Fabasoft

Data Processing Agreement

Fabasoft Personnel File

Valid from May 1st, 2020

Confidential

Contractual partners

This data processing agreement is concluded

between

_____

(hereinafter referred to as the "Client)

and

Fabasoft Austria GmbH, companies' trade register FN 199728v, Honauerstrasse 4, 4020 Linz, Austria,

(hereinafter referred to as the "Supplier" or "Fabasoft")

(hereinafter referred to collectively as the "Contractual Parties")

1. Preliminary remarks and obligation to comply

1.1. The following stipulations shall apply to all data processing services that Fabasoft may fulfil for the Client, within the scope 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 Fabasoft employees or third parties commissioned by Fabasoft may come into contact with the Client's personal data.

1.2. The Client and Fabasoft commit themselves to complying with the respective data projection laws pertinent for them in relation 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, Fabasoft will process personal data on behalf of and following written documentary instructions from the Client, pursuant to the service agreement Fabasoft Personnel File (hereinafter "Main contract") concluded between both parties and in accordance with this agreement.

The most recent version of the Main contract can be viewed online at https://www.fabasoft.com/personnel-file/contract.

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 Client given at a later date.

2.2. Within the scope of this agreement, the Client 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 Client is solely responsible for informing data subjects that their data is collected, processed and used, and informing them of the purpose of this. The Client will ensure that data subjects are informed of any option they have to withdraw.

2.3. 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.

2.4. Fabasoft shall process the following personal data on behalf of the Client:

a) Contact details of the Client.
b) The Client's user data shall remain solely within the Client's control. The Supplier shall not know this information, nor shall they have access to it.

The definition and the differences between contact details and user details are provided in Section 4 of "Performance Characteristics Data Security".

2.5. The purpose of the data processing is for Fabasoft to complete the tasks specified in the service description in the Main contract or to follow the instructions given by the Client. Contact details are used in particular for the purpose of two-factor authentication.

From the Client's perspective, the categories of data subjects are its clients, prospective clients, employees, applicants, suppliers, contractual partners and any other individuals authorized to access the cloud by the Client whose contact data will be processed.

2.6. Data processing shall take place exclusively in Germany, Austria or Switzerland.

The most recent version of the Performance Characteristics Data Center Operation can be viewed online at https://www.fabasoft.com/cloudservices/data-center.

2.7. Because of this responsibility, Fabasoft is able to rectify, block, erase and pass on data to the Client, throughout the duration of this agreement. The rights of data subjects should be protected by the Client. If the Client requires Fabasoft to be involved in the protection of data subjects' rights (particularly their right to information, rectification or erasure), then Fabasoft must implement the relevant measures required immediately, following the Client's instructions.

3. Technical and organizational measures

3.1. Fabasoft must take appropriate technical and organizational measures as per Article 32 of the GDPR to ensure an appropriate level of data protection. Fabasoft will structure its internal organization so as to ensure the implementation of and adherence to particular requirements from the Client and the GDPR and/or national regulations. The most recent version of the Performance Characteristics Data Security can be viewed online at https://www.fabasoft.com/cloudservices/data-security.

3.2. Fabasoft is obligated not to provide any third parties with

a) direct, indirect, comprehensive or restricted access to data or
b) the encryption key used to secure data or the opportunity to circumvent such encryption.

3.3. The most recent version of the "Technical and organizational measures" can be viewed online at https://www.fabasoft.com/tom. This lists all the technical and organizational measures that Fabasoft 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 Client.

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. Fabasoft commits to evaluate and update this data protection and data security plan, whereby changes shall be made with the Client 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. Client's instructions

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

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

4.2. The Client will inform Fabasoft 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. Fabasoft will be informed in writing of any changes without delay.

4.3. Before the data processing commences, the Client will make sure that Fabasoft complies with the technical and organizational measures for data security. The Client will inform Fabasoft if there is any evidence of errors or irregularities when assessing the Client's requirements or data protection regulations.

4.4. If the Client issues instructions that go beyond the contractually agreed scope of services, the associated cost and expenses must be borne by the Client.

5. Fabasoft's duties; data confidentiality

5.1. Fabasoft commits to processing and using the Client's personal data solely for the services specified in the service description in the Main contract, the Client'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). When storing the Client's data, Fabasoft must ensure data secrecy in accordance with national regulations and/or the GDPR.

5.3. Fabasoft shall ensure that the employees involved in processing the Client'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. Fabasoft may pass on information to third persons or data subjects only if prior written consent is given by the Client.

5.5. It is the Client's responsibility to keep a record of all processing activities in accordance with Art. 30 (1) of the GDPR. Fabasoft will support the Client in this. Fabasoft must keep its own record of processing activities in accordance with Art. 30 (2) of the GDPR and must provide this to the Client upon request. Fabasoft will support the Client in their duty regarding any

data protection impact assessment or consultation with the supervisory authorities to be conducted.

5.6. Fabasoft shall inform the Client immediately of any assessment procedures, investigations or measures taken by the data protection supervisory authorities.

5.7. Fabasoft commits to regularly checking compliance with the data protection regulations within its scope of responsibility and, if necessary, to implementing necessary adjustments to the regulations and/or measures for lawful data processing. If Fabasoft should deem an instruction given by the Client to be unlawful, it must inform the Client of this immediately.

5.8. Fabasoft has a data security team at its disposal that is dedicated to data protection issues ("Privacy Team"). The contact details for this privacy team are available at: https://www.fabasoft.com/privacy. The privacy team can be contacted at: privacy@fabasoft.com

If the GDPR and/or national regulations require, Fabasoft will appoint a data protection officer. The contact details of this data protection officer are available at: https://www.fabasoft.com/privacy

5.9. Fabasoft has an obligation to provide the Client with any information the Client deems necessary to carry out comprehensive checks on the order on request and within an appropriate timeframe.

6. Sub-processors

6.1. In accordance with the stipulations below, Fabasoft is permitted to contract sub-processors or to replace sub-processors that have already been contracted.

6.2. Fabasoft shall inform the Client of any intended subcontracting or the change of a sub-processor immediately. The Client shall then have a 14-day period to object. If no objection to the subcontracting or the change in sub-processor is raised for objectively justifiable reasons (see 6.3) within the 14 days, it shall then be deemed approved.

6.3. The Client can refuse the use of a sub-processor only for objectively justifiable reasons. 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 Client 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 an objection being raised and in the absence of an amicable resolution, the Client and the Supplier each have the right to extraordinary termination of the Main contract.

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

6.5. If sub-processors are contracted, they 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 sub-processor by way of a contract *mutatis mutandis* the same obligations as set out in this agreement or any other agreements between the Client and Fabasoft. At the request of the Client, 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 to the Client for all activities and failures on the part of the sub-processor used.

6.7. The engagement of companies affiliated with the Fabasoft Group within the European Union as sub-processors is also deemed approved by the Client on conclusion of this agreement. Companies affiliated with Fabasoft are defined as 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 Client recognizes the legitimate interest of the Supplier to transfer personal data within the group of companies belonging to the Client for internal administrative purposes, including the processing of personal data.

6.8. The current list of sub-processors is available to view in the document "Performance Characteristics Data Security" The most recent version of "Performance Characteristics Data Security" can be viewed online at https://www.fabasoft.com/cloudservices/data-security.

7. Monitoring rights of the Client

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

To this end, the Client may request relevant 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 to provide all information necessary for such monitoring within a reasonable period, at the written request of the Client.

7.3. All significant decisions with regard to data security that concern the organization of the data processing and the procedures applied must be agreed with the Client in advance.

7.4. Fabasoft is obliged to notify the Client without delay of any breach of statutory data protection regulations or of contractual agreements in text form and in such a way that enables the Client to meet its legal obligations. The same applies to failures and any suspected data protection breaches or irregularities during the processing of personal data.

7.5. The Client is entitled to request an audit to be carried out by an independent authority for the purpose of verifying measures on data security or compliance with the data security measures. In such a case, an independent audit authority is to be selected by mutual agreement with Fabasoft. The Client must give reasons for the necessity of the audit. The costs of the audit shall be borne by the party that requests the audit.

The Client shall make the audit documentation available to Fabasoft in the form of an audit report.

For more provisions related to conducting an audit, please refer to Section 3.6 of "Performance Characteristics Data Security".

8. Case of data breach

8.1. Fabasoft is aware of the applicable statutory data protection notification and information obligations, in particular the provisions with regard to time and content.

8.2. Fabasoft shall notify the Client without delay in all cases if it or its employees have breached any provisions for the protection of the Client's data or have breached any specifications agreed in the contract for data processing. This also includes, in particular, if this leads to serious operational interruptions, if there is a suspected breach of the data protection regulations or where other irregularities occur during the processing of the Client's data.

8.3. Fabasoft is obliged to take adequate measures to ensure the protection of the data and to minimize any possible adverse consequences for data subjects in consultation with the Client and to document such measures. If requested by the Client, the documentation must be submitted without delay. If the Client is subject to notification and information obligations, Fabasoft is obliged to assist the Client in this respect.

9. Rights of the data subject

9.1. Fabasoft shall assist the Client in the fulfilment of its obligation to answer requests pertaining to the protection 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 the right not to be subject to a decision based solely on automated processing in an individual case.

9.2. In the event that a data subject approaches Fabasoft directly for the purpose of exercising their rights as a data subject, Fabasoft shall pass this request on to the Client without delay.

9.3. Any withdrawal of consent of a data subject pursuant to Art. 7 (3) of the GDPR received by Fabasoft must also be passed on the Client without delay.

10. Return of data after the contract expires

10.1. Fabasoft has no access to the Client's user data. This personal data remains exclusively under the control of the Client. For this reason, the Client must delete the data it has stored itself after completion of the contract. Alternatively, the Client can also have Fabasoft delete the data. In this case, Fabasoft must receive written instruction to do so, as well as access to the data. Any costs and expenses incurred by Fabasoft in connection with the deletion shall be borne by the Client.

10.2. The Client shall define the measures for the return and/or deletion of the stored data after the end of the contract by way of a contract or instruction. In addition, the Client 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 by no later than 6 months after the end of the contractual relationship. All costs incurred in connection with the completion and/or surrender of the data shall be borne by the Client.

10.3. Client data that could, for example, facilitate verification of the contractual and orderly execution of data processing 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 Client immediately if the Client's data at Fabasoft is no longer secure or is at risk due to becoming the subject of an attachment, seizure or confiscation or due to bankruptcy or insolvency proceedings or other occurrences or actions by third parties. Fabasoft shall inform all pertinent parties in this context without delay that all power over the data lies with the Client.

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 ancillary verbal arrangements have been made to this agreement. A waiver of the requirement for the written form is not permitted – even if this is done in writing.

11.3. This agreement is subject to the law governing the domicile of Fabasoft under exclusion of reference norms and the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction is the competent court at Fabasoft's place of business.

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 Client is obliged to designate and maintain a contact person in the mandatory field provided in the Fabasoft Cloud for this purpose. The Client 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 Client.