

# Broker Agreement

Fabasoft Cloud

Effective from November 1<sup>st</sup>, 2016

[www.fabasoft.com](http://www.fabasoft.com)

## 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 computing 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.

The contents and outline of these Service Packages are described and specified as appendix ./1 and displayed in their most up to date form at <https://www.fabasoft.com/en/public-cloud/contract>.

1.2 The Broker shall operate as an independent company to purchase Service Packages offered by Fabasoft for the Broker's customers. In addition to this, the Broker shall provide services and software products connected with these Service Packages for their customers. For purchasing Service Packages the Broker will be granted a resale price.

1.3 Fabasoft and the Broker therefore possess a shared interest that

a) the Broker shall offer his own existing customers and future customers Service Packages as an additional application option and that these Service Packages are integrated with the Broker's own sales activities and

b) the Broker shall also offer the customer services connected with Service Packages, especially support services (processing of support queries) or comparable services (e.g. training seminars, commissioning of Service Packages, etc.) or shall perform these independently.

## 2. Assistance on behalf of Fabasoft

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

2.1 Fabasoft authorizes the Broker to conclude business agreements between Fabasoft and the Broker's existing and future customers based exclusively on Service Packages. In the case of such business transaction, the Broker shall acquire one or more Service Packages accordingly to provide usage of these Service Packages for customers of the Broker in turn.

The character and properties of the Service Packages are described and specified in their most up to date form in the Fabasoft Cloud Partner Shop.

2.2 Fabasoft shall operate a service structure via the IT infrastructure implemented in its computing center that enables Beneficial Users who have registered and activated Service Package software products via the Broker to submit support queries to Fabasoft, and these shall be forwarded to the Broker for processing via this service structure.

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

## 3. Broker registration and services

3.1 By correctly completing the registration process as a Broker via the Internet (<https://partner.fabasoft.com>) and agreeing to this Fabasoft Cloud Broker Agreement (also referred to in the following as the 'Contract'), the Broker 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 Broker. The Broker 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/brokeragreement>.

3.2 The Broker shall be obliged to fulfill the duties outlined by this Contract, especially with regard to the services defined in clauses 1.3 a) and 1.3 b), with the due care of a professional businessman.

3.3 The Broker shall promote the distribution of Service Packages and support services or comparable services to the best of their ability and shall actively protect this interest.

The Broker shall add Service Packages in particular to their own operations for their existing and future customers and shall register these customers as Beneficial Users of Service Packages. A Beneficial User is a legal unit (natural person, legal person, plurality of persons) who has opened a corresponding account and who has gained access to a Service Package via the Broker. The Broker is obliged to acquire the Beneficial User's written agreement to register them as a Beneficial User for fee-requiring Service Packages. The Broker is as contracting partner Customer of Fabasoft and the Broker shall also be obliged to make payments to Fabasoft or shall receive invoices for the use of fee-requiring Service Packages by the Beneficial User.

Fabasoft shall separately record each registration process initiated by the Broker's customers that registers and activates them as Beneficial Users of Service Packages. Business transactions between Fabasoft and the Broker's Beneficial Users that are initiated via the Broker shall qualify as the Broker's business transactions, unless the email address indicated during the registration process cannot be assigned to an actual Beneficial User of the Broker (e.g., the address belongs to a fictional, non-existent natural or legal person).

3.4 The fee to be paid by the Broker for a specific business transaction will be determined as follows:

3.4.1 The Service Package agreed with the Broker and the current price at the time of completion of the contract are decisive for determining the fee due to Fabasoft. This price (including the relevant currency) can be seen in the Fabasoft Cloud Partner Shop. For this price Fabasoft guarantees the Broker a purchasing margin, which can also be seen for each Service Package in the Fabasoft Cloud Partner Shop. Payments can only be made in the currencies quoted in the Fabasoft Cloud Partner Shop. The stated prices do not include sales tax.

3.4.2 The agreed fee is fixed at the conclusion of the Contract and remains unchangeable for the duration of the payment period. For any following payment period, Fabasoft withholds the right (for the first and all subsequent new payment periods) to set a new fee for the use of the Service Package, which then applies from the start of the new payment period. If the price of a new payment period is increased by more than 5% in comparison with the last fee charged, the Broker may terminate the contractual relationship within 14 days of the start of the new payment period with the increased price conditions (of more than 5%) in writing to become effective at the end of the month following the charge of the new price. In the case of termination of the contractual relationship by the Broker due to price increase, Fabasoft will charge the Broker the price applicable prior to the price increase for the duration of the notice period.

3.4.3 Upon completion of the contract, the fee is to be paid in advance within 30 days of the receipt of the invoice. Upon request, it may be possible for the Broker to pay the agreed fee by automatic bank transfer, direct debit or other similar payment method.

3.4.4 If the Service Package selected by the Broker involves an activity-based fee then a time limit exists within which the activities are to be carried out. The applicable time period is stated in the Fabasoft Cloud Partner Shop.

3.4.5 The Broker shall not be permitted to offset any receivables to which he is entitled from Fabasoft against payment of the fee. The payment obligation remains effective regardless of whether the requested user accounts are actually used.

3.4.6 Fabasoft expressly reserves the right to terminate or suspend the services being provided, without prejudice to any other rights, in the event of late payment by the Broker. As agreed by both contracting parties, a default interest of 8% above the base rate applies. In addition, the Broker shall reimburse Fabasoft for any collection costs. Furthermore, Fabasoft shall be authorized to permanently delete data stored by the Broker or his Beneficial User in the Fabasoft Cloud data centers.

3.5 Besides distribution activities as described in clause 1.3 a) of this Contract, the Broker shall also be responsible for providing the following services for his Beneficial Users at his own cost and at his own risk according to clause 1.3 b) of this Contract:

In case support queries from a Broker's Beneficial User referring to a Service Package are received and/or errors or access problems involving a Service Package are reported, then Fabasoft shall forward this information to the Broker for processing. The Broker shall be obliged to treat the information provided as First Level Support (direct communication with the Beneficial User, especially with regard to the application or use of Service Packages) and respond to the case as quickly as possible in the interests of maximum satisfaction of his Beneficial Users. Support queries involving problem cases that have not been documented and for which a solution must still be developed shall be treated by Fabasoft free of charge for the Broker's Beneficial Users, provided the cause of the problem case lies outside the Broker's influence. In case of such support queries, the Broker shall be obliged to prepare and forward all information involving the case to Fabasoft so that it is possible to process the problem without the need for further correspondence with Fabasoft.

3.6 Fabasoft shall not accept and liability for support services provided by the Broker for the Broker's Beneficial Users or other equivalent services according to clause 1.3 b) of this Contract. In case the claims of a Broker's Beneficial User are acknowledged by the Broker as a result of support services or other comparable services according to clause 1.3 b) of this Contract, then the Broker shall release Fabasoft from all potential damages and complaints. The Broker must ensure via a corresponding contractual agreement with the Broker's Beneficial User that any claims raised by the Broker's Beneficial User resulting from the services defined in clauses 1.3 a) and 1.3 b) may only be claimed vis-à-vis the Broker. If the Broker exercises their reserved right to grant their Beneficial Users more extensive warranty and liability guarantees or other rights than those specified by Fabasoft's applicable general terms and conditions, then the legal relationship between the Broker and Fabasoft shall continue according to the provisions of the applicable terms and conditions, described and specified as appendix ./2 and displayed in their most up to date form at <https://www.fabasoft.com/en/cloudservices/gtc>, and the provisions of this Contract.

3.7 The Broker may also sign an additional support contract with Fabasoft.

## 4. Other provisions

4.1 The contracting parties expressly guarantee that they are legally authorized to sign this Contract.

4.2 Fabasoft expressly reserves the right to amend or expand the appendices referred to in this Contract (links). The Broker 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.

4.3 Fabasoft hereby grants the Broker a non-exclusive license to use trademarks, trade names, and articles belonging to Fabasoft, and the Broker 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 Broker 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 Broker shall not be entitled to award sublicenses. These usage rights shall apply for the duration of the Contract.

The Broker 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.

4.4 The place of fulfillment for all duties of the contractual partners arising under this Contract shall be Linz/Austria.

4.5 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.

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

4.7 The Broker shall support separate distribution activities within his customers on behalf of Fabasoft to a suitable degree according to the provisions of this Contract.

4.8 The Broker shall not disclose any of Fabasoft's business secrets which may be revealed during the course of this cooperation to third parties, and vice versa.

4.9 This Contract shall remain valid for an unspecified duration. Both contracting parties may terminate this Contract at the end of a respective calendar month. The cancellation period following termination is one month for both contracting parties. Other contracts signed between the Broker and Fabasoft shall remain unaffected by termination of this Contract.

Declaration of termination must be indicated to the respective contracting partner in such a manner that the complete termination period is ensured. Declaration of termination shall be submitted by registered letter.

4.10 This Contract specifies the legal relationships of the contracting parties in full. All agreements, declarations and other circumstances of legal relevance made prior to the signing of this Contract shall be rendered invalid once this Contract becomes legally binding.

Action or failure to act on the part of one of the contracting partners shall not result in the omission of any rights, unless this is declared explicitly in writing.

Where legally permissible, the contracting parties shall refrain from disputing this Contract for the purposes of amending it or rendering it void and shall not attempt to claim that it was signed under legally invalid circumstances or that it is void.

4.11 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.

4.12 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.

4.13 The Broker 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.

4.14 Any possible business, purchasing and delivery, or other contractual provisions vis-à-vis the Broker are hereby explicitly excluded, even in case these are not explicitly contradicted.