Developer Agreement

Fabasoft Cloud

Effective from November 1st, 2016

Fabasoft

Where business works

1. Preamble

1.1 Fabasoft Austria GmbH, Company No FN 199728v, Honauerstrasse 4, 4020 Linz, Austria, (referred to hereinafter also as 'Fabasoft') sells a range of different service packages over the internet. These various service packages are offered under the name 'Fabasoft Cloud', which entitles registered and activated customers to utilize the IT infrastructure that is maintained by Fabasoft in its data centers to store and manage data, to utilize the software products operated via these facilities, and to use Cloud Apps and/or Mobile Apps, which are operated on the basis of the Service Package selected by the Customer.

1.2 Application software for developers (Developer Cloud Apps, DCA) that is operated by Fabasoft on the basis of the Fabasoft Cloud software product supports the Developer technically and structurally to produce his own application software independently (New Cloud App, NCA), which is in turn intended to provide users useful functions based on the Fabasoft Cloud software product.

1.3 The Developer has an interest resulting from his training and experience in the development of software to create so-called NCAs. If the Developer has software (e.g. from other commercial activities) with system technical functionality, he has the possibility to let this software be run in the Fabasoft data centers (free of charge for Fabasoft) and to make it available for use (licensing) via the Cloud App Store through an NCA (see 1.4). The Developer also has the possibility to develop an NCA with which the Developer supports his sales activities in his company's designated business field and to offer this NCA via the Cloud App Store. The exact details are covered in 3.5.

1.4 Fabasoft features a 'marketplace' on its website (Cloud App Store) where Fabasoft NCAs are offered to its customers, provided an NCA that has been produced by a Developer has been released by Fabasoft for presentation in the Cloud App Store.

1.5 Users of NCAs offered via the Cloud App Store must be registered and activated users of a Fabasoft Cloud service package.

2. Assistance on behalf of Fabasoft

Fabasoft shall provide the supporting services indicated herein within the context of and for the duration of this Contract.

2.1 Fabasoft shall operate the Fabasoft Cloud software product via the IT infrastructure implemented by Fabasoft in its data center and based on the 'Developer Cloud Apps' (DCA). Currently, this includes 'Cloud App Development' (CAD), 'Virtual Development Environment' (VDE), and 'SCRUM Projects' (SCRUM). This application software supports the Developer structurally in the agile software development of an NCA and also offers version management for source code files and directories.

The character and properties of these DCAs are described and specified as appendix ./1 and displayed in their most up to date form at https://www.fabasoft.com/en/cdi.

2.2 Fabasoft provides a usage agreement for software products operated by Fabasoft that support the software development process. Currently, this includes the software products Fabasoft app.ducx, Fabasoft app.test primo, and Fabasoft app.telemetry primo. The character and properties of these software products are described and specified as appendix ./2 and displayed in their most up to date form at https://www.appducx.com/spi, https://www.apptest.com/spi, and https://www.apptelemetry.com/spi.

2.3 Fabasoft features a 'marketplace' on its website (Cloud App Store) where interested users, who are also registered and activated customers of Fabasoft Cloud Service Packages, may also purchase the rights to use NCAs that have been released by Fabasoft for distribution via the Cloud App Store.

2.4 Fabasoft shall operate a service structure via the IT infrastructure implemented in its data center that enables customers who have registered and activated Fabasoft Cloud Service Packages

(i) to access an information and discussion platform to learn about new developments and their functions and to submit suggestions and discussion entries involving an NCA, and

(ii) to submit support queries to the Developer of an NCA that are submitted to the Developer via Fabasoft's service structure for processing.

The character and properties of the service structure are described and specified as appendix ./3 and displayed in their most up to date form at https://www.fabasoft.com/en/cds.

2.5 Fabasoft offers interested Developers the opportunity to support the distribution of Fabasoft Cloud Service Packages. If the Developer shows interest in this option, then they may sign a separate Affiliate Marketing Agreement with Fabasoft that is not covered by this Contract. This is described and specified as appendix ./4 and displayed in their most up to date form at https://www.fabasoft.com/en/affiliatemarketingagreement.

2.6 Furthermore, Fabasoft offers interested Developers the opportunity to receive sales and marketing support for their NCAs by enabling the Developer to allow their NCA(s) to take part in Fabasoft's Marketing Program. Only fee-requiring NCAs can take part in this Affiliate Marketing Program.

3. Developer registration and services

3.1 By correctly completing the registration process as a Developer via the Internet (https://developer.fabasoft.com) and agreeing to this Fabasoft Cloud Developer Agreement (also referred to in the following as the 'Contract'), the Developer submits an offer to enter into an agreement with Fabasoft according to the conditions of this Contract. Fabasoft accepts this offer by transferring a confirmation email to the email address provided by the Developer. The Developer may open, read, save, and print the current version of this Contract in English and German by accessing the link https://www.fabasoft.com/en/developeragreement.

3.2 The Developer must be a registered and activated user of a Fabasoft Cloud Service Package. The rights and obligations resulting between Fabasoft and the Developer are described and specified in the Service Agreement Fabasoft Cloud as appendix ./5 and displayed in their most up to date form at https://www.fabasoft.com/en/public-cloud/contract.

3.3 The Developer shall sign an agreement with Fabasoft regarding the use of Fabasoft software products that support the software development process. Currently, this includes the software products Fabasoft app.ducx, Fabasoft app.test primo, and Fabasoft app.telemetry primo. The terms of use of these software products are described and specified as appendix ./6 and displayed in their most up to date form at https://www.fabasoft.com/en/tia.

3.4 Based on the Service Agreement Fabasoft Cloud of (see appendix ./5) and the following expanded contractual conditions, the Developer may use the application software, which is intended to support the Developer structurally in agile software development. Currently these are the applications 'CAD', 'VDE', and 'SCRUM', see appendix ./1. The Developer shall structure the software development of the NCA according to the technical recommendations provided:

(i) Using 'CAD', the Developer shall identify his project reference (namespace), in which case he shall refrain from injuring the rights of third parties when selecting this project reference. The Developer shall describe the character and properties of their planned NCA.

(ii) Using 'SCRUM', the Developer shall specify the temporal, contextual, and technical aspects of the development process (including but not exclusively including the release plan, user stories, back logs, sprints, etc.).

(iii) The Developer shall complete software development using the prescribed Fabasoft technology and the agile procedure for temporal, contextual, and technical aspects of development according to these specifications. The Developer shall test his own development results according to state of the art technology with the goal that the complete source code of the NCA is tested (100% code coverage). The Developer shall create automated tests over the course of the software development that may also be executed by Fabasoft. Over the course of software development, especially in case of errors that result during the testing procedure (defects), the Developer shall correct these during advanced development. The Developer shall save all source code including code for automated tests while using the subversion repository available to CAD. The Developer shall document the source code in English from the perspective of a Developer with the goal that the entire source code of the NCA is completely documented in English language (100% code documentation coverage).

Fabasoft reserves the right and is explicitly entitled by the Developer to submit the development results saved by the Developer over the course of development to the company's own tests.

If Fabasoft executes its own tests, then a test report shall be provided via CAD. The Developer shall include these test results in further development activities.

(iv) Once the Developer has fulfilled all of the described goals (code coverage, code documentation coverage) and the test results no longer indicate any known errors, the Developer shall confirm completion of the NCA.

Fabasoft reserves the right and is explicitly entitled by the Developer to test the NCA confirmed as finished according to reasonable quality criteria defined by Fabasoft via a company-internal testing process.

In case internal tests executed by Fabasoft result in technically confirmed conditions that indicate that the finished NCA should not be accepted for productive use and/or distribution via the Cloud App Store, the Developer shall acknowledge this decision by Fabasoft without dispute .

(v) Fabasoft normally updates its Fabasoft Cloud Service Packages once per month. At regular intervals (normally one week) prior to product activation of the next production release of the Fabasoft Cloud Service Packages, Fabasoft shall adjust the VDE application software to the planned continued development scheme. Fabasoft shall provide information concerning planned developments. The Developer shall refer to Fabasoft with regard to continued development to ensure that the finished version of the NCA provided by the Developer (which has not been rejected by Fabasoft) is compatible (according to an arbitrary examination time) with the directly following planned production release of Fabasoft Cloud Service Packages.

(vi) At the time the Developer confirms the completion of the NCA (see iv), the Developer shall have specified which basic Fabasoft Cloud Service Package is required for their NCA, whether their NCA is available for a fee or free-of-charge, and whether their NCA shall be distributed publicly via the Cloud App Store or not, and whether their fee-requiring NCA will be taking part in Fabasoft's Affiliate Marketing Program or not.

In case the Developer decides that his NCA shall be distributed free of charge and not publicly via the Cloud App Store, then use of the NCA must require the use of a fee-requiring basic service package of Fabasoft Cloud. This type of NCA may only be operated for 14 days after initial product activation via a free-of-charge basic Fabasoft Cloud Service Package from.

If the Developer decides that operation of the NCA shall be fee-requiring, then they must indicate to Fabasoft completely and correctly in a clear manner all information that is required for standard legal invoicing.

If the Developer decides that the NCA will be fee-requiring, then the Developer must indicate the price selected from the price options indicated by Fabasoft, which are specified and described as appendix ./7 and displayed in their most up to date form at https://www.fabasoft.com/en/pricetiers. The Developer has the option to offer usage rights free-of-charge for the NCA for a period of 14 days starting with the date that a customer activates it for the first time. Price options allow the activation of the NCA for free, but the use of the NCA (activity) is fee-requiring.

(vii) At the time the Developer confirms completion of the NCA (see iv), the Developer shall provide all marketing information that is required for appropriate sales activities, therefore especially but not exclusively: Name, label, link to website, screenshots, description of character and properties etc.

Once all of the prescribed information has been provided or submitted by the Developer, and provided the NCA that the Developer has confirmed as complete has not been rejected (see iv), then Fabasoft shall activate the NCA with the next planned update to the production release of the Fabasoft Cloud Service Package.

If the Developer decides that the NCA shall not be distributed via the Cloud App Store, then Fabasoft will provide the Developer with a hyperlink that the Developer may use to promote to his own group of potential customers how they may purchase usage rights for the NCA (see vi).

(viii) The Developer shall continue to develop the NCA for the contract term so that it remains compatible and usable with each production release of the Fabasoft Cloud Service Package.

(ix) If the Developer has software with system technical functionality which should be operated in the Fabasoft data centers (see 1.3), the Developer shall provide, at each stage of the NCA development phase as named by Fabasoft ((i) through (viii)), their software with system technical functionality (free of charge for Fabasoft) for operation in the data centers, as specified by Fabasoft. The Developer shall initiate and document reasonable adaptations and/or quality assurances deemed necessary by Fabasoft. Once the NCA has been accepted into the Cloud App Store the Developer will continue to develop not only his NCA but also his software with system technical functionality so that both remain compatible and usable with the relevant product release of the Fabasoft Cloud service packages.

3.5 If the NCA supports the Developer's sales activities in his company's designated field of business, the following applies:

(i) The Developer creates the NCA and makes the NCA available to Fabasoft as described in item 3 of this agreement.

(ii) Once the NCA has been completed and approved it is included in the Cloud App Store.

(iii) The NCA supports the Developer's business activity. Fabasoft is in no way involved in this business activity, particularly not in the contract initiation, contract conclusion or contract fulfilment. The Developer is therefore obliged, in the legal conditions, to make explicitly clear that Fabasoft has no rights or duties to fulfil in this contractual relationship, particularly also not for the Developer's customer. Fabasoft has the right to demand that this integral part of the Developer's contract is as clearly formulated as required by Fabasoft. The Developer shall therefore defend, indemnify and hold Fabasoft harmless from all damages concerning all business dealings that the Developer conducts through the NCA in the Cloud App Store. The Developer therefore settles his services from business dealings conducted through the NCA in the Cloud App Store with his customers himself.

3.6 The indemnification obligation on behalf of the Developer towards Fabasoft according to 8.2 also applies for NCAs through which the Developer licenses their own software with system technical functionality via the Cloud App Store (see 3.4 (ix)).

4. Invoicing process

4.1 If the Developer decides to distribute the NCA for a fee, then Fabasoft shall distribute the NCA at the price selected by the Developer.

The net revenue per month that Fabasoft actually and finally receives from the distribution of an NCA (including software with its own system technical functionality licensed through an NCA) shall be settled with the Developer at the end of each calendar month. Payment to the Developer shall be due within 30 days after documentation of the invoicing process. The Developer is obliged to submit legally conformant invoices if Fabasoft requests this.

The net revenue that is actually and finally received from this sale of an NCA by Fabasoft shall be divided at a rate of 50%: 50% between the Developer and Fabasoft.

If the Developer opts for their fee-requiring NCA to take part in Fabasoft's Affiliate Marketing Program, the total and actual collected net financial returns will initially be reduced in accordance with the due Affiliate Marketing fee detailed in appendix ./7, with the remainder to be shared 50%: 50% between the Developer and Fabasoft.

4.2 In so far as an NCA supports the Developer's sales activity in his company's designated business field (see 3.5) the net revenue received by the Developer from his sales activities conducted through the NCA is to be shared between the Developer and Fabasoft at a rate of 92%: 8%. The net revenue is calculated with Fabasoft at the end of each calendar month. Payment to Fabasoft is due within 30 days after documentation of the billing procedure. The Developer shall make all relevant and necessary information for the billing procedure available. Fabasoft is to be granted access to books and accounts.

Fabasoft is obliged to submit legally conformant invoices if the Developer requests this.

5. Service structure

Fabasoft shall operate the service structure described in item 2.4 of this Contract. This service structure enables the highest level of customer service possible to be reached and ensured for the Service Packages and NCAs distributed by Fabasoft.

The Developer shall be contractually obliged to support the operation of this service structure according to the goals indicated above as follows:

5.1 If the NCA is distributed via the Cloud App Store, the Developer shall provide information on the information and discussion platform (see 2.4) concerning new and continued developments involving their NCA including its function, character, and properties. The Developer shall react to suggestions and discussion entries that are related to the Developer's NCA as they are presented in the forum.

5.2 In case support queries involving one of the Developer's NCAs are received and/or errors or access problems involving an NCA of the Developers are reported, then Fabasoft shall forward this information to the Developer for processing. The Developer shall be obliged (as far as may be reasonably expected of him) to respond to this information as quickly as possible within the context of maximum customer satisfaction. This obligation also applies for the software with system technical functionality contained in the NCA.

Errors and access errors involving a Developer's NCA that must be corrected via a hotfix shall be remedied by the Developer via the creation and publishing of an appropriate hotfix. Fabasoft alone shall decide if and when it shall activate the appropriate hotfix or another error-free version. Especially for technical reasons, if an error correction may only be activated over the course of the next production release update, then the Developer shall make the error-free version of his NCA available at a time when Fabasoft is able to activate it along with the next following production release update.

In case customers respond that the reaction to support queries or error corrections do not take place or are delayed, then Fabasoft shall inform the Developer of this. Fabasoft shall allow a suitable grace period, dependent on the defect. If the Developer's approach to corrections does not change after this reminder and the expiry of the grace period, then Fabasoft shall be entitled to reduce the Developer's claim to remuneration for distribution of the NCA to €0.00.

5.3 Regardless of the Developer's service obligations according to item 5, Fabasoft considers it useful that the Developer offers registered and activated Fabasoft Cloud Service Package customers the option to enter into a support agreement directly with the Developer for their NCAs according to the provisions of this Contract.

5.4 The same service obligations that the Developer has to fulfil for their NCA under item 5 also apply for the licensing of software with system technical functionality (see 3.4 (ix)).

5.5 In as far as an NCA supports the Developer in his company's designated business field (see 3.5), the services to be provided by the Developer include the obligation to use his best efforts in direct business activities with customers (through usage of the NCA) to offer and provide service quality as appropriate to this agreement.

6. Distribution

Fabasoft and the Developer agree that an NCA created by the Developer may only be distributed as follows:

6.1 Either via the Fabasoft Cloud App Store or

6.2 Via Fabasoft's own distribution activities (other than the Cloud App Store), especially via distribution to existing and future Fabasoft customers or

6.3 Via the Developers own distribution activities to existing and future Fabasoft customers.

7. Rights

7.1 The Developer shall grant Fabasoft worldwide and unlimited usage rights for the NCA including documentation and the associated source code so that Fabasoft is entitled to all forms of use involving the NCA (its operation in the data center, its distribution etc.), no matter whether it is already known or unknown, and including the right to make changes.

These usage rights shall be granted to Fabasoft only; third parties are excluded.

7.2 For the contract term, the Developer shall remain entitled with regard to the NCA to those measures involved with the Developer's duties resulting from this Contract (2.5, 3.3, 5.1, 5.2, 5.3).

7.3 With regard to software with system technical functionality contained in an NCA (see 3.4 (ix)) Fabasoft's responsibility is only to install this software in operable form in Fabasoft's data centers and to put this software into operation, for which Fabasoft does not have to pay any remuneration. Installation and operation serve to market the software with system technical functionality through the Developer's NCA. Fabasoft's responsibility is restricted to the contract term.

8. Warranty, replacement claims

8.1 For the contract term and for 6 months after the termination of the contract term, the Developer shall guarantee the following to Fabasoft and every legal user of the Developer's NCA:

(i) The character and property of the NCA shall correspond with the specification and description that the Developer has provided as information (see 3.3 (vii)).

(ii) The NCA (its source code, its name) shall not infringe the rights of third parties and is therefore completely free of legal defects.

(iii) The NCA (its content, its use and ownership) shall not infringe the laws of any state in which the NCA may be used.

(iv) The Developer has developed his/her software (including software with system technical functionality licensed with the help of the NCA) free of malware, spyware, back doors or other hidden features that affect or violate the security and/or integrity of the data and will do so for the duration of the Contract.

(v) The Developer shall perform their deliveries and services resulting from this Contract corresponding with the involved agreement provisions in a manner that may be reasonably expected.

8.2 The Developer shall release Fabasoft from all third-party claims to compensation for damages or other claims resulting from use and distribution of the NCA (including those involving the software with system technical functionality licensed through the NCA) created by the Developer, provided these claims are based on the NCA (or software with system technical functionality) created by the Developer.

8.3 Fabasoft shall be liable to the Developer for compensation of damages resulting from this Contract due to deliberate actions or gross negligence.

8.4 Furthermore, Fabasoft's indemnity and non-liability assured by the Developer under item 3.5 of this contract also applies for warranty claims and all other claims for compensation related to the NCA.

9. Contract term

9.1 This Contract shall remain valid for an unspecified duration. This Contract may be terminated by either contracting party with a notice period of three months at the end of each calendar month. Declaration of termination shall be submitted by registered letter. Fabasoft shall refrain from terminating this Contract for a period of three years without providing an important reason or a reasonable explanation.

9.2 If Fabasoft no longer offers an NCA that has been created by the Developer in the Cloud App Store or if Fabasoft deactivates an NCA that has been created by the Developer or if Fabasoft no longer offers the services that are described in the preamble of this Contract (also no longer via a legal successor to Fabasoft), then all of these processes shall no longer affect the legal validity of this Contract, provided Fabasoft provides a reasonable explanation(e.g., technical reasons, commercial reasons, legal reasons, etc.). The rights granted by Fabasoft shall remain unaffected by this.

9.3 If Fabasoft terminates this Contract without providing a reasonable explanation or important reason, then Fabasoft shall be entitled for a maximum period of three years, beginning with the last day of the month corresponding with the termination, to continue to exercise the rights granted via this Contract involving the NCAs that have been created by the Developer. In case an NCA is sold for a fee, then the net revenues that have actually been received by Fabasoft shall be

shared with the Developer according to clause 3 of this Contract for the period that Fabasoft exercises rights resulting from this Contract to an NCA that has been created by a Developer. The Developer shall continue to be entitled to exercise these rights according to item 7.2. After the expiry of this three-year period, the previously indicated rights and duties of Fabasoft shall end, and after this period, the unlimited ownership of the usage rights involving the NCA shall return to the Developer. His obligations as set out by this Contract shall end.

9.4 If Fabasoft terminates this Contract with a reasonable explanation, then Fabasoft shall remain entitled to the unlimited exercise of the rights granted by this Contract (involving NCAs that have been created by the Developer) for an unspecified period. If the interface of an NCA features a trademark or a legally protected logo belonging to the Developer, then Fabasoft shall remove this trademark or logo from the interface within no more than 6 months after the termination of this Contract, provided this is requested by the Developer. The rights and duties of the Developer (especially according to clauses 3 and 7.2 of this Contract) shall end at the time when the termination is declared.

9.5 If the Developer terminates this Contract without declaring an important reason, then the consequences indicated in clause 9.4 shall come into effect.

9.6 If the Developer terminates this Contract declaring an important reason, then the consequences indicated in clause 9.3 of this Contract shall come into effect.

An important reason within the context of the previously indicated provisions of this Contract shall only be present if Fabasoft infringes important provisions of this Contract and the continuation of these long-term obligations no longer seems reasonable to the Developer.

9.7 If Fabasoft no longer offers an NCA in the Cloud App Store as described under item 3.5 of this contract or removes an NCA or software with system technical functionality according to item 3.4 (ix) from productive operation or if Fabasoft definitively no longer offers services as described in the preamble of this contract (also with no legal successor from Fabasoft), such events bring into effect the termination of this contract according to item 9.1 under consideration of the defined periods of notice. Fabasoft shall uninstall the software with system technical functionality in its data centers upon expiry of the cancellation period and shall end the operation of software with system technical functionality.

10. General provisions

10.1 The contracting parties expressly guarantee that they are legally authorized to sign this contract.

10.2 Fabasoft expressly reserves the right to amend or expand the appendices referred to in this contract (links). The Developer shall regularly review the most recent version of these appendices (links). In accordance with the above provisions, reference is made to the most recent descriptions in each case in the form of a dynamic reference. The referenced documents and links are integral parts of this contract.

10.3 Fabasoft hereby grants the Developer a non-exclusive license to use trademarks, trade names, and articles belonging to Fabasoft, and the Developer hereby agrees only to use these trademarks, trade names, and articles within the context of the activities defined in this contract. Within this context, the Developer shall be prohibited from changing or expanding these trademarks, trade names, and articles. These usage rights shall only apply to the respective most up-to-date publicly released versions. The Developer shall not be entitled to award sublicenses. These usage rights shall apply for the contract term.

The Developer shall not use or apply these trademarks, trade names, and articles as part of their company or in any other manner to identify their own business operations.

These usage rights shall expire upon termination of this contract, regardless of the reason involved, without any separate declaration of expiry or special expiry procedure.

10.4 The place of fulfillment for all duties of the contractual partners arising under this contract shall be Linz.

10.5 This Contract and the question of its validity, as well as any prior and resulting effects, shall be subject to Austrian law exclusively, and international private law and the United Nations Convention on Contracts for the International Sale of Goods are hereby explicitly excluded.

10.6 The place of jurisdiction shall be the competent court in Fabasoft's place of business.

10.7 In the event that one or more provisions of these general terms and conditions are or become invalid, the validity of this Contract as a whole shall remain unaffected. In this case, the contracting parties shall be bound to replace the ineffective provision with an effective provision which most closely reflects the commercial purpose of the ineffective provision. The same shall apply to any loopholes present in this Contract.

10.8 Headings used in these general terms and conditions are used solely to provide structure and enhance the clarity of this document. All provisions of this Contract are significant for its interpretation, regardless of their arrangement in the document itself.

10.9 The Developer confirms that they have read these general terms and conditions and all sources listed as well as links and appendices referred to herein in full, have understood them, and agree to their content.