

Data Processing Agreement

for a Service Package Mindbreeze InSpire SaaS

Valid from February 26th, 2024

Public

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To aid readability, the third-person plural pronoun will be used instead of gendered pronouns (e.g. they/them instead of he/him).

These plural pronouns shall be used for both singular and plural references, encompassing all genders.

Contractual partners

This Data Processing Agreement is concluded between the Contract Parties pursuant to the Offer.

1. Preliminary remarks and obligation to comply

- 1.1. The following provisions shall apply to all data processing services that the Contractor may fulfill for the Customer within the meaning of Article 28 of the General Data Protection Regulation (EU) 2016/679 (hereinafter referred to as the “GDPR”) and/or the applicable national regulations. This includes all activities connected with this Agreement and during which employees of the Contractor or third parties commissioned by the Contractor may come into contact with the Customer’s personal data.
- 1.2. The Customer and the Contractor undertake to comply with the relevant data protection laws with regard to the data to be processed.
- 1.3. Terms that are not explicitly defined in this Agreement are subject to the definition provided in the GDPR.

2. Subject matter/term of this contract; Scope/type/purpose of data processing, types of data and the group of data subjects

- 2.1. In accordance with the GDPR and national regulations, the Contractor will process personal data on behalf of and following written documentary instructions from the Customer, pursuant to the Offer (hereinafter “Main Contract”) concluded between both parties and in accordance with this Agreement.

The activities affected, as well as the scope and type of order processing, are either specified in the description of services in the Main Contract or will result from instructions from the Customer given at a later date.

- 2.2. If an external service based on an Application Programming Interface (API) – in particular a service that provides AI services – is connected to the services to be provided by the Contractor under the main contract or due to a subsequent instruction by the Client, the parties mutually agree on the following and make a binding agreement: Data processing by the Contractor on behalf of the Client ends with the transmission of the data to the external service provider. Further data processing is not part of the scope of instructions and services of the commissioned data processing in question. The external service provider is neither a vicarious agent nor a subcontractor of the Contractor – rather, the Client will conclude its own service contract and thus a correlating commissioned data processing contract with the external service provider.

If the connection to an external service provider is to be carried out by an employee of the Contractor on the instructions of the Client, the Contractor hereby draws the Client’s attention to the following as a precautionary measure: In accordance with its role as the Processor, the Contractor has not carried out (and does not owe) a legality check of the data processing by the external service provider. Insofar as the external service provider is an AI provider, the Contractor points out as a precautionary measure that the lawful use of such AI services is not guaranteed according to current assessments (precautionary note pursuant to GDPR Art. 28 para. 3 last sentence). Otherwise, sentence 4 of this section 2.2 applies accordingly.

- 2.3. Within the scope of this Agreement, the Customer is solely responsible for adhering to the legal provisions of data protection legislation, particularly with regard to the permissibility of data processing and data usage within the framework of this Agreement, as well as protecting the rights of data subjects. The Customer is solely responsible for informing data subjects that their data is collected, processed and used, and informing them of the purpose of this. The Customer will ensure that data subjects are informed of any option they have to withdraw.

- 2.4.** The term of this Agreement is determined by the term of the Main Contract. If the Main Contract is terminated, this Data Processing Agreement shall also expire automatically when it ends, without requiring separate termination. Data confidentiality shall continue to apply after this Agreement has ended, irrespective of the legal grounds.
- 2.5.** The Contractor shall process the following personal data on behalf of the Customer:
- a) Contact details of the Customer / user.
- User (required data):
- E-mail address (log-in), first name, last name, customer affiliation (including location), log-in information (time of log-in, time of log-out, time of last access, authentication method and type, workstation, IP address), logging data (see Data Security Fabasoft app telemetry performance features).
- 2.6.** The purpose of the data processing is for the Contractor to complete the tasks specified in the service description in the Main Contract or to follow the instructions given by the Customer.
- From the Customer's perspective, the categories of data subjects are their employees.
- 2.7.** Data processing shall take place exclusively in Germany.
- The most recent version of the Performance Characteristics Data Center Operation can be viewed online at the website <https://inspire.mindbreeze.com/contracts-and-information>.
- 2.8.** Because of this responsibility, the Contractor is able to rectify, restrict, erase and pass on data to the Customer, throughout the duration of this Agreement. The rights of data subjects should be protected by the Customer. If the Customer requires the Contractor to be involved in the protection of data subjects' rights (particularly their right to information, rectification or erasure), then the Contractor must implement the relevant measures required immediately, following the Customer's instructions.

3. Technical and organizational measures

- 3.1.** The Contractor must take appropriate technical and organizational measures as per Article 32 of the GDPR to ensure an appropriate level of data protection. The Contractor will structure their internal organization so as to ensure the implementation of and adherence to particular requirements from the Customer and the GDPR and/or national regulations. The most recent version of the Performance Characteristics Data Security can be viewed online at the website <https://inspire.mindbreeze.com/contracts-and-information>.
- 3.2.** The Contractor undertakes not to give any third party
- a) direct, indirect, comprehensive or unrestricted access to data or
- b) encryption keys used to secure data or the possibility of circumventing such encryption.
- 3.3.** The most recent version of the "Technical and organizational measures" can be viewed online at the website <https://inspire.mindbreeze.com/contracts-and-information>. This lists all the technical and organizational measures that the Contractor has to implement, presented by principle. By granting the order, the technical and organizational measures shall be deemed to have been checked and approved by the Customer.
- 3.4.** The documents "Performance Characteristics Data Security", "Performance Characteristics Data Center Operation" and "Technical and organizational measures" show the principles of the data protection and data security plan. The Contractor commits to evaluate and update this data protection and data security plan, whereby changes shall be made with the Customer corresponding to the provisions of the Main Contract.
- 3.5.** Evidence can also be provided by presenting attestations or reports by independent experts (e.g. auditors, inspections, accredited verifying authorities, data protection officers, IT security experts) or a suitable certificate.

4. Customer's instructions

- 4.1.** The Customer is entitled to give written or oral instructions about the type, scope and method of data processing. The Customer shall confirm oral instructions in writing immediately. Only written instructions are binding for the Contractor.

If instructions from the Customer are not provided in the required form, the Contractor will inform the Customer of this.

- 4.2.** The Customer will inform the Contractor of the individuals who are authorized to issue instructions or whose role is that of a contact person, specifying their name, organizational unit, function and telephone number. The Contractor will be informed in writing of any changes without delay.
- 4.3.** Before the data processing commences, the Customer will make sure that the Contractor complies with the technical and organizational measures for data security. The Customer will inform the Contractor if there is any evidence of errors or irregularities when assessing the Customer's requirements or data protection regulations.
- 4.4.** If the Customer issues instructions that go beyond the contractually agreed scope of services, the associated cost and expenses must be borne by the Customer.

5. Duties of the Contractor; data confidentiality

- 5.1.** The Contractor commits to processing and using the Customer's personal data solely for the services specified in the service description in the Main Contract, the Customer's instructions that are documented in writing and the current Agreement.
- 5.2.** The Contractual Parties commit to preserving the confidentiality of each Contractual Party's critical business matters that are not common knowledge (trade secrets). The Contractor shall maintain data secrecy in accordance with national regulations or the GDPR when storing the Customer's data.
- 5.3.** The Contractor shall ensure that the employees involved in processing the Customer's personal data are bound to data secrecy when completing their tasks, in accordance with national regulations and/or the GDPR – even after this Agreement has expired – and that they have received instruction on the applicable data protection regulations.
- 5.4.** The Contractor may pass on information to third persons or data subjects only if prior written consent is given by the Customer.
- 5.5.** It is the Customer's responsibility to keep a record of all processing activities in accordance with Art. 30 (1) of the GDPR. The Contractor will support the Customer in this. The Contractor must keep their own record of processing activities in accordance with Art. 30 (2) of the GDPR and must provide this to the Customer upon request. The Contractor shall support the Customer in their responsibility with regard to any data protection impact assessment to be carried out and consultation with the supervisory authorities.
- 5.6.** The Contractor shall inform the Customer without delay about control actions; investigations and measures of the supervisory authority under data protection law.

Should the Contractor be required to appear before a court or another government authority within the framework of a legal obligation or legal process and the Contractor is obligated to make user data stored by the Customer available for the court or the government authority, The Contractor shall proceed as follows:

- i. Governmental requests for information are thoroughly checked for their legality by qualified persons before they are complied with.
 - As long as the Contractor is not in violation of any laws, The Contractor shall contact the Customer as quickly as possible (electronically) in order to give the Customer the opportunity to take legal action to prevent disclosure of the data at the Customer's own expense.

- The Contractor will only permit access after a positively completed check (cf. item i.) and will cooperate with the Customer to the extent legally possible in order to protect the Customer's data protection rights.

- ii. The Contractor will only allow access to data covered by the request for information, insofar as this is possible using proportionate means. The Contractor must rely on the support of the Customer in order to determine which data is covered by the request for information and which is not, as the Contractor is not aware of the data stored in the Service Package.

5.7. The Contractor undertakes to regularly monitor compliance with the provisions of data protection law in their area of responsibility and to make any necessary adjustments to regulations and/or measures for proper commissioned processing. If the Contractor should deem an instruction given by the Customer to be unlawful, they must inform the Customer of this immediately.

5.8. The Contractor has a data security team at their disposal that is dedicated to data protection issues ("Privacy Team"). The contact details of this Privacy Team are available at the website <https://inspire.mindbreeze.com/de/datenschutzerklaerung>.

If the GDPR and/or national regulations require, the Contractor will appoint a data protection officer. The contact data of this data protection officer are available at the website listed in <https://inspire.mindbreeze.com/de/datenschutzerklaerung>.

5.9. The Contractor has an obligation to provide the Customer with any information the Customer deems necessary to carry out comprehensive checks on the order on request and within an appropriate time frame.

5.10. All complaints or uncertainties relating to the Service Package can be made through the following channels:

- By email: privacy@mindbreeze.com
- By mail: Head Office of the Contractor pursuant to the CSA Information Sheet

All complaints should be addressed to the Contractor in writing. In order to prevent misuse by unauthorized persons, evidence of the identity of the complainant must be provided to the Contractor in a suitable form.

6. Sub-processors

6.1. In accordance with the following provisions, the Contractor shall be entitled to engage sub-processors or to replace those already engaged.

The Contractor shall only engage those sub-processors who provide sufficient guarantees that appropriate technical and organizational measures will be implemented in such a way that the processing will be in compliance with the applicable data protection provisions and will ensure the protection of the rights of the data subject. The Contractor may satisfy themselves of compliance with the data protection provisions on site with timely notice.

For the purposes of this provision, subcontracting relationships are understood to be those services which relate directly to the provision of the main service. This does not include ancillary services which the Contractor uses, for example, as telecommunication services, postal/transport services, maintenance and user service or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing systems. However, the Contractor shall be obliged to implement appropriate contractual agreements and control measures in compliance with the law to ensure data protection and data security of the Customer's data, even in the case of outsourced ancillary services.

The Contractor shall notify the Customer without delay of any intended subcontracting or change of sub-processor. The Customer shall then be granted a 14-day first period to object. If no objection is raised within 14 days on objectively justified grounds against the subcontracting or the change of the sub-processor, it shall be deemed approved.

An objectively justified reason shall be deemed to exist in particular if there are indications, that the provision of the contractual services is endangered or impaired by the assignment, the cooperation with the sub-processor endangers the fulfillment of legal or contractual obligations of a contracting party, in particular of supervisory regulations.

In case the Customer objects to the subcontracting for an objectively justified reason, such objection shall not change the legality of the subcontracting. In the event of an objection, the Customer and the Contractor shall each be entitled to extraordinary termination of the main contract in the absence of a mutually agreed solution.

The Customer shall also be entitled to this extraordinary right of termination if the Contractor uses a sub-processor without obtaining the prior written consent of the Customer or contrary to an objectively justified objection by the Customer and an amicable solution is not possible.

In the event that sub-processors are engaged, they shall be contractually obligated with regard to the requirements for confidentiality, data protection and data security in accordance with this Agreement. The Contractor shall contractually impose on the sub-processor, mutatis mutandis, the same obligations that are specified in this Agreement or in other agreements between the Customer and the Contractor. The Contractor shall be obliged to provide the Customer with information on the main content of the Contract and the implementation of the data protection obligations by the sub-processors upon request.

The Contractor shall be responsible to the Customer for all actions and omissions of the sub-processors they employ.

The use of companies affiliated with the Contractor within the European Union as sub-processors shall be deemed to have been approved by the Customer in any case upon conclusion of this Agreement. Affiliated companies are companies in which Fabasoft AG, directly or indirectly, currently or in the future

- a) holds more than half of the voting rights; or
- b) can appoint more than half of the members of the management or administrative body or of the bodies appointed to represent them by law; or
- c) has the right to manage the company's business.

The Customer acknowledges the legitimate interest of the Contractor to transfer personal data for internal management purposes within the group of companies to which the Contractor belongs, including the processing of personal data.

- 6.2.** In the event of an objection, the Customer and the Contractor shall be entitled to extraordinary termination in the absence of a mutually agreed solution. This extraordinary right of termination entitles the Customer and the Contractor to terminate the contractual relationship in question, taking into account the formalities pursuant to Section 4.5 of the CSA. If the Customer has selected a payment period that lasts longer than the contractual relationship once extraordinary termination occurs, the Customer shall be refunded the fees that have been overcharged, factored on a monthly basis.

The Customer also has a right to extraordinary termination if the Contractor arbitrarily uses a sub-processor without obtaining the prior written consent of the Customer or does so contrary to an objectively justifiable objection of the Customer, and an amicable resolution is not possible.

- 6.3.** The current list of sub-processors is available online at <https://inspire.mindbreeze.com/de/vertraege-und-informationen>.

7. Control rights of the Customer

- 7.1.** The Customer shall satisfy themselves of the technical and organizational measures of the Contractor prior to the commencement of data processing and thereafter on a regular basis and shall document the result.

For this purpose, the Customer may request corresponding information from the Contractor or personally satisfy themselves after timely notification during normal business hours without disrupting the operating process.

- 7.2.** The Contractor undertakes to provide the Customer, upon written request and within a reasonable period of time, with all information required for the performance of an inspection.
- 7.3.** A summary of certifications and audits is available in the CSA Information Sheet under “Additional Helpful Links”, “Summary of Certifications and Audits” at the website provided there.

To verify the data security measures and/or compliance with data security measures, the Customer can request, in writing, an audit by an independent authority or carry out such an audit themselves, provided the Customer can prove that they have the required expertise to carry out this audit.

The Customer will present and justify the need for this audit to the Contractor in writing, within a period of at most 14 days from the request being made. The audit should be carried out without causing disruption to Contractor’s operation, insofar as is possible. The Customer and the Contractor should then come to a mutual agreement on the process, choice of testing authority, date of audit and assignment.

The Customer who requests the audit must bear the reasonable costs themselves (i.e. costs of the audit and Contractor’s expenses). If the Contractor also incurs additional staffing costs beyond this, the Customer must settle these additional costs in accordance with the Contractor’s standard hourly rates.

The Contractor can also present the Customer who requests the audit with the internal provisions on conducting an audit. The Customer must adhere to these provisions. The Customer will present the Contractor with the audit documentation in the form of the entire audit report.

The Contractor can also comply with the Customer’s request as a matter of priority by providing the Customer with a list of the current audit reports of audits previously carried out.

In any case, a corresponding non-disclosure agreement (NDA) must be signed by the Customer, the Contractor and the independent auditing authority before starting. The summary of an audit report and the audit reports themselves should be treated as strictly confidential documents. In general, all forms of transferring, disseminating or publishing the reports and summaries is prohibited unless explicitly authorized in writing by the Contractor.

If the Customer requires copies of the audit report from audits previously carried out on the Contractor for the purposes of assessment procedures, investigations or measures taken by the data protection supervisory authorities, then the Contractor will support the Customer – at their request – to fulfill their obligations to the supervisory authorities and transfer the required audit reports directly to the supervisory authorities.

- 7.4.** Decisions concerning the organization of data processing and the procedures used that are significant for data security shall be coordinated with the Customer in advance. The Contractor is obliged to notify the Customer immediately in text form of any breach of data protection regulations or the contractual agreements in such a way that the Customer can fulfill their legal obligations. The same applies to malfunctions, as well as in the event of suspected data protection violations or irregularities in the processing of personal data.

8. Data breach incident

- 8.1.** The Contractor is aware of the applicable data protection reporting and notification obligations vis-à-vis the supervisory authority and data subjects, in particular their time and content requirements.
- 8.2.** In all cases, the Contractor shall immediately notify the Customer if breaches of regulations for the protection of the Customer’s data or of the stipulations made in the order have occurred by them or by the persons employed by them. This shall also include, in particular, if serious operational disruptions occur, if a breach of the data protection regulations is suspected or if other irregularities occur in the processing of the Customer’s data.

- 8.3.** The Contractor shall, in agreement with the Customer, take appropriate measures to secure the data and to mitigate any possible adverse consequences for the data subject and shall document these measures. The documentation shall be handed over to the Customer immediately upon the Customer's request. To the extent that the Customer is subject to reporting or notification obligations, the Contractor shall support the Customer in this respect.

9. Rights of the data subject

- 9.1.** The Contractor shall support the Customer in fulfilling their obligation to respond to requests to exercise the rights of the data subjects. Data subject rights may include, in particular:
- a) Duty to inform and right to access data;
 - b) Right to correction, deletion and data portability;
 - c) Right to object and right to not exclusively automated decision-making in individual cases.
- 9.2.** If data subjects contact the Contractor directly for the purpose of exercising their data subject rights, the Contractor shall forward this request to the Customer without delay.
- 9.3.** Likewise, any revocation of consent received by the Contractor from a data subject within the meaning of Art 7 (3) GDPR shall be forwarded to the Customer immediately.

10. Return of the data at the end of the contract

- 10.1.** After termination of the commissioned processing or earlier upon written request by the Client - at the latest upon termination of the service agreement - the Contractor shall hand over to the Client all documents, processing and usage results and data pertaining to the contractual relationship that have come into its possession or, with prior consent, destroy them in accordance with data protection regulations. The same applies to test and scrap material. The deletion log must be submitted on request. If the client additionally requests destruction by an external service provider, the contractor shall carry this out at the client's expense. Statutory retention obligations shall remain unaffected and reserved.
- 10.2.** If the Contractor is obliged to return the data to the Client after the commissioned processing has been completed, the Client must confirm to the Contractor in writing that all processing results, records and documents and copies thereof have been handed over to the Client.
- Otherwise, the data shall be deleted or irretrievably returned by the Contractor no later than 6 weeks after termination of the contractual relationship. All costs in connection with the termination and/or return of the data shall be borne by the customer.
- 10.3.** The data of the Customer, which may be useful, for example, for the proof of proper and order-compliant processing, may be stored by the Contractor's premises beyond the end of the contract, if justified, in accordance with data protection regulations.

11. Miscellaneous

- 11.1.** If the Customer's data is no longer safe or at risk at the Contractor's premises due to an attachment, execution or seizure or due to insolvency or composition proceedings or due to any other event or act of a third party, the Contractor shall notify the Customer immediately. The Contractor shall immediately inform all parties responsible in this context that the power over the data lies with the Customer.
- 11.2.** The Contractor and the Customer agree that amendments, additions and declarations relating to this agreement must be made in writing. The waiver of this written form requirement must also be made in writing. If amendments to this agreement are necessary due to changes in the legal basis, e.g. changes in the law or supreme court rulings, the amendment shall take effect on the respective date of its entry into force (see cover sheet, date).

- 11.3.** This Agreement shall be governed by the laws of the Contractor's place of business to the exclusion of any conflict of laws rules and of the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction shall be the locally competent court having jurisdiction at the Contractor's place of business.
- 11.4.** Should any provision of this Agreement be or become invalid or unenforceable, this shall not affect the validity of its remaining provisions. The contractual parties undertake to agree on a new, effective provision in place of the invalid provision which comes as close as possible to the meaning and purpose of the invalid provision. This also applies to any omissions in the Agreement.
- 11.5.** For the purposes of this Agreement and Contractor's contact, Customer shall designate and keep current a contact in the mandatory field provided for that purpose in the Service Package. The Customer acknowledges that the Contractor shall direct all messages arising from and/or in connection with data security and data protection matters, in particular in accordance with item 8., exclusively to this contact set up by the Customer.