 3.1. Marketing Obligations

In consideration for the above-mentioned benefits each Partner agrees to:

- display the Exasol Partner Logo, in the format authorized and as notified by Exasol to Partner from time to time, prominently on Partner's website;
- work cooperatively and transparently with the Exasol sales team on joint opportunities;
- make commercially reasonable efforts to attend partner operational meetings on a regular basis in order to gain information concerning events and collaboration, alignment, enablement, and status of registered opportunities;
- follow strictly the Exasol marketing guidelines in their most current version for any content creation and use of digital communication platforms, such as LinkedIn, Facebook, or Twitter;
- register only Opportunities for which such Partner is eligible using the ORF; and
- use Partner's commercially reasonable efforts to pursue any Approved Opportunity.

#### 3.2. Elite Partners Additional Obligations

In consideration for the additional benefits made available under Section 2.3 an Elite Partner shall also:

- create an annual joint-marketing plan with proposed joint events, exhibitions and customer lead generation activities and an up-to-date enablement plan for keeping technical and sales certifications valid;
- work pro-actively with Exasol's Partner and Product Management to define interesting potential solutions or technology stacks for customers, industry segments or specific use cases;
- carry out regular reviews with the named Partner Account Manager on joint opportunities to discuss progress, success criteria and help required from Exasol to win new business;
- organize a minimum one (1) partner day per annum at which Exasol may present to the Partner's management regarding the status and progress of the Parties' relationship, joint solutions, strategic- and reference-customers as well as regarding potential additional sales to existing customers;
- submit at least one (1) joint customer case study for external marketing purposes per annum;
- hold quarterly business review meetings with Exasol's Partner and/or sales leadership teams on the progress of the relationship; and
- have minimum annual Software license revenues (excluding maintenance and other professional services and deducting any maintenance portion from Software subscriptions) of not less than \$ 250,000 from executed Referral Opportunities, Joint Sales Opportunities or Reselling Opportunities, after deducting any Referral Fees paid or owing to Partner and/or including only the Discounted license fees received by Exasol from Partner in any Reselling Opportunity ("**Minimum Revenue Requirement**"). If an Opportunity is executed in a currency other than U.S. Dollars, the calculation of the relevant amount shall be based on the following exchange rate:
  - o Referral Opportunity: day when Exasol received payment from the customer.
  - o Reselling Opportunity: day when Exasol received payment from Partner.
- Exasol reserves the right to downgrade any Elite Partner not meeting the Minimum Revenue Requirement.

#### 3.3. Prohibited Acts

Partner must not:

- pursue any non-Approved Opportunity or interfere with the pursuit of such Opportunity by Exasol or any other Partner or referral source of Exasol;
- disparage Exasol or the Exasol Properties, including without limitation in Partner's marketing or sales materials or on its website, for example by positioning or comparing or them unfavorably in relation to competing products; and
- modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Products except to the extent that enforcement of the foregoing restriction is prohibited by applicable law;
- circumvent any user limits or other timing, use or functionality restrictions built into the Products;
- remove any proprietary notices, labels, or marks from the Products;
- use its access to the Products to build a competitive product or software; or
- use any or copy any ideas, features, functions or graphics of the Products for such purpose.

#### **4. NFR-License**

Subject to the terms and conditions of this Agreement and during the Term Exasol hereby grants Partner a limited, non-exclusive, non-transferable, and non-sublicensable license in the Territory during the Term solely to install and use the Software in the volume and configuration specified in Section 3 of Annex A to the Agreement, on its own or dedicated and controlled IT infrastructure solely for purposes of demonstrating and marketing the Products to Customers in the Territory and for the training of Partner's sales and technical support staff. Individual not-for-resale licenses (each a "**NFR-License**") will be made available to Partner in appropriate numbers. Notwithstanding the aforesaid and without an express written agreement to the contrary the use of the Products shall be subject to the applicable End User Agreement, as amended by Exasol from time to time and as modified by this Agreement. In the event of a conflict between the provisions of this Agreement and those of the End User Agreement, the provisions of this Agreement shall prevail. Partner shall not and shall not permit Partner's prospective or current Customers to use any NFR-License for any other purpose including, without limitation, use or distribution for any other commercial use or in any billable engagements or for evaluation purposes, without express prior and written approval by Exasol.

#### **5. Reselling**

##### **5.1. License to Resell**

Upon Partner's acceptance of Exasol's Quote, subject to compliance with this Agreement, Exasol hereby grants Partner a limited, non-exclusive, non-transferable, and non-sublicensable license in the Territory during the Term solely for the purpose of reselling the Products to the End User, in each case, as listed in the applicable Quote, in Partner's own name and not on account of or in the name of Exasol, and solely for End User's own internal use ("**License to Resell**"). If Partner provides maintenance or professional support services with regard to the Products to End User, Exasol and Partner shall agree on the terms and conditions of such service provision in a separate Service Addendum.

##### **5.2. End User Agreement**

Partner agrees to incorporate into its agreement with the End User for the resale of the Products as its own rights and obligations the provisions of the then applicable standard End User Agreement, except the provisions regarding End User's payment of fees to Exasol and to make Exasol a third-party beneficiary of

Partner's rights under its agreement with the End User. Partner shall not make any representation or warranty or enter into any obligation on behalf or in the name of Exasol and shall in its own name not make any warranty or representation to a Customer that exceeds the scope of Exasol's limited warranty set forth in Exasol's then current End User Agreement. Exasol reserves the right to review the terms of Partner's agreement with any End User before it is provided to End User.

### **5.3. Future Sales, Renewals**

Partner's License to Resell shall be limited to the specific ORF and Quote. Partner acknowledges having no right to receive any Referral Fee and/or Discount after the initial sale. Exasol will be free to sell any other Products to the End User, including renewal of Service subscriptions after the end of the initial term of such subscription and contact End User directly for such purposes.

## **6. Intellectual Property Rights**

### **6.1. Ownership**

Exasol or its Affiliates and its and their licensors (as the case may be) own all right, title and interest in and to the Products, which (notwithstanding any use of the word "sale" or its cognates to describe or refer to a transaction involving the Products) are licensed, not sold. Each Party owns and retains all rights in its trademarks, logos and other brand elements, whether or not registered in any jurisdiction (collectively, "**Trademarks**"). To the extent a Party grants any rights or licenses to its Trademarks to the other Party in connection with this Agreement, the other Party's use of such Trademarks shall be subject to the reasonable trademark guidelines made available to the other Party. Partner shall not remove any Trademarks or other proprietary notices incorporated in, marked on, or affixed to the Products. Partner agrees that it shall not register, or attempt to register, any Trademark or domain name containing the word "Exasol" or any product name of an Exasol product and, if despite the aforesaid, Partner has registered any such Trademark or domain name then Partner herewith undertakes to cause the transfer of such domain name to Exasol immediately, upon execution of this Agreement or upon Exasol's request, and at Partner's sole cost and expense.

### **6.2. Use of Exasol Partner Logo**

Subject to the terms and conditions of this Agreement, including Partner's status as set forth in Annex A to the Agreement, Exasol hereby grants Partner a non-exclusive, non-transferable, non-sub-licensable license to (1) identify itself as an Exasol Business Partner, Authorized Partner or Elite Partner (as applicable) and (2) use Exasol's corresponding proprietary logo ("**Exasol Partner Logo**") and the applicable Software trademarks solely for the purposes foreseen and authorized under this Agreement. The relevant Exasol Partner Logo is available on the Partner Portal for download in accordance with the terms of this Agreement.

### **6.3. Digital Content**

Exasol may from time to time create or requests third parties to create digital content around a number of topics ("**Digital Content**"). Exasol grants Partner a non-exclusive, non-transferable and revocable license to use Digital Content provided to Partner by Exasol and to provide copies in part or in whole and changed within reason to conform to Partner's go-to-market strategy and corporate identity to potential customers. Partner shall not permit anyone other than a potential customer to use or access Digital

Content, or display or otherwise make any Exasol-proprietary materials available to anyone without Exasol's prior written consent.

## **7. Representations and Warranties**

### **7.1. Limited Warranty by Exasol**

Exasol warrants to Partner only that for a period of thirty (30) days from the delivery of the Software to End User ("**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 Partner 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) ("**Limited Software Warranty**"). All warranty claims must be made by written notice to Exasol on or before the expiration of the Warranty Period.

### **7.2. Exclusions**

The Limited Software Warranty 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 Partner or Customer or anyone acting on their 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) negligence, abuse, misapplication or misuse of the Software by Partner, Customer or any third party, including any use of the Software other than as specified in the Documentation or expressly authorized by Exasol in writing; (d) failure by Partner or Customer to promptly install all maintenance releases that Exasol has previously made available to them; (e) the operation of, or access to, the IT infrastructure on which the Software is installed (other than Exasol's infrastructure); (f) any Open Source Software, beta software, software that Exasol has made available for testing or demonstration purposes, temporary software modules or software for which Exasol does not receive a license fee; (g) material breach of this Agreement by Partner; or (h) any other circumstances or causes outside of the reasonable control of Exasol (including abnormal physical or electrical stress on the Software).

### **7.3. Remedy**

The sole liability of Exasol (and its Affiliates and suppliers/licensors), and Partner's sole remedy, under this Agreement or otherwise, for any failure of the Software to conform to the Limited Software Warranty 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 Limited Software Warranty, (b) replace the non-conforming copy of the Software with a copy that conforms to the Limited Software Warranty, or (c) terminate the license to Partner with respect to the non-conforming Software and refund the amount paid by Customer for such non-conforming Software (pro rata for any period of non-conformity in the event of a subscription).

### **7.4. Disclaimer of Warranties**

7.4.1. Except for the Limited Software Warranty as provided in Section 7.1, the Exasol Properties and all Services are provided "AS IS".

- 7.4.2. NOTWITHSTANDING ANY WARRANTY PROVISIONS IN THE END USER AGREEMENT, EXASOL MAKES NO WARRANTY WHATSOEVER, AND SHALL HAVE NO SUPPORT OR INDEMNIFICATION OBLIGATIONS OF ANY KIND WITH RESPECT TO PARTNER'S USE OF ANY NFR-LICENSE.
- 7.4.3. EXASOL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND 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 ANY OTHER EXASOL PROPERTIES, OR ANY RESULTS OF THE USE THEREOF, WILL MEET PARTNER'S OR ANY OTHER PERSON'S 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 SOFTWARE AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN PARTNER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE SOFTWARE AND THIRD-PARTY MATERIALS.

## **8. Indemnification**

### **8.1. Indemnification by Exasol**

Exasol will indemnify, defend, and hold harmless Partner from and against any and all Losses incurred by arising out of or relating to any Claim by a third party (other than an Affiliate of Partner) that arise from any allegation in such Claim that Partner's exercise of the licenses granted by this Agreement in accordance with the Documentation and this Agreement infringes a US Intellectual Property Right. Exasol will have no indemnification obligation to the extent the Claim in question is attributable to:

- use of the Exasol Properties by or on behalf of Partner in a manner that is that is outside the purpose, scope, or manner of use permitted under this Agreement or that is inconsistent with the Documentation or otherwise contrary to Exasol's instructions;
- modifications to the Exasol Properties 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;
- 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;
- Partner's continued use of the Exasol Property in question, or other allegedly infringing activity, after receiving notice of an alleged infringement, misappropriation or other violation of third party's rights;
- Open Source Software which forms part of, is used by or is provided with the Software; or
- 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;
- negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Partner, or a third party;

- events or circumstances outside of Exasol's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or
- Losses for which Partner is obligated to indemnify pursuant to Section 8.2.

## 8.2. Indemnification by Partner

Partner 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 arising out of or relating to any Claim by a third party (other than an Affiliate of Exasol) that arise from any allegation in such Claim of or relating to:

- facts that, if true, would constitute a breach by Partner of any obligation under this Agreement;
- gross negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Partner with respect to the Software or Documentation or otherwise in connection with this Agreement; or
- use of the Software or Documentation by or on behalf of Partner that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or contrary to Exasol's instructions.

## 8.3. Indemnification Procedure

The Party seeking indemnification (the "**Indemnitee**") shall promptly inform the other Party (the "**Indemnitor**") and reasonably cooperate with the Indemnitor in the defense of the Claim, 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. 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 - will not relieve the Indemnitor of its obligations under this Section 8, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

## 8.4. Mitigation

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

- modify the affected Software so that it ceases to be infringing;
- replace it with software which performs in a substantially similar manner;
- procure for the Partner 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 none of the above is reasonably feasible, Exasol may terminate Partner's applicable license by notice in writing and refund the Partner a pro rata refund of the Fees previously paid by Partner, or if the Software is provided under a Perpetual Software

License, a refund of Fees previously paid by Partner, less straight-line depreciation on a three-year basis from the Delivery of the applicable Software.

## **8.5. Exclusive Remedy**

THE OBLIGATIONS SET FORTH IN THIS SECTION 8 CONSTITUTE PARTNER'S SOLE AND EXCLUSIVE REMEDY, AND EXASOL'S ENTIRE LIABILITY, WITH RESPECT TO ANY CLAIMS THAT ANY OF THE EXASOL PROPERTIES INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## **9. Limitations of Liability**

### **9.1. Exclusion of Damages**

EXCEPT AS SET FORTH IN SECTION 9.3, IN NO EVENT SHALL EITHER PARTY 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), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR (b) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSON WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

### **9.2. Cap on Liability**

EXCEPT AS SET FORTH IN SECTION 9.3, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR UNDER OR PURSUANT TO ANY OTHER CAUSE OF ACTION OR LEGAL THEORY OF LIABILITY) UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE OF ALL AMOUNTS RECEIVED BY SUCH PARTY DURING THE 12-MONTH PERIOD PRECEDING THE INCIDENT GIVING RISE TO SUCH LIABILITY OR, IN THE CASE OF A SERIES OF EVENTS GIVING RISE TO LIABILITY, THE DATE OF THE LAST OF SUCH EVENTS.

### **9.3. Exceptions**

The exclusions and limitations in Section 9.1 and Section 9.2 shall apply to the fullest extent permissible by law, but not in the cases of:

- A Party's breach of its obligations under Section 11.
- Partner's breach of its obligations under Section 3.3 or Section 6.
- liability for indemnification as provided in Section 8;
- death or personal injury caused by negligence;
- fraud or fraudulent misrepresentation; or
- any other liability which may not be excluded by applicable law.

## **10. Termination**

10.1. In addition to the termination provisions in Section 12 of the Agreement, either Party may terminate this Agreement if the other Party fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach.



- 10.2. Exasol may terminate this Agreement at any time by giving notice in writing to Partner if (a) Partner stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so; (b) the Partner commences any proceeding (i) under any law relating to bankruptcy, insolvency, reorganization, or other relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts, or (ii) seeking appointment of a receiver, trustee, custodian, conservator, or other similar official for it or for all or any substantial part of its assets; or (b) the Partner makes a general assignment for the benefit of its creditors; or (c) any proceeding of a nature referred to in clause (b) above is commenced against Partner which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged, or unbonded for a period of sixty (60) days; or (c) Partner is generally unwilling or unable, or admits in writing its inability to, pay its debts as they become due and payable.
- 10.3. Upon expiration or termination of this Agreement, (i) within 7 days, each Party shall return or destroy (and upon request certify complete destruction of) the other Party's Confidential Information and Partner shall return or, at Exasol's option, destroy all copies of the Software the Documentation and Marketing Materials then within its control; provided that each Party may retain copies of such Confidential Information (other than the Software) as it is required to retain by law or which are in such Party's archival or backup files; provided that it shall continue to treat such retained Confidential Information in accordance with applicable law and its confidentiality obligations under Section 11; (ii) all licenses and rights granted under this Agreement shall terminate.
- 10.4. In the event of expiration or termination of this Agreement for any reason, Partner shall immediately:
- cease soliciting and accepting orders for the Products;
  - cease all use of all Exasol Properties;
  - cease all promotion, marketing, or advertising of the Products; and
  - remove from all materials in any form which are to be provided or made accessible to any Person (including websites, notices, advertisements, and any other documents) any reference to it being a Partner of Exasol.
- 10.5. Except if Exasol has terminated this Agreement pursuant to Section 10.1, Exasol will upon termination or expiration of this Agreement pay Partner all Referral Fees that have accrued as of the effective date of such expiration or termination as and when they become due.
- 10.6. Upon expiration termination of this Agreement Partner must immediately pay any outstanding amounts due to Exasol under this Agreement or a related Quote.
- 10.7. Partner will have no claim against Exasol for compensation for loss of any rights, loss of goodwill or similar loss following termination or expiry of this Agreement, in whole or in part, for any reason.
- 10.8. Except as set forth in Section 10.5, termination or expiration of this Agreement for whatever reason shall be without prejudice to the rights of the Parties accrued up to the date of such termination or expiration.

## **11. Confidential Information**

Each Party (as “**Receiving Party**”) agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party (“**Disclosing Party**”) or the Disclosing Party’s Affiliates constitute the confidential property of the Disclosing Party (“**Confidential Information**”), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Software, Documentation, technical information and other code or data of any type provided by Exasol (or its agents) shall be deemed a trade secret and Confidential Information of Exasol without any marking or further designation. Except as expressly authorized herein, the Receiving Party shall hold in confidence and not use or disclose any Confidential Information. Affiliates of the Receiving Party shall not be considered to be a third party according to this Section 11, but the Receiving Party shall procure that its Affiliates comply with this Section 11. The Receiving Party’s non-disclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. In addition, Receiving Party may disclose Confidential Information if so required pursuant to a regulation, law or court order, but only to the minimum extent required to comply with such regulation or order and (to the extent permissible) with advance notice to the Disclosing Party. The Receiving Party shall reasonably cooperate with the Disclosing Party to obtain a protective order or other reasonably available measure to protect the Confidential Information in question from further disclosure. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm to the Disclosing Party that could not be remedied by the payment of damages alone and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law, without the requirement of posting a bond or similar security.

## **12. Data Protection**

Each Party shall comply with its obligations under the data protection laws applicable to it, and shall use reasonable efforts not to do any act or thing which is likely to cause the other to breach any applicable data protection laws.

## **13. Miscellaneous**

### **13.1. Entire Agreement**

This Agreement (including any documents incorporated by reference) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to its subject matter.

### **13.2. Amendments**

Any amendment to this Agreement must be made in writing and signed by an authorized representative of each of the Parties.

### **13.3. Waivers**

No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by an authorized representative of the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

### **13.4. Severability**

If one or more provisions of this Agreement is invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

### **13.5. Assignment**

Except as expressly set forth in this Agreement or permitted under mandatory law, no Party shall assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of the other Party; provided that Exasol may assign this Agreement and its rights and obligations hereunder to an Affiliate.

### **13.6. Successors and Assigns**

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

### **13.7. Independent Contractors**

Parties to this Agreement are and remain independent contractors. Irrespective of any use of terms such as “partner”, there is no relationship of partnership, joint venture, employment created hereby between the Parties. Neither Party shall have the power to bind the other or incur obligations on the other Party’s behalf without the other Party’s prior written consent. Nothing contained in this Agreement creates any franchise, dealership, agency, or business opportunity (each, a “**Franchise**”) relationship between the parties. Partner acknowledges that it does not and will not offer or sell Products under a business or marketing plan or system prescribed by Exasol and that Partner sells Products at prices set solely by Partner.

### **13.8. Non-Exclusive**

The rights granted to Partner hereunder are non-exclusive and nothing in this Agreement shall be deemed to prohibit Exasol from entering into any alliance, referral, resale, end-user license or other agreement with any party anywhere in the world (including the Territory named in Annex A) either during or after the Term of this Agreement.

### **13.9. Audit**

Partner shall keep accurate and complete records relating to its activities under this Agreement. At Exasol's request, Exasol may audit such records and Partner's use of the Software during normal business hours and subject to Partner's reasonable security requirements.

#### **13.10. Force Majeure**

No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; or (h) strikes, labor stoppages or slowdowns, or other industrial disturbances (each, a "**Force Majeure Event**"). The party suffering a Force Majeure Event shall give notice within 10 days of the Force Majeure Event] to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

#### **13.11. Taxes**

As between Exasol and the Partner, the Partner shall be responsible for all taxes levied on amounts payable under this Agreement other than taxes on Exasol's revenue. In the event that a Party is obliged by law to withhold any part of a payment due to the other Party by way of withholding tax, the paying Party shall pay the appropriate withheld amount to the relevant tax authority and use all reasonable efforts to obtain for the payee Party appropriate documentation as to the withheld amount for the purpose of the payee Party claiming the withheld amount back under applicable double taxation treaties.

#### **13.12. Compliance with Law**

Partner must in connection with this Agreement comply with all laws, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorizations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with this Agreement.

#### **13.13. Export Regulations**

The Products, including the Documentation, and any related technical data included with, or contained in, such Products, and any products utilizing any such Products, Documentation or technical data (collectively, "**Regulated Products**") may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. Partner shall not, and shall not permit any third parties to, directly or indirectly, export, re-export, or release any Regulated Products to any jurisdiction or country to which, or any Party to whom, the export, re-export, or release of any Regulated Products is prohibited by applicable federal law, regulation, or rule. Partner shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, or releasing any Regulated Products. Partner shall provide prior written notice of the need to comply with such laws and regulations to any person, firm, or entity which it has reason to believe is obtaining any such Regulated Products from the Customer with the intent to export or re-export.

#### **13.14. Applicable Law and Jurisdiction**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of the State of Georgia. Each Party irrevocably agrees that the state and, if they can, 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 Agreement or its subject matter or formation.

#### **13.15. Notices**

Any notice given by a Party under this Agreement must be in writing be sent to the other Party by certified mail, return receipt requested, overnight courier, telefax or email at the relevant address set out below. A Party giving notice of to the other Party shall bear the burden of proof of receipt of such notice, which proof may be given by any written or electronic confirmation of receipt or transmission.

Exasol: Exasol, Inc., 1372 Peachtree Street, Atlanta, GA, 30309

Partner: see Annex A, Section 10.

#### **13.16. Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

\* \*

## Schedule A

### Definitions

“**Affiliate**” means as to any Person, any other Person that such Person directly or indirectly controls, is controlled by, or is under common control with. In this context, a Person “controls” another Person if it or any combination of it and/or its Affiliates owns more than fifty percent (50%) of the voting rights for (i) the board of directors, or (ii) other mechanism of control for such Person.

“**Approved Opportunity**” has the meaning set forth in Section 5.1 of the Agreement.

“**Authorized Partner**” has the meaning set forth in Section 3.2 of the Agreement.

“**Business Partner**” has the meaning set forth in Section 3.2 of the Agreement.

“**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.

“**Confidential Information**” has the meaning set forth in Section 11 of the Partner T&C.

“**Customer**” is any Person which licenses the Software for operation within its business for internal and/or commercial purposes and who agrees to the terms and conditions of the End User Agreement.

“**Digital Content**” has the meaning set forth in Section 6.3 of the Partner T&C.

“**Disclosing Party**” has the meaning set forth in Section 11 of the Partner T&C.

“**Discount**” has the meaning set forth in Section 5 of Annex B to the Agreement.

“**Documentation**” means the user manual for the Software available at the Exasol User Portal (<https://www.exasol.com/portal/>) in German and English languages. Other languages may be published by Exasol from time to time or created with Exasol Partner by mutual agreement.

“**Effective Date**” means the date specified in Section 7 of Annex A to the Agreement or, if no such date is specified, the date of the last signature of the Agreement.

“**Elite Partner**” has the meaning set forth in Section 3.2 of the Agreement.

“**End User**” has the same meaning as Customer.

“**End User Agreement**” means a set of terms and conditions that applies to the provision of Products by Exasol to an End User and is available on Exasol’s homepage.

“**Exasol Indemnitee**” has the meaning set forth in Section 8.2 of the Partner T&C.

“**Exasol Partner Logo**” has the meaning set forth in Section 6.2 of the Partner T&C.

“**Exasol Properties**” means any and all of the Software, Documentation, the Exasol Partner Logo and any other Exasol trademark, Marketing Materials, Exasol’s Confidential Information, and other technologies, information and materials provided by Exasol to Partner to enable Partner to perform its obligations and exercise its rights hereunder.

**“Force Majeure Event”** has the meaning set forth in Section 13.10 of the Partner T&C.

**“Franchise”** has the meaning set forth in Section 13.7 of the Partner T&C.

**“Indemnitee”** has the meaning set forth in Section 8.3 of the Partner T&C.

**“Indemnitor”** has the meaning set forth in Section 8.3 of the Partner T&C.

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

**“Joint Sales Opportunity”** has the meaning set forth in Section 4.2 of the Agreement.

**“License to Resell”** has the meaning set forth in Section 5.1 of the Partner T&C.

**“Limited Software Warranty”** has the meaning set forth in Section 7.1 of the Partner T&C.

**“Loss”** or **“Losses”** means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**“Marketing Materials”** means any advertising, promotional, or marketing materials for or relating to the Software or Products that Exasol may make available to Partner from time to time during the Term.

**“Minimum Term”** has the meaning set forth in Section 12 of the Agreement.

**“Not-For-Resale License”** or **“NFR License”** has the meaning set forth in Section 4 of the Partner T&C.

**“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.

**“Opportunity”** has the meaning set forth in Section 3.2 of the Agreement.

**“ORF”** has the meaning set forth in Section 5 of the Agreement.

**“Partner”** has the meaning set forth in the preamble of the Agreement.

**“Partner Account Manager”** means Exasol’s account manager for the Partner listed in Annex A, Section 9, of the Agreement.

**“Partner Indemnitee”** has the meaning set forth in Section 8.1 of the Partner T&C.

**“Partner Portal”** is Exasol’s online gateway accessible via password for accessing Digital Content, information, tools and services for Exasol Partners.

**“Partner T&C”** means these Terms and Conditions for Exasol Partners.

**“Party”** means a party to the Agreement.

**“Person”** means an individual or any type of legal entity or association, whether incorporated or not, and any federal, state, local or foreign government or a subdivision or agency thereof.

**“Products”** means Software and Services as may be provided by Exasol at its sole discretion in different commercial forms, including without limitation subscription, perpetual, time-limited, cloud-based, time & material.

**“Quote”** has the meaning set forth in Section 6.1 of the Agreement.

**“Receiving Party”** has the meaning set forth in Section 11 of the Partner T&C.

**“Referral Fee”** has the meaning set forth in Annex B of the Agreement.

**“Referral Opportunity”** has the meaning set forth in Section 4.1 of the Agreement.

**“Regulated Products”** has the meaning set forth in Section 13.13 of the Partner T&C.

**“Renewal Term”** has the meaning set forth in Section 12 of the Agreement.

**“Reselling Opportunity”** has the meaning set forth in Section 4.3 of the Agreement.

**“Services”** means any services, such as maintenance, operational services, consulting, pre-sales engineering, training etc., as provided upon request by Exasol and defined in the applicable End User Agreement.

**“Software”** means Exasol’s current software stack consisting of the Exasol database software, the underlying EXACluster operating system, the client EXAplus and various drivers (e.g. ODBS, JDBC, ADO.NET), in whichever version is currently supported and/or released by Exasol, and provided in object code form, unless otherwise agreed. Exasol may change the components in the Software stack at its sole discretion. For more information, please see overview at <https://www.Exasol.com/support/browse/SOL-345>).

**“Term”** has the meaning set forth in Section 12 of the Agreement.

**“Territory”** means the geographic or market territory specified in Section 2 of Annex A to the Agreement.

**“Third-Party Materials”** means all materials and information in any form or medium, including any Open Source Software or other software, documents, data, content, specifications, products, equipment or components of or relating to the Software, that are not proprietary to Exasol.

**“Trademarks”** has the meaning set forth in Section 6.1 of the Partner T&C.

**“User Portal”** is Exasol’s password-accessible online gateway to access Digital Content, information, tools and services for End Users.

**“Warranty Period”** has the meaning set forth in Section 7.1. of the Partner T&C.