



# Cloud Service Agreement ("CSA")

Fabasoft Cloud

Valid from January 1<sup>st</sup>, 2022

Confidential

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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.

## Preamble

- A.** Fabasoft Austria GmbH, companies' trade register FN 199728v, Honauerstrasse 4, 4020 Linz, Austria, (hereinafter referred to as "Fabasoft"), offers the service package 'Fabasoft Cloud' (hereinafter also referred to as "service package") as Software-as-a-Service (SaaS). This service package offers CustomerCustomers the option to save and manage data on the IT infrastructure operated by Fabasoft in the Fabasoft Cloud data centers and to use a software product that is integrated into the service package.

The Cloud Service Agreement (hereinafter referred to as "CSA") regulates the rights and duties of the contractual parties in relation to Fabasoft's Cloud Service.

- B.** The CSA is made up of the following annexes, which constitute integral components:

- ./1 Cloud Service Agreement
- ./2 Software Product Information
- ./3 Data Processing Agreement, including technical and organizational measures
- ./4 Performance Characteristics Data Security
- ./5 Performance Characteristics Data Center Operation

and regulate the contractual relationship between the Customer and Fabasoft on the use of the service package chosen by the Customer.

The Customer can access, read, save and print the current version of the CSA at <https://www.fabasoft.com/public-cloud/contract>.

- C.** It shall be noted that Fabasoft Austria GmbH, companies' trade register no. FN 199728v, Honauerstrasse 4, 4020 Linz, Austria has been appointed a representative, as defined by Art. 3, para. 2 in conjunction with Art. 27 GDPR (EU General Data Protection Regulation), for Fabasoft Schweiz AG, UID no. CH-170.3.023.107-2, Spitalgasse 36, 3011 Bern, Switzerland, within the European Union.

- D.** Customers can contact Fabasoft using the following e-mail address [privacy@fabasoft.com](mailto:privacy@fabasoft.com) in case of any questions regarding the processing of personal data.

The supervisory authority is also available through this contact option for notifications and communications in the event of security or data protection incidents, complaints or ambiguities, as well as for requests for support in answering requests from data subjects, and in reviews.

- E.** The agreement for a cost-free service package shall be concluded for an unlimited period of time and may be terminated by either contractual party without providing a reason, subject to a notice period of one week.

The agreement for a service package subject to a fee shall also be concluded for an unlimited period of time. When concluding the agreement, the Customer has the option to choose the payment period (e.g. over one year). The contractual relationship can be terminated by either party without providing a reason, subject to a notice period of one month to the end of the respective payment period, for which the Customer still needs to pay, in accordance with the agreement.

- F.** Fabasoft is also entitled to claim a charge for the agreement concluded with the Customer, unless the service package is advertised as being cost-free. The applicable prices at the time

of concluding the agreement can be viewed in the present offer. The agreed charge is to be paid in advance of the specific payment period.

- G.** The features and properties of the integrated software product, the use of which are connected with this service package, shall be defined in a separate software product information document. For the respective up-to-date version of the integrated software product, the relevant version of the software product information document is applicable and enforceable. The current version of the software product information document can be found at <https://www.fabasoft.com/public-cloud/spi>.

## 1. Subject of the agreement

- 1.1.** On conclusion of the agreement, Fabasoft grants the Customer a non-exclusive and non-transferable license, which is unlimited in terms of geography and, with regard to term, limited to the duration of the Customer's agreement concluded with Fabasoft on use of the service package (hereinafter referred to as "contract"),
  - (i) to save and manage data on the IT infrastructure operated by Fabasoft in the Fabasoft Cloud data centers and
  - (ii) to use the software products operated there and
  - (iii) to use Cloud apps and/or mobile apps that are sold alongside the service package chosen by the Customer.

The license granted to the Customer and the services provided by Fabasoft in accordance with the agreement shall be referred to as the "service package".

- 1.2.** The features, properties and definition of the service package are specified as follows:

- (i) In the Software Product Information (<https://www.fabasoft.com/public-cloud/spi>)
- (ii) In the Performance Characteristics Data Security (<https://www.fabasoft.com/cloudservices/data-security>).
- (iii) In the Performance Characteristics Data Center Operation (<https://www.fabasoft.com/cloudservices/data-center>).

- 1.3.** Fabasoft expressly reserves the right to change this service agreement and the performance parameters in the service package chosen by the Customer. The version of the service agreement that is applicable to the contractual relationship with the Customer is the one published by Fabasoft made available at the time of concluding the agreement with the Customer or at the start of a new payment period. This also applies to the performance parameters in the service package chosen by the Customer. Changes to the contract will be announced at least 14 days before they take effect.

- 1.4.** For contractual relationships with Customers that correspond to a cost-free service package, a modified service agreement and modified performance parameters are possible and permitted at any point during an existing agreement period. The most up-to-date version published at <https://www.fabasoft.com/public-cloud/contract> applies to the contractual relationship.

## 2. Registration

- 2.1.** Fabasoft requests information (contact details) that is necessary and relevant in order to conclude a transaction with the interested party as a Customer on the basis of this information and to activate the Customer as a user. A description of these contact details

can be found in the annex "Performance Characteristics Data Security" (<https://www.fabasoft.com/cloudservices/data-security>).

### 3. Concluding an agreement

- 3.1. An agreement is concluded between the Customer and Fabasoft through an orderly purchase procedure for the use of a service package. This service agreement applies to this contractual relationship. Upon concluding a contract for a service package, the Customer shall receive the service agreement as confirmation of the contract conclusion as well as an invoice sent by e-mail for service packages that are subject to a fee.
- 3.2. Fabasoft cannot technically establish with certainty whether a Customer really is the person that the Customer claims to be. Therefore, Fabasoft provides no guarantee as to the actual identity of a Customer. For this reason, each Customer must be convinced of the identity of another Customer or of the identities of natural persons allocated by this Customer.

### 4. Agreement duration, agreement termination

- 4.1. The agreement for a cost-free service package shall be concluded for an unlimited period of time and may be terminated by either contractual party without providing a reason, subject to a notice period of one week.
- 4.2. The agreement for a service package subject to a fee shall also be concluded for an unlimited period of time. When concluding the agreement, the Customer shall choose the payment period (e.g. over one year). The contractual relationship can be terminated by either party without providing a reason, subject to a notice period of one month to the end of the respective payment period, for which the Customer still needs to pay, in accordance with the agreement.
- 4.3. Concluding a CSA for certain service packages may require a modification to the payment period of service packages that have already been purchased. During the purchase process in the Fabasoft Cloud Shop, the Customer will be made aware of exactly which modifications to payment periods are linked with the conclusion of a CSA of this kind.
- 4.4. Furthermore, the contractual parties are entitled to cancel the contract with immediate effect on justifiable grounds without complying with notice periods or notice dates.

Good cause that entitles Fabasoft to cancel the agreement with immediate effect includes, in particular: if the Customer is in arrears with payments by more than 30 days, if the Customer has violated their obligations assumed pursuant to this agreement, especially violations of statutory provisions by the Customer (e.g. the Customer advertises for associations or groups – or their methods or activities – that are monitored by security or youth protection authorities), the Customer provides incorrect contact details or payment information to Fabasoft or the Customer damages one or several other Customers. In general, good cause shall also be deemed to exist if the conduct of a contractual party causes the other contractual party to lose trust in the former within the continuing obligation.

- 4.5. The termination declaration and the contract cancellation notification due to good cause must be sent on time and in writing by e-mail to [cancel@fabasoft.com](mailto:cancel@fabasoft.com) or by sending the correctly completed termination form, which is available online at <https://www.fabasoft.com/cancel>; those sent by Fabasoft provided by the Customer when ordering. When the Customer is making the cancellation, they must provide their identification (e.g. name, company, address, companies' trade register number, UID) and

their registered e-mail address in order for the termination to be legally effective. In the event of a termination declaration, it is crucial for compliance with notice periods that the other contractual party receives the termination declaration before the start of the notice period.

- 4.6.** Fabasoft shall use an automatically generated message to inform the Customer, no later than 14 days after termination of the contract, of the upcoming end of the contract and of Fabasoft's authorization to delete the data (user data) stored by the Customer in Fabasoft Data Centers. Subject to a term of at least four months and no more than six months after contract termination, Fabasoft shall be explicitly authorized to permanently delete data saved by the Customer in the Fabasoft Cloud data centers – i.e. in such a way that the process cannot be reversed. This deletion is carried out by Fabasoft irrespective of the quality, nature, intrinsic value and meaning of the data for the Customer. If requested by the Customer in a written declaration to Fabasoft by e-mail within four months after contract termination, Fabasoft is prepared to transfer data specifically designated by the Customer that the Customer had stored on the infrastructure operated by Fabasoft in accordance with this contract on machine-readable data carriers, in exchange for a fee to be decided on an individual basis, within a period of at least four months and no more than six months after the termination of this contract. Documents in the user data will be in the technical format in which they were provided by the Customer and metadata in the user data shall be provided in Fabasoft XML.

Fabasoft therefore recommends that the Customer finds and retrieves their data before the end of this contract at their own initiative.

- 4.7.** At the end of the payment period, if the Customer changes to a service package with lower performance parameters, the Customer must readjust the storage volume they have used for their stored data to fit the lower performance parameters of the newly selected service package when this change of contract becomes effective. Otherwise, Fabasoft shall be entitled to delete this data in accordance with this CSA.

- 4.8. In the context of data processing by Fabasoft as the contract processor for the Customer (as the controller), Fabasoft may commission subcontractors or replace those already commissioned under the provisions of paragraph 5.5.1. of "Performance Characteristics Data Security".** Fabasoft shall inform the Customer of subcontracting or the change of **sub-processor** immediately. The Customer shall then be granted a right of objection.

In the event that the Customer 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 Customer and Fabasoft each have the right to extraordinary termination of this contract.

The Customer and Fabasoft are entitled to terminate this right to extraordinary termination in the present contractual relationship subject to formalities, pursuant to paragraph 4.5. 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 Fabasoft 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.

The current list of sub-processors is available online at <https://www.fabasoft.com/cloudservices/data-security>.

Refer to the provisions in “Performance Characteristics Data Security” and “Data Processing Agreement” with regard to the regulations on data protection and data security in terms of commissioning a sub-processor, as well as the requirements for objection.

## 5. Customer

- 5.1.** The Customer and natural persons named by this Customer (allocated natural persons and their roles) have exclusive authorization to use the service package. A Customer is understood as a legal entity (natural person, legal person, plurality of persons) that has concluded the contract, is responsible for the rights and obligations within the conclusion of the contract and, in particular, therefore also pays for the charges included in the conclusion of the contract. Therefore, the Customer’s identity must be specified in connection with the conclusion of the contract (e.g. name, company, address, companies’ trade register number, UID). Upon concluding the contract, the Customer shall state how many natural persons the Customer intends to assign to roles liable to pay costs for use of the service package forming the subject of the contract and for which storage volume is the foundation of the contract.

## 6. Performance parameters

- 6.1.** The variety of service package options represents the contractually defined performance parameters. If these performance parameters specified with the Customer at the conclusion of the respective contract (e.g. the storage volume) are exhausted, further use of the service package (e.g. data storage) may not be possible.

The Customer has the option to enter into a new contractual relationship with Fabasoft, whereby the Customer selects a service package that offers higher performance parameters.

- 6.2.** The data stored for the Customer is any data for which the Customer is registered as the owner (user data).
- 6.3.** If the Customer upgrades to a service package that offers higher performance parameters during a payment period and/or if the Customer purchases additional service packages during a payment period, the payments for these shall be calculated pro rata for the remaining payment period of the original service package.
- 6.4.** During a payment period for a service package subject to a fee, it is not possible to downgrade to a service package subject to a fee with lower performance parameters.

## 7. Payment, due dates, default penalties

### 7.1. Term-related payment

- 7.1.1.** The service package agreed with the Customer and the current price at the time of concluding the contract are required for the payment due to Fabasoft in accordance with the contract. This price, including the correct currency, can be seen in the present offer. Payments can only be made in the respective currencies that are provided in the present offer. The prices given are net, without VAT.

7.1.2. The agreed payment cannot be changed throughout the payment period specified by the Customer upon conclusion of the contract. For any new payment periods, Fabasoft is entitled (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 respective payment period. If the price increase for a new payment period is more than 5% in comparison with the last price charged, the Customer 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 at the new price. In the event that the contractual relationship is terminated by the Customer due to a price increase, Fabasoft shall charge the Customer the price applicable prior to the price increase for the duration of the notice period.

7.1.3. The payment is to be made in advance of the conclusion of the contract and at the start of a new payment period.

## **7.2. Activity-related payment**

7.2.1. These payments concern the use of the service packages, wherein their use is for carrying out activities subject to a fee. The price per activity, including the appropriate currency, can be seen in the present offer. Payments can only be made in the respective currencies that are provided in the present offer. The prices given are net, without VAT. These payments shall be due in advance (before the first activity is carried out). If the Customer has purchased a package for multiple activities, there shall be a time limit for carrying out these activities, which means that the activities must be completed within this limit. The respective applicable time period is specified in the present offer.

## **7.3. General provisions**

7.3.1. Payment of the agreed charge is to be made by automatic bank transfer, direct debit or other similar, automated payment methods.

7.3.2. The Customer is not permitted to offset any receivables to which they are entitled against payment of the fee to Fabasoft. The payment obligation remains effective regardless of whether the requested user accounts are actually used.

7.3.3. In the event of delayed payments from the Customer, Fabasoft reserves the right to suspend or end the services being provided, without prejudice to other rights to which they are entitled. Fabasoft is entitled to this suspension of services, only insofar as this causes no risk to the security or integrity of the Customer's (personal) data. Interest on arrears of 8 percentage points above the base interest rate according to the publication of the Federal National Bank at Fabasoft's place of business shall be considered as agreed. In addition, the Customer shall reimburse Fabasoft for all necessary costs that are incurred in connection with collection. Fabasoft shall also be authorized to delete data stored by the Customer in the Fabasoft Cloud data centers in such a way that the process cannot be reversed. (see point 4.6)

## **8. Warranty**

**8.1.** The requirements for objective and/or content-specific performance and contractual fulfilment and the determination of guaranteed properties and/or the agreed characteristics of the service package agreed with Customer (including, for instance, the hardware and software environment required by the Customer, availability, response times, data storage



method and methods for measuring, recording and documenting performance parameters) are solely determined under the links specified in paragraph 1 of this contract.

Fabasoft guarantees that the type, features and properties of the service package agreed with the Customer in individual cases shall fundamentally meet the performance parameters attributed to the most recent version of the respective service package.

- 8.2.** If the service is not performed in accordance with the contract, or is performed with errors, if the circumstances can be recreated by Fabasoft and Fabasoft is able to achieve these circumstances, Fabasoft shall be obliged to produce a defect-free condition for the Customer at no additional cost and within a reasonable period. This is conditional on an objection from the Customer that is made immediately and within two weeks of knowledge, at the latest. If the performance of the service in accordance with the contract fails significantly for reasons that fall within Fabasoft's control, even within a reasonable period set by the Customer, the Customer is entitled to terminate the contract without notice. In this case, Fabasoft shall be able to claim payment for the services performed as part of the contract up to the point at which the termination of the contract becomes effective. Payment shall be waived only for services for which the Customer is able to prove are of no use or interest to them, within four weeks of notifying of termination.

Further claims by the Customer due to service faults in terms of quality and/or quantity are excluded. This exclusion shall not apply to damage caused by intent or gross negligence, nor to injury to life, body or health.

- 8.3.** Warranty claims are fully excluded in any cases in which Fabasoft performs its services pursuant to the contract for using a service package free of charge.
- 8.4.** Fabasoft shall ensure the high availability of the Data Center operation as described in paragraph 2.1 of the annex "Performance Characteristics Data Center Operation". If the Data Center operation is not available for more than 48 continuous hours outside the reserved maintenance window, and Fabasoft is responsible for this non-availability, in this case Fabasoft shall pay the Customer for each calendar month in which such an event occurs, in lieu of other receivables and claims. This payment shall be a monthly sum that is calculated based on the charge for the Customer's chosen payment period, on a monthly pro-rata basis. Fabasoft shall not be considered responsible for the actual non-availability (lack) of high availability if the failure is caused by the availability/lack of availability of the internet or other long-distance transmission technologies and/or if the failure is caused by war, strike, natural disasters or other comparable cases of force majeure.

## 9. Compensation

- 9.1. Fabasoft's liability for warranty claims, and for any damage, shall be limited to actual realized loss and also to damage that is caused by intent or gross negligence. Fabasoft shall not be liable for consequential or indirect damage. The Customer shall confirm and expressly agree that Fabasoft is in no way liable for damage of any kind that arises through the use of content, websites (including hyperlinks), products and resources (hardware and software environment) belonging to third parties in connection with the service packages.** As Fabasoft has no control over websites, resources and/or materials belonging to third-party providers, the Customer hereby expressly confirms and agrees that Fabasoft is not liable for consequential or indirect damages or for data loss to the Customer that results from the use of such websites or resources in connection with the service packages detailed under paragraph 1 of this CSA. **In the same manner, Fabasoft shall not**

**be liable for any loss of data stored by the Customer, in particular when this is due to force majeure or acts that lie within the Customer's scope of influence. For each individual case covered by the warranty claim or claim for damages, the maximum amount guaranteed for all possible claims shall be limited to the total amount of the fees paid in the past two years.**

**9.2.** When providing its services pursuant to this contract for the use of the service package, Fabasoft is reliant on usable remote data transmission media being available and on an adequate power supply. If Fabasoft is thereby hindered in or prevented from providing services because these essential requirements are not available or not available to the necessary degree, Fabasoft shall not be held responsible for this in any way, regardless of however described.

**9.3.** Fabasoft guarantees that it will not access the data and data content (user data) entrusted to it within the scope of the operation of the Fabasoft Data Centers without obtaining the Customer's prior written consent in each individual case, and will only store such data and content in the Fabasoft Cloud data centers. Therefore, Fabasoft is in no way responsible to Customers or to third parties for the content of the stored data.

Fabasoft is hereby explicitly exempt from deletions, corrections, modifications, corruption, loss of or failure to save data by the Customer. This express exclusion from liability also extends to software viruses and any other harmful computer codes, files, scripts or programs that may be contained in the stored data.

**9.4.** The Customer shall remain solely responsible for the content of the data stored subject to the contract on the use of a service package and general responsibility for usage behavior, as if the data was stored on the Customer's own internal hardware and software. The Customer may therefore use the services provided by Fabasoft pursuant to this contract only in accordance with the respective relevant national, international, cross-national and supranational laws. This means that, in particular, but not exclusively, the Customer shall

- (i) not send spam e-mails or other bulk/unsolicited e-mails
- (ii) not store or send any content that is offensive, obscene, harmful to young people or that violates the personal rights of third parties, or any other illegal or prohibited content
- (iii) not create or introduce any software viruses, worms, Trojan horses or other harmful computer codes, files, scripts, spyware or programs and/or send or store any software viruses known to the Customer (or that ought to be known to the Customer)
- (iv) not take any measures that could compromise or damage Fabasoft's integrity or performance, or their data stored by Fabasoft
- (v) not attempt to gain unauthorized access to Fabasoft's Data Center operations or the associated systems and networks, especially through assuming the identity of other users or by using false identification.

Furthermore, the Customer undertakes to notify Fabasoft immediately of any unauthorized use of their user account, in addition to informing Fabasoft of any other known or suspected violation of data security regulations via e-mail at [support@fabasoft.com](mailto:support@fabasoft.com) or by phone at +43 (0)7 32 60 61 62. In these cases, the Customer shall immediately take all reasonable measures to prevent these types of data security violations promptly.

In all of the aforementioned instances, the Customer shall indemnify Fabasoft against any claims or legal action brought against Fabasoft by any person and against any claims, costs, compensation payments or direct and indirect damages, as well as consequential and indirect damage, consequences and receivables.

## 10. Intellectual property

**10.1.** Fabasoft alone, as well as Fabasoft's licensors, hold all rights and claims to rights, including all associated intellectual property rights, to the use of the provided software products and to improvement suggestions, ideas, enquiries concerning enhancements, feedback, recommendations and other information supplied by the Customer in connection with the use of the provided software products. This contract shall not constitute a sale and does not transfer any rights of ownership or concern the use of software products provided by Fabasoft, meaning that these cannot be transferred or modified by the Customer. The product names of the software products available for use are trademarks belonging to Fabasoft or its affiliated companies, for which expressly no ownership rights or rights of use shall be granted to the Customer.

## 11. Newsletter

**11.1.** Fabasoft is entitled to send regular newsletters to service package Customers. In this newsletter, Fabasoft provides information on new features and product information on the service package.

**11.2.** Moreover, Fabasoft is entitled to send Customers direct advertisements by e-mail for its own similar products or services. If the Customer does not wish to receive any more information or newsletters electronically, they must send an e-mail to [unsubscribe@fabasoft.com](mailto:unsubscribe@fabasoft.com).

## 12. General

**12.1.** The contractual parties explicitly guarantee that they are legally authorized to conclude the contract on the use of a service package. The Customer shall, furthermore, expressly guarantee that the information concerning their identity is accurate and that no false information has been, or shall be provided in the future, in order to gain access to the service package that is the subject of this contract. In addition, the Customer guarantees that the payment details (account details, credit card numbers, etc.) are correct, where provided.

**12.2.** Fabasoft reserves the express right to modify or supplement this CSA at any time. It remains the Customer's responsibility to regularly review the respective most recently updated version of the CSA (see at the link <https://www.fabasoft.com/cloudservices/gtc>). Furthermore, Fabasoft shall announce contractual changes at least 14 days before coming into effect.

Pursuant to the preceding provisions, reference is therefore made to the most recent descriptions in the sense of a dynamic reference. The referenced documents and links are integral parts of the contract.

**12.3.** The place of performance for obligations of the contractual partner given in this agreement is Fabasoft's place of business.

**12.4.** This CSA, in addition to the contract on the use of the service package and the question of its effective entry into force, as well as the initial and subsequent impacts, are subject exclusively to the law at Fabasoft's place of business, under express exclusion of the application of the specifications of international private law and the express exclusion of the United Nations Convention on Contracts for the International Sales of Goods. The governing

language for this contract is German. Texts available in other languages are a non-binding service feature.

- 12.5.** The place of jurisdiction is the competent court at Fabasoft's place of business.
- 12.6.** If one or several provisions in this CSA are, or become, invalid, the validity of the CSA remains unaffected. In this case, the parties are obligated to replace the invalid provision with one that is valid and that comes as close as possible to the economic purpose of the invalid provision. This also applies to any omissions in the contract.
- 12.7.** Headings used in this CSA function solely to structure the document and facilitate readability. All provisions, regardless of their position in the document itself, are to be used in interpreting this CSA.
- 12.8.** The Customer confirms that they have fully read and understood this CSA and all of the sources of information mentioned and links and annexes referenced in this CSA and that they agree with all of the content.
- 12.9.** Provisions that conflict with or add to this CSA, particularly the Customer's terms and conditions, expressly do not constitute contractual content, even if Fabasoft enters into a contract without explicitly prohibiting such provisions.

### **13. Data protection concerns and information on data processing**

- 13.1.** In accordance with the provisions of this CSA, Fabasoft shall be obliged to prevent data, information or materials transferred by the Customer within the scope of using the service package provided by Fabasoft under this contract from being accessed by any person other than Fabasoft itself, and shall be prohibited from using or publishing such data. Insofar as this data includes "personal data" as understood by the respective national data protection laws, Fabasoft shall observe data secrecy within the meaning of the substantive data protection regulations of the respective countries. More information on data protection can be found at <https://www.fabasoft.com/privacy>. Fabasoft has a data security team that is dedicated to data protection concerns. The Fabasoft privacy team can be contacted at [privacy@fabasoft.com](mailto:privacy@fabasoft.com).
- 13.2.** Should Fabasoft be required to appear before a court or another government authority within the framework of a legal obligation or legal process and Fabasoft is obligated to make user data stored by the Customer available for the court or the government authority, Fabasoft shall proceed as follows:
  - (i) Fabasoft shall contact the Customer as quickly as possible (electronically) in order to give the Customer the opportunity to attempt to take legal action to prevent disclosure of the data at the Customer's own expense.
  - (ii) Fabasoft shall cooperate with the Customer to the extent that can be reasonably expected to protect the Customer's data protection rights.
- 13.3.** For the purposes of managing support requests and other services concerning a Cloud app purchased by the Customer, the further development of this Cloud app and the development of new Cloud apps, the Customer hereby grants their prior and explicit consent that the Customer's personal data (contact details) may be passed on to the relevant developer of the Cloud app purchased by the Customer and that the Customer may be contacted by the developer via e-mail.

Contact by the developer in this respect is governed by general statutory provisions.

**13.4.** By concluding this CSA, a data processing agreement in compliance with Art. 28 GDPR (see Annex Data Processing Agreement, including technical and organizational measures, <https://www.fabasoft.com/cloudservices/data-processing-agreement>), which is an integral part of the CSA, is concluded at the same time.

## **14. Confidentiality**

**14.1.** The contractual parties shall also exchange confidential information, if required, as part of the conclusion of this agreement. Confidential information is that which is labelled as “confidential”, or information whose confidential nature can be derived through reasonable, commercial prudence.

**14.2.** The contractual parties shall both handle each other’s confidential information in strict confidence and only use it for the purposes of executing this contract. The confidentiality obligation does not apply to confidential information

- (i) that is, or becomes, publicly known or is accessible to the public or
- (ii) that a contractual party has received from a third party, without this third party breaching a confidentiality obligation or
- (iii) that contains details, facts, experiences and expertise that the receiving contractual party already had before the confidential information was disclosed or
- (iv) that one contractual party must disclose due to a statutory obligation or a judicial/regulatory decision.

**14.3.** Each contractual party shall handle the confidential information of the other contractual party with at least the same amount of due care with which it protects its own confidential information.

**14.4.** In the event that a contractual party is guilty of breaching the obligations drawn from this guarantee of confidentiality, the breaching contractual party shall be obligated to compensate the other contractual party and is also subject to claim for injunction.

**14.5.** In the absence of any contrary mandatory statutory decrees that require an obligation that lasts for a longer period of time, the guarantee of confidentiality shall be in effect for the duration of the term of the contract and expires two years after the contract is terminated.

**14.6.** Furthermore, the contractual parties both undertake to not actively share the personal data obtained through the conclusion and execution of the contract with any third party for commercial purposes, i.e., for the purposes of promoting external competition, without the express consent of the other contractual party. A third party is defined as a legal entity other than the contractual parties and the companies affiliated with them.