Test Installation Agreement

Annex ./6 to Fabasoft Cloud Developer Agreement

Fabasoft Cloud GmbH

Austrian Law

Valid from October 13th, 2014

Fabasoft®

(1) This Agreement relates to Fabasoft software products. Fabasoft software products are standard software products that are distributed by Fabasoft Cloud GmbH under the umbrella brand "Fabasoft" (with or with no addition). This agreement shall apply to the following Fabasoft software products (most recent version):

- Designations:
    - Fabasoft Cloud
    - Fabasoft app.ducx
    - Fabasoft app.test
    - Fabasoft app.telemetry
- the authority is limited on de VDE (Virtual Development Environment)
- Testing period: according to the contract period
- Testing purpose: Development and ongoing maintenance of an NCA (New Cloud App)

(2) During the period defined in paragraph (1), above, Fabasoft shall provide the CUSTOMER with the Fabasoft software products defined in paragraph (1) for testing and development purposes at no extra charge.

(3) During the testing period the CUSTOMER shall verify jointly with Fabasoft whether or not the Fabasoft software products satisfy its requirements and duly fulfil the functions specified by it.

The CUSTOMER may use the Fabasoft software products exclusively for its own testing and development purposes, but not for productive use. Therefore, the CUSTOMER covenants and agrees that the Fabasoft software products defined in paragraph (1) shall neither be sold, leased out, or rented out by it, nor shall the CUSTOMER use them in any other way (Fabasoft software products and documentation). The right to use the same shall neither be exclusive nor transferable.

It is explicitly pointed out and agreed that installation and utilisation carried out exclusively for testing and development purposes neither includes licensing to the CUSTOMER nor granting of a license or other rights in or to the Fabasoft software products which have been installed for testing and development purposes or any other intellectual property rights of Fabasoft.

(4) The CUSTOMER acknowledges and agrees that the Fabasoft software products defined in paragraph (1) are the property of Fabasoft or of the third party mentioned, as are all copies of those Fabasoft software products. The CUSTOMER guarantees that the copyright notice contained in the Fabasoft software products will remain visible if and when the Fabasoft software products are used under this Agreement and that the Fabasoft software products (including documentation) must be kept strictly secret and protected against use by unauthorised persons. At Fabasoft's request the CUSTOMER must provide information on the whereabouts of the Fabasoft software products, the documentation, and copies, if any.

The CUSTOMER guarantees that it will abstain from revising the programs, reverse engineering or decompiling them, or breaking the Fabasoft software products down into any of their individual functions in any other way.

(5) As regards such Fabasoft software products (including documentation and installation manuals) which are exclusively installed for testing and development purposes, Fabasoft does not warrant that they are free of defects in quality and of defects of title.

(6) Fabasoft does not warrant that the program functions will meet the CUSTOMER's requirements or, in the selection made, will interact with existing hardware and software of the CUSTOMER, nor does Fabasoft warrant that the programs function without interruption and faultlessly.

(7) Fabasoft shall not be liable to the CUSTOMER for lost profits, savings expected but not realized, damage caused by claims of third parties vis-à-vis the CUSTOMER, direct and/or indirect damage, punitive damage, consequential damage or damage to recorded data. The CUSTOMER acknowledges that installation of the Fabasoft software products for testing and development purposes may make data accessible by third parties without any protection that third parties might gain access to the CUSTOMER's data system and that malfunctions to or unintended or unwanted functions of the CUSTOMER's hardware and/or software might be caused.

Fabasoft shall be liable for damage caused by wilful intent in accordance with statutory provisions.

(8) Upon expiration of the testing period the CUSTOMER shall be obliged to provably destroy the originals as well as all copies and partial copies, modified copies, or copies of the Fabasoft software products combined with other program material and shall provide Fabasoft with a written confirmation to that effect or shall, at Fabasoft's option, surrender them to Fabasoft. Backup copies exclusively made for archiving purposes shall be exempt from this obligation.

The CUSTOMER undertakes to keep all information on Fabasoft and the Fabasoft software products which have been installed for testing and development purposes of which the CUSTOMER obtained knowledge in connection with this Agreement strictly secret and shall neither directly nor indirectly exploit or use, in any form whatsoever, the results from use of the Fabasoft software products, in particular their functions, processes, and procedures as well as knowledge of the same, and make the same accessible to third parties only upon Fabasoft's prior written consent. The CUSTOMER shall provably impose this secrecy obligation on its entire staff.

(9) The CUSTOMER shall remain solely responsible for data security and protection of personal data used in connection with the Fabasoft software products.

(10) The right to use the Fabasoft software products is granted for a definite period of time, i.e. until the date of expiry mentioned above under paragraph (1).

Upon termination of this Agreement the remaining provisions of this Agreement, in particular the provision on secrecy, shall continue in full force and effect.

In the event that Fabasoft is indirectly or directly prohibited by sovereign order from further making the Fabasoft software products defined above under paragraph (1) available to the CUSTOMER, Fabasoft shall be entitled to terminate this Agreement with immediate effect.

(11) The CUSTOMER shall provide Fabasoft with useful information and empirical results from test use of the Fabasoft software products at Fabasoft's request. Such proposals and empirical results may (but need not) be exploited and implemented by Fabasoft, which, however, does not translate into any responsibility of the CUSTOMER (except for a responsibility for transmission as such). The CUSTOMER shall not retain or claim any proprietary rights of its own to the proposals, information and empirical results made available by it.

(12) The CUSTOMER shall immediately notify Fabasoft in writing of any disruption of the programs, malfunctions, and other defects of the Fabasoft software products (and specify in detail). Fabasoft shall not be required by this Agreement to remedy such defects. The CUSTOMER shall not retain or claim any proprietary rights of its own to the information, empirical results and materials made available by it in connection with reported defects.

(13) Fabasoft shall be under no obligation to fully develop the Fabasoft software products installed for testing purposes for serial production in the version(s) made available and/or in any later version(s) and/or offer them for sale as products and/or include them in its product range.

(14) Modifications of or amendments to this Agreement shall be made only in writing by authorized persons on behalf of both parties and shall not be modified by custom or usage; this shall also apply to a waiver of this clause itself. Written form cannot be replaced by electronic transmission.

(15) If one or more contractual provision(s) is/are or become(s) ineffective or unenforceable in whole or in part, the effectiveness and enforceability of the remaining provisions of this Agreement shall not be affected thereby. The ineffective or unenforceable provision shall be deemed replaced by a provision which comes as close as possible to the economic and technical purpose of the ineffective or unenforceable provision. In the event of a gap in this Agreement the foregoing provision shall apply accordingly. In that case a reasonable regulation shall apply which the parties would have intended if they had thought of that issue at the time of conclusion of this Agreement.

This Agreement as well as the issue of whether it was validly concluded, and its pre-effects and after-effects, shall exclusively be subject to Austrian law; applicability of the provisions of private international law and UN Sales Law (UN Convention on Contracts for the International Sale of Goods) shall expressly be excluded.

For all disputes arising out of this Agreement, including its annexes and attachments, which constitute a part of this Agreement, as well as the issue of whether it was validly concluded, and its pre-effects and after-effects, the court in Linz (Austria) having subject-matter jurisdiction shall be the exclusive place of jurisdiction; at the option of Fabasoft also the CUSTOMER's general place of jurisdiction or any other place of jurisdiction provided for by law shall be a legal venue. To the extent permitted by law, each party irrevocably waives any objection it might otherwise have to such jurisdiction based on improper venue or inconvenient forum.