



Data Processing Agreement

Fabasoft Cloud

Valid from 2018-10-15

Confidential

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Contractual partners

This data processing agreement is concluded
between

(hereinafter referred to as "Controller")

and

Fabasoft Austria GmbH, Commercial register number: FN 199728v, Honauerstrasse 4, 4020
Linz, Austria,

(hereinafter referred to as "Processor" or "Fabasoft")

(jointly hereinafter referred to as "Contractual Partners")

1 Preliminary remarks and obligation of compliance

- 1.1** The following provisions apply to all data processing services provided by Fabasoft vis-à-vis the Controller pursuant to Art. 28 of the General Data Protection Regulation (EU) 2016/679 (hereinafter referred to as the "GDPR") or the respectively applicable national regulations. These include all activities connected with this agreement and in which Fabasoft employees or third parties engaged by Fabasoft come into contact with personal data of the Controller.
- 1.2** With respect to the processing of data, both the Controller and Fabasoft undertake to comply with the respective data protection laws applicable for them.
- 1.3** Any terms not expressly defined in this agreement are subject to the definition given in the GDPR.
- 1.4** As a founding member, Fabasoft has undertaken to comply with the EU Cloud Code of Conduct.

Key information on the scope of the EU Cloud Code of Conduct is available online at <https://www.fabasoft.com/cloudservices/eucloudcoc>.

2 Subject matter/duration of the processing; scope/nature/purpose of the data processing, types of data and categories of data subjects

- 2.1** Fabasoft will process personal data in compliance with the GDPR or national regulations on behalf of the Controller and according to the written instruction of the Controller, pursuant to the Service Agreement Fabasoft Cloud (hereinafter "Main Contract") concluded between the parties and pursuant to the provisions of this agreement.

The latest version of the Main Contract is available online at <https://www.fabasoft.com/public-cloud/contract> (Annex /1). The latest version of the General Terms and Conditions is available online at <https://www.fabasoft.com/cloudservices/gtc> (Annex /2).

The activities included and the scope and nature of the data processing are either defined in the service description of the Main Contract or stem from an instruction given subsequently by the Controller.

- 2.2** The Controller bears sole responsibility within the scope of this agreement for compliance with the legal provisions of data protection laws, in particular for the lawfulness of the data

processing and use of the data within the scope of this agreement, and for the protection of the rights of the data subjects. It is the responsibility of the Controller to independently point out to the data subjects that their data will be collected, processed and used and also the purpose of the data processing. The Controller shall ensure that the data subjects are informed of any revocation options.

2.3 The term of this agreement conforms to the term of the Main Contract. Termination of the Main Contract will also automatically result in the termination of this Data Processor Agreement, without the need of any separate notice of termination. Data secrecy shall continue to apply even after termination of this agreement, irrespective of the legal grounds of the termination.

2.4 Fabasoft processes the following personal data on behalf of the Controller:

- a) Contact data of the Controller.
- b) The customer data of the Controller remain exclusively under the power of disposition of the Controller and are neither known to nor accessible to the Processor.

2.5 The purpose of the data processing is fulfilment by Fabasoft of the activities defined in the service description of the Main Contract or the instructions of the Controller. The contact data are used in particular for the purpose of two-factor authentication.

The categories of the data subjects include

- customers
- interested parties
- employees
- applicants
- suppliers
- others: _____

(multiple selection possible)

2.6 Processing of the data is carried out at the discretion of the Controller exclusively in

- Austria
- Germany
- Switzerland.

(multiple selection possible)

The latest version of the performance characteristics for data center operation is available online at <https://www.fabasoft.com/cloudservices/data-center> (Annex /3).

2.7 Based on this responsibility, Fabasoft enables the Controller to rectify, block, erase and disclose data itself for the term of the agreement. The rights of data subjects must be observed by the Controller. Insofar Fabasoft is required to participate in the Controller's observation of the rights of data subjects (in particular disclosure, rectification or erasure), Fabasoft undertakes to take the necessary measures in compliance with the instruction of the Controller without undue delay.

3 3. Technical and organizational measures

3.1 Fabasoft must implement appropriate technical and organisational measures pursuant to Art. 32 GDPR for ensuring an adequate level of data security. Fabasoft shall arrange its internal organisation in such a way that the implementation and compliance with the special requirements of the Controller and the GDPR or national regulations is ensured. The latest

version of the Performance Characteristics data security is available online at <https://www.fabasoft.com/cloudservices/data-security> (Annex ./4).

3.2 Fabasoft undertakes not to give any third party

- a) direct, indirect, comprehensive or unrestricted access to data or
- b) to the encryption key for securing data or the possibility to bypass such encryption.

3.3 The latest version of the technical and organisational measures is available at <https://www.fabasoft.com/tom> (Annex /5). All technical and organisational measures to be fulfilled by Fabasoft are indicated with respect to reason in this concept. The technical and organisational measures are deemed checked and approved by the Contractor on placement of the order.

3.4 Annexes ./3, ./4 and ./5 present the data protection and data security concept with respect to reason. Fabasoft is obliged to evaluate and update this data protection and data security concept, whereby any changes applying mutatis mutandis to the provisions of the General Terms and Conditions of Fabasoft Cloud (Annex ./2) are undertaken together with the Contractor.

3.5 Verifications can also be provided by the submission of attestations or reports from independent bodies (e.g. auditors, audits, accredited inspection bodies, data protection officers, IT security experts) or appropriate certification.

4 Instructions of the Controller

4.1 The Controller is entitled to give instructions, in text form or orally, concerning the type, scope and procedures of the data processing. The Controller shall confirm any oral instructions in text form without undue delay. Only written instructions are binding for Fabasoft.

4.2 The Controller shall inform Fabasoft of the persons who are authorised to give instructions to Fabasoft or who act as contact persons, indicating the name, organisational unit, position and telephone number of said persons. Fabasoft will be informed of any changes without undue delay in text form.

4.3 Before the start of the data processing the Controller shall satisfy itself that the technical and organisational measures of Fabasoft for data security are observed. The Controller shall notify Fabasoft of any errors or irregularities it detects during verification of the requirements of the Controller and/or statutory data protection regulations.

4.4 Any costs and expenses incurred in the performance of instructions given by the Controller over and above the contractually agreed scope of services shall be borne by Controller.

5 Obligations of Fabasoft; data secrecy

- 5.1** Fabasoft undertakes to process or use personal data of the Controller solely in compliance with the service description in the Main Contract, the written instructions of the Controller documented and this agreement.
- 5.2** The contractual parties undertake to keep secret business and other important matters of the other respective contractual partner that are not generally known (trade secrets). Fabasoft is obliged to comply with data secrecy according to national regulations or the GDPR during the storage of the data of the Controller.
- 5.3** Fabasoft shall ensure that any personnel entrusted with the processing of the personal data of the Controller have undertaken to comply with the principle of data secrecy in compliance with national regulations or the GDPR – also for the time after termination of this agreement – and have been duly instructed in the applicable data protection regulations when they take up their data processing activities.
- 5.4** Fabasoft may not give information to any third parties or the data subjects concerned without the prior consent of the Controller in text form.
- 5.5** The Controller bears the responsibility for maintaining a record of the processing activities in compliance with Art. 30 (1) GDPR or the national regulations. Fabasoft shall assist the Controller in this respect. Fabasoft is obliged to maintain its own record of processing activities in compliance with Art. 30 (2) GDPR and to make this available to the Controller on request. In addition, Fabasoft shall ensure the technical and organisational requirements necessary for the Controller to duly fulfil its responsibility with regard to any data protection impact assessment and consultation with supervisory authorities that it might have to carry out.
- 5.6** Fabasoft shall inform the Controller without undue delay of any control activities, investigations and actions of the data protection supervisory authority.
- 5.7** Fabasoft undertakes to regularly verify observation of the statutory data protection regulations within its area of responsibility and if necessary to undertake any necessary adaptations of regulations and/or measures to enable orderly data processing on behalf of the Controller. Should Fabasoft deem an instruction of the Controller to be unlawful, it must inform the Controller of such without undue delay.
- 5.8** Fabasoft has a data security team (“Privacy Team”) entrusted with legal data security issues. The contact data of this Privacy Team are kept up to date at <https://www.fabasoft.com/privacy>. The Privacy Team can be contacted via privacy@fabasoft.com.

Insofar this is required by the GDPR or the national regulations, Fabasoft shall appoint a data protection officer. The contact data of the data protection officer are kept up to date at <https://www.fabasoft.com/privacy>.
- 5.9** Fabasoft undertakes to provide the Controller on request and within a reasonable period of time with all information the Controller deems necessary for performing the comprehensive verification of the data processing undertaken on its behalf.

6 Subcontractors

- 6.1** In compliance with the following provisions, Fabasoft is entitled to engage subcontractors or to replace already engaged subcontractors.

6.2 Fabasoft shall inform the Controller without undue delay of any intended engagement or change of a subcontractor. In such a case the Controller is granted a period of 14 days within which it can lodge an objection. If no objection to the subcontracting or change of the subcontractor for an objectively justifiable reason (see 6.3) is lodged with fourteen days, this shall be deemed approved.

6.3 The Controller may only refuse the use of a subcontractor for an objectively justifiable reason. A reason is deemed objectively justifiable, in particular, if there is evidence that,

- a) fulfilment of the contractual services is endangered or impeded by such engagement,
- b) the cooperation with the subcontractor endangers the fulfilment of the statutory or contractual obligations of a contractual party, in particular requirements of the supervisory authority.

6.4 In the event the Controller objects to the subcontracting for an objectively justifiable reason, this objection shall in no way affect the lawfulness of the subcontracting. In the event of a successful objection and in the absence of an amicable resolution, the Controller and the Processor each have the right to extraordinary termination of the Main Contract.

The Controller also has a right to extraordinary termination if Fabasoft arbitrarily uses a subcontractor without obtaining the prior written consent of the Controller or does so contrary to an objectively justifiable objection of the Controller and an amicable resolution is not possible.

6.5 In the case of the engagement of subcontractors, these must be contractually obligated with regard to the requirements of confidentiality, data protection and data security in accordance with this agreement. Fabasoft shall impose on the subcontractor by way of a contract *mutatis mutandis* the same obligations as set out in this agreement or any other agreements between the Controller and Fabasoft. On request of the Controller, Fabasoft is obliged to provide information on the essential content of such a contract and the implementation of the data protection obligations by the subcontractor.

6.6 Fabasoft is responsible vis-à-vis the Controller for all activities and omissions on the part of the subcontractor used.

6.7 The engagement of Fabasoft group-affiliated companies within the European Union as subcontractors is also deemed approved by the Contractor on conclusion of this agreement. Group-affiliated companies are companies in which Fabasoft AG directly or indirectly, currently or in future

- a) holds more than one-half of the voting rights; or
- b) can appoint more than one-half of the members of the management or administrative bodies or bodies legally representing the company; or
- c) has the power to manage the company's affairs.

The Contractor recognises the justified interest of the Processor to transfer personal data within the group of companies belonging to the Processor for internal administrative purposes, including the processing of personal data.

6.8 Annex ./4 contains the latest list of other subcontractors.

7 Monitoring rights of the Controller

7.1 The Controller shall verify the technical and organisational measures of Fabasoft before the start of data processing and at regular intervals thereafter and shall document the results.

To this end the Contractor may demand respective information from Fabasoft or may, after timely prior announcement, verify compliance in person during normal business hours and without disrupting the course of business.

- 7.2** Fabasoft undertakes on written request of the Controller to provide all information necessary for such monitoring within a reasonable period.
- 7.3** All significant decisions with regard to data security that concern the organisation of the data processing and the procedures applied must be agreed with the Controller in advance.
- 7.4** Fabasoft is obliged to notify the Controller without undue delay of any breach of statutory data protection regulations or of contractual agreements in text form and in such way that enables the Controller to meet its legal obligations. The same applies to failures and any suspicion of data protection breaches or irregularities during the processing of personal data.
- 7.5** The Controller is entitled to demand an audit to be carried out by an independent body for the purpose of verifying measures for data security or compliance with the data security measures. In such a case, an independent audit body is to be selected mutually with Fabasoft. The Controller must give reasons for the necessity of the audit. The costs of the audit shall be borne by the party that demands the audit. The Controller shall make the documentation of the audit available to Fabasoft in the form of a "Summary Report".

8 Case of data breach

- 8.1** Fabasoft is aware of the applicable statutory data protection notification and information obligations, in particular their provisions with regard to time and content.
- 8.2** Fabasoft shall notify the Controller without undue delay in all cases, if it or its employees have breached any provisions for the protection of the data of the Controller or have breached any specifications agreed for the data processing on behalf of the Controller. This also includes in particular if this leads to serious operational interruptions, if a breach of the data protection regulations is suspected or where other irregularities occur during the processing of the Controller's data.
- 8.3** Fabasoft is obliged to take adequate measures to ensure the protection of the data and to minimise any possible adverse consequences for the data subjects in consultation with the Controller and to document such measures. If requested by the Controller, Fabasoft must submit the documentation without undue delay. Insofar the Controller is subject to notification and information obligations, Fabasoft is obliged to assist the Controller in this respect.

9 Rights of the data subject

- 9.1** Fabasoft shall assist the Controller in the fulfilment of its obligation to answer requests pertaining to the exercising of the rights of data subjects. The rights of the data subject can include in particular:
 - a) Information obligation and right of access to data;
 - b) Right to rectification, erasure and data portability;
 - c) Right to object and right not to be subject to a decision based solely on automated processing in an individual case.

- 9.2** In the event a data subject approaches Fabasoft directly for the purpose of exercising its rights as a data subject, Fabasoft shall pass this request on to the Controller without undue delay.
- 9.3** Any withdrawal of consent of a data subject pursuant to Art 7 (3) GDPR received by Fabasoft must also be passed on the Controller without undue delay.

10 Return of the data on completion of data processing on behalf of the Controller

- 10.1** Fabasoft has no access to the customer data of the Controller. These personal data remain exclusively under the power of disposition of the Controller. For this reason the Controller is obliged to delete the data it has stored itself after completion of the data processing on behalf the Controller. Alternatively, the Controller can also have Fabasoft delete the data. In this case Fabasoft must receive a written instruction as well as access to the data. Any costs and expenses incurred by Fabasoft in connection with the deletion shall be borne by the Controller.
- 10.2** The Controller shall define the measures for the return and/or deletion of the stored data after completion of the data processing on behalf of the Controller by way of a contract or instruction. In addition, the Controller must define a timeframe within which the return and/or deletion must be carried out. Failing that, Fabasoft shall delete the data or irreversibly return the data at the latest 6 months after completion of the data processing on behalf of the Controller. All costs incurred in connection with the completion and/or surrender of the data shall be borne by the Controller.
- 10.3** Data of the Controller that could, for example, facilitate verification of the contractually and orderly execution of data processing on behalf of the Controller may, where justified, be kept by Fabasoft beyond the termination of the contract in a manner compliant with data protection regulations.

11 Miscellaneous

- 11.1** Fabasoft is obliged to notify the Controller without undue delay in the event the data of the Controller at Fabasoft are no longer secure or are endangered due to becoming the subject of an attachment, seizure or enforcement or due to bankruptcy or insolvency proceedings or other measures by third parties. Fabasoft shall inform all pertinent parties in this context without undue delay that all power over the data lies with the Controller.
- 11.2** This agreement must be concluded in writing. Ancillary agreements and amendments to this agreement also require the written form to become effective. No subsidiary verbal arrangements have been made to this agreement. Waiving of the written form requirement is not permitted – even if this effected in writing.
- 11.3** This agreement is subject to the law governing the domicile of the Controller under exclusion of reference norms and UN Sales Law. Place of jurisdiction is the competent court at the domicile of the Controller in 4020 Linz/Austria.
- 11.4** Should a provision of this agreement be or become invalid or unfeasible, this shall in no way affect the validity or feasibility of the remaining provisions. The contractual parties undertake to replace the invalid provision with a new valid provision that comes as close as possible to the intent and purpose of the invalid provision. The same shall apply to any gaps in this agreement.

11.5 For the purpose of this agreement and contact by Fabasoft, the Contractor is obliged to designate and keep up-to-date a contact in the field in the Fabasoft Cloud provided for this purpose. The Contractor takes note that Fabasoft will address all messages from and/or in connection with data security and data protection issues, in particular pursuant to Point 8., to this contact set up by the Contractor.

12 Annexes

- Service Agreement Fabasoft Cloud (Annex /1)
- GTC Fabasoft Cloud (Annex /2)
- Performance Characteristics Data Center Operation Fabasoft Cloud (Annex /3)
- Performance Characteristic Data Security Fabasoft Cloud (Annex /4)
- Technical and Organizational Measures of Fabasoft (Annex /5)

For the Controller

Place, date

Company signature

Fabasoft Austria GmbH

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Managing Directors: Andreas Dangl, Walter M. Schill, Dipl.-Ing. Helmut Fallmann, Leopold Bauernfeind

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Place, date

Company signature