

General Terms and Conditions

1. Interpretation and Definitions

The following definitions and rules of interpretation apply in this Agreement.

Additional Support Services	means additional support services outside the scope of the Support Services including change requests and business-as-usual changes, and account management time, as set out in the Cover Sheet.
Additional Support Services Charges	the charges for the Additional Support Services set out in the Cover Sheet.
Aggregated Data	means data in anonymous, aggregated form generated by the Supplier from data processed as a result of the provision of the Services.
Applicable Law	means any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law with which Customer, or Supplier (as applicable) is bound to comply.
Authorised User	means the Customer and the employees, contractors and agents who are authorised by the Customer to use the Services.
Business Day	means any day on which the banks in England are open for business.
Business Hours	means 9am to 5pm on any Business Day.
Charges	the Set-up Services Charges, the PoC Charges, the Subscription Services Charges, the Support Services Charges and the Additional Support Services Charges, in each case as set out in the Cover Sheet.
Commencement Date	the commencement date as set out in the Cover Sheet.
Confidential Information	all confidential information (however recorded, preserved or disclosed) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including the terms of this Agreement, any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party and any information or analysis derived from Confidential Information.

Customer Brand	logos (or other brand identity), trademarks or trade names provided by or used by the Customer.
Customer Materials	the Customer Data together with any materials, designs, domain names, documentation, processes and procedures, information, programs, software and codes supplied by (or on behalf of) the Customer to the Supplier in connection with this Agreement.
Data Protection Laws	as defined in the Data Processing Addendum.
Exchange Rate	means the exchange rate at which the Charges in the Rates Schedule are calculated. As at the Commencement Date those rates are: USD: 1.25 to 1 GBP Euro: 1.17 to 1 GBP
Force Majeure Event	any event outside the reasonable control of either party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, disaster or any action taken by a third party in relation to any third-party software.
Initial Term	the period set out in the Cover Sheet.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright (including source code) and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.
PoC Services	the proof-of-concept services, if any, set out in the Cover Sheet.
PoC Services Charges	the charges, if any, for the PoC Services set out in the Cover Sheet.
PoC Term	if applicable, the period set out in the Cover Sheet.

PSTN	means public switched telephone network.
Renewal Term	the period set out in the Cover Sheet.
Representatives	employees, workers, agents, officers, advisers and other representatives of that party including in the case of the Customer, the Authorised Users .
Services	the Set-Up Services, the Subscription Services, the PoC Services, the Support Services and the Additional Support Services, in each case as set out in the Cover Sheet;
Service Description	the description of the Services as detailed in the Cover Sheet.
Set-up Services	the set-up services set out in the Cover Sheet.
Set-up Services Charges	the charges, if any, for the set-up Services set out in the Cover Sheet.
Site	the cloud hosted property management platform at askporter.com made available to the Customer in accordance with the terms of this Agreement.
Subscription Services	the subscription services for access to the Site set out in the Cover Sheet.
Subscription Services Charges	the charges for the Subscription Services set out in the Cover Sheet.
Supplier IPR	as defined in Clause 8.1.
Supplier Materials	any materials, designs, logos (or other brand identity), domain names, documentation, processes and procedures, information, programs, software and codes supplied by the Supplier to the Customer through the use of the Site or otherwise.
Supplier Personnel	any person engaged from time to time in the performance of the Services, whether an employee, contractor or otherwise of Supplier or any sub-contractor.
Support Credits	the support credits purchased by the Supplier for the Additional Support Services set out in the Cover Sheet.
Support Services	first line support for bugs and error corrections and any upkeep that the Supplier may provide or perform with respect to the Site as set out in the Cover Sheet, but which does not constitute a new version or Additional Support Services.

Support Services Charges	the charges for the Support Services set out in the Cover Sheet.
Term	the PoC Term, the Initial Term together with any Renewal Term.
User Content	content uploaded by Authorised Users as further described in the EULA.
VAT	value added tax or any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.
Working Day	a day (other than a Saturday or Sunday or bank and/or public holiday in England or Wales).

2.The Services

Subject to payment of the Charges and the terms and conditions of this Agreement, the Supplier shall provide the Customer with the Services.

3.Rights of Use

- 3.1. In relation to the Site and as part of the Subscription Services the Supplier hereby grants to the Customer a non-exclusive, non-transferable licence to allow Authorised Users to access the Site for the Term provided that:
 - 3.1.1. the Customer adheres to the terms and conditions of this Agreement and procures that Authorised Users shall adhere to the terms and conditions of the EULA;
 - 3.1.2. the Customer shall be liable for all acts and omissions of any Authorised User and warrants that it shall meet its obligations under Clause 3.1.1;
 - 3.1.3. all Charges are paid on or before the due date for payment set out in the Clause 5.2 below;
 - 3.1.4. access to the Site for the purpose of receiving the Subscription Services is provided only in accordance with the agreed access detailed in the Cover Sheet; and
 - 3.1.5. the Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Site or Services and notify the Supplier promptly of any such unauthorised access or use.
- 3.2. The Subscription Services may be unavailable in the following circumstances, which, for the avoidance of doubt, shall not amount to a breach of the Supplier's obligations under this Agreement.
 - 3.2.1. as a result of scheduled maintenance being undertaken on the Site, the Supplier shall provide the Customer with reasonable notice of such maintenance; and
 - 3.2.2. as a result of emergency maintenance at any time to preserve the security and reliable operation of the Site and Subscription Services and shall provide as much notice as possible in the circumstances.

4.Customer Obligations

- 4.1. The Customer shall:
 - 4.1.1. provide the Supplier with all necessary co-operation and access to such information, documentation and data as may reasonably be required by the Supplier in order to provide the Services;
 - 4.1.2. be responsible for obtaining any necessary import licences, permits, notifications or certifications necessary for the use of the Services. The Customer shall be responsible for any customs duties, clearance charges, taxes and other amounts payable;
 - 4.1.3. comply with all applicable laws and regulations (as updated and amended from time to time) and maintain all necessary licences, permits, authorisations and consents in connection with this Agreement and its use of the Services;

- 4.1.4. carry out all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner;
- 4.1.5. comply with the terms and conditions of any third party service provider utilised by the Supplier to provide the Services including in particular Twilio's terms of service: <https://www.twilio.com/en-us/legal/tos>
- 4.1.6. promptly perform all its obligations set out in this Agreement;
- 4.1.7. appoint the Customer Representative for the Term to serve as primary contact with the Supplier and inform the Supplier of a change to the Customer Representative;
- 4.1.8. promptly notify the Supplier of any demonstrable failure by the Supplier to deliver the Services in accordance with the Service Levels;
- 4.1.9. not make any representation, warranty, guarantee or other commitment or statement relating to the Services (including in relation or connected to features, specifications and capabilities) other than those expressly set out in this Agreement or as agreed in writing between the parties from time to time;
- 4.1.10. If the Customer becomes aware that an Authorised User's use of the Site or Services breaches the EULA, the Customer shall:
 - 4.1.10.1. remove the relevant offensive or infringing User Content;
 - 4.1.10.2. suspend the relevant End-User's account and that End-User's access to the Site and Services, for so long as the relevant breach remains unremedied without prior notice to the relevant End-User; and
 - 4.1.10.3. be responsible for any further obligations that the parties may agree to for the Services.

4.2. In relation to the Authorised Users, the Customer undertakes that:

- 4.2.1. the maximum number of Authorised Users that it authorises to access and use the Subscription Services is the agreed number in the Cover Sheet; and
- 4.2.2. each Authorised User shall keep a secure password for their use of the Services, such password shall be changed no less frequently than monthly and that each Authorised User shall keep their password confidential.

4.3. The Supplier shall not be held liable for any breach of this Agreement to the extent that such breach is caused in whole or in part by the Customer's failure to perform its obligations under this Clause 4.

5. Charging and invoicing

- 5.1. The Customer shall pay the Charges set out in the Cover Sheet to the Supplier in accordance with this Clause 5.
- 5.2. At the end of each month, the Supplier shall prepare and send to the Customer an invoice setting out the Charges incurred during the previous month. The Customer shall make payment to the Supplier of each invoice in full and cleared funds within Ten (10) days of the date of the invoice.

- 5.3. All fees, charges and other payments to be made by the Customer are exclusive of VAT and all other relevant taxes, for which the Customer shall be responsible.
- 5.4. All Charges shall be charged and paid in the currency stated in each invoice and shall be agreed between the parties prior to the date of the invoice. If there is no agreement as to a specific currency, then all Charges shall be charged and paid in pound sterling (£/GBP).
- 5.5. The Supplier may increase the Charges in accordance with the arrangements set out below:
- 5.5.1. at any time during the Term, to reflect any increase in costs of third party software on giving not less than ninety (90) days' prior written notice to the Customer;
 - 5.5.2. prior to the conclusion of the Initial Term or any Renewal Term on not less than ninety (90) days' written notice to the Customer; and
 - 5.5.3. On [10] days notice where the Exchange Rate applied against the calculation of the Charges set out in the Rate Schedule increases.
- For the avoidance of doubt, any increase in the amount payable by the Customer to the Supplier during the Initial Term or Renewal Term which is due to increased volumes charged at agreed prices, shall not be considered an increase in Charges for the purpose of this clause.
- 5.6. Subject to clause 5.7, the Customer may at any time during the Term purchase Support Credits. Unless otherwise agreed, these shall be invoiced and payable in accordance with clause 5.2.
- 5.7. Support Credits shall not be available to the Customer during the PoC Term. The Customer may purchase Support Credits at any time during the Initial Term and any Renewal Term provided that all Support Credits purchased during the Initial Term or Renewal Term are used prior to the expiry of the Initial Term or applicable Renewal Term (unless otherwise agreed in writing). The Customer shall not be entitled to a refund of any Support Credits on termination or expiration of this Agreement.
- 5.8. The Supplier shall report the usage of the Support Credits used for the Additional Support Services to the Customer on a monthly basis, setting out the amount of Support Credits used and the amount of the remaining Support Credits available.
- 5.9. The Charges are to be paid by the Customer in full and the Customer is not entitled by reason of set-off, counterclaim, abatement or other similar deduction to withhold payment of any amount due to the Supplier.
- 5.10. If any sum is not paid on or before the due date under this Agreement, the Customer shall pay the Supplier interest on the outstanding amount until payment is received in full and cleared funds at a rate equal to 4% above the Bank of England base rate from time to time in force, whether before or after judgement until the date actual payment is received.

6.Changes to the Services

- 6.1. Provided that such changes do not materially reduce the functionality of the Services, the Supplier shall be entitled to make changes to the Services and Site from time to time for the purposes of:

- 6.1.1. maintaining the security and/or performance and/or availability of the Site and/or Services;
or
- 6.1.2. complying with all applicable laws, statute, regulation, order, regulatory policy, guidance or industry code in any relevant jurisdiction.
- 6.2. Any changes implemented in accordance with Clause 6.1 shall be notified to the Customer as soon as reasonably practicable.

7.Audit

Subject to being given at least five (5) Working Days' prior written notice (or if the Supplier reasonably believes, that the Customer has breached a term of this Agreement and the Customer cannot provide evidence of its compliance with the terms of this Agreement or if required by applicable law or a regulator, such shorter notice as is reasonable), the Customer shall permit the Supplier and/or a third party on its behalf access during normal business hours to copies of relevant documents, data and information for the sole purpose of ensuring that the Customer and its Authorised Users where applicable, are complying with this Agreement including the EULA. In the event of any non-compliance, the Customer shall rectify the breach within fourteen (14) days of notification by the Supplier (including payment of any unpaid or outstanding Charges).

8.Intellectual property rights

- 8.1. All Intellectual Property Rights in the Site, Services, Supplier Materials and all other Intellectual Property Rights arising out of the performance of the Supplier's obligations under this Agreement ("**Supplier IPRs**") are, and shall remain, the property of the Supplier or its licensors. The Customer acquires no rights in or to such Supplier IPRs other than those rights expressly granted by this Agreement.
- 8.2. The Customer shall at the request and expense of the Supplier do, and shall use all reasonable endeavours to, procure that any necessary third party shall do, all necessary acts and execute all documents that the Supplier may reasonably request to perfect the right, title and interest of the Supplier in the Supplier IPRs.
- 8.3. The Customer shall promptly report to the Supplier any infringement of the Supplier IPRs that comes to its attention. Without prejudice to the generality of the foregoing, the Customer shall ensure that each Authorised User, prior to use of the Services and the Supplier Materials, is made aware that the Services and the Supplier Materials are proprietary to the Supplier.
- 8.4. Save where expressly agreed in writing by the parties, the Customer acknowledges and accepts that nothing in this Agreement shall prevent or restrict the Supplier from exploiting and or licensing any of the Supplier IPRs to any third party.

9. Licence to use Customer trademarks and materials

- 9.1. Subject to Clause 9.2 and Clause 12 below, all Customer Materials supplied or provided by Customer and/or any other Authorised User shall be and shall remain the exclusive property of the Customer and the Supplier shall acquire no right, title or interest in or to the same.
- 9.2. Customer hereby grants a non-exclusive, worldwide, royalty free, non-transferable licence to the Supplier to use the Customer Materials solely, and to the extent necessary, to provide the Services.

10. Data

- 10.1. Each party shall comply with the obligations set out in the Data Processing Addendum at Schedule 3 of this Agreement.
- 10.2. The Customer agrees and hereby agrees and consents to the Supplier creating Aggregated Data. The parties agree that the Supplier shall own such Aggregated Data (that is not personal data) and as such may retain, use, combine and share such Aggregated Data with any third party for the Supplier's business purposes during or after the Term of this Agreement.

11. Confidentiality

- 11.1. Each party shall keep the other party's Confidential Information confidential and shall not:
 - 11.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement ("**Permitted Purpose**"); or
 - 11.1.2. disclose such Confidential Information (in whole or in part) to any third party, except as expressly permitted by this Clause 11.
- 11.2. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 11.2.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 11.2.2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause 11.
- 11.3. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that (to the extent it is legally permitted to do so), it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.4. On termination of this Agreement, each party shall on request from the other party:
 - 11.4.1. return to the other party or destroy all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

- 11.4.2. erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- 11.4.3. certify in writing to the other party that it has complied with the requirements of this Clause, provided that the Recipient may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by Applicable Laws or applicable governmental or regulatory authority.

12.Publicity

Subject to the Customer's written consent, the Supplier shall be entitled to use the Customer's Brand, in its marketing and promotional material.

13.Warranties

- 13.1. The Supplier warrants to the Customer that:
 - 13.1.1. it owns or has obtained all necessary rights or licences (as applicable) in and to the Site necessary to grant access to the Site to receive the Subscription Services as set out in this Agreement;
 - 13.1.2. it will provide the Services using reasonable care and skill and in all material respects in accordance with the Service Description.
- 13.2. In the event of breach of Clause 13.1.2 by the Supplier, the Supplier shall at its option: (i) repair or replace the impacted Services within a reasonable time; (ii) refund any pre-paid Charges for unused Services which have been adversely impacted as a direct result of the Supplier's breach; or (iii) agree with the Customer an appropriate remedy such remedy to be actioned within a mutually agreed timeframe and in accordance with all Applicable Laws at the Supplier's cost.
- 13.3. The Customer acknowledges that Clause 13.2 sets out the Customers sole and exclusive remedy in respect of the Supplier's breach of Clause 13.1.2. Save for the warranties expressly set out in this Agreement, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.

14.Anti-Bribery

- 14.1. Both parties shall:
 - 14.1.1. comply with all Applicable Laws, statutes relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("**Relevant Requirements**");
 - 14.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
 - 14.1.3. have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and shall enforce them where appropriate.

15.Indemnities

- 15.1. Subject to Clause 15.2 and the cap on liability in Clause 16.1 the Supplier agrees to defend Customer against any third party claim that Customer's use of the Services or Site in accordance with this Agreement directly infringes a third party's copyright or directly misappropriates a trade secret (but only to the extent such misappropriation is not a result of Customer's actions) and shall indemnify, defend and hold harmless Customer from the resulting costs and damages finally awarded against the Customer to such third party by a court of competent jurisdiction.
- 15.2. If any third party makes a claim, or notifies an intention to make a claim against the indemnified party, which may reasonably be considered likely to give rise to a liability under Clause 15.1 (as applicable) ("**Indemnity Claim**"), the indemnified party shall:
- 15.2.1. immediately give written notice of the Indemnity Claim to the indemnifying party, specifying the nature of the Indemnity Claim in reasonable detail;
 - 15.2.2. not make any admission of liability, agreement or compromise in relation to the Indemnity Claim; and
 - 15.2.3. allow the indemnifying party to conduct all negotiations and proceedings and will provide the indemnifying party with such reasonable assistance, documents, records and information as required by the indemnifying party regarding the Indemnity Claim.
- 15.3. If an Indemnity Claim is made (or the indemnifying party reasonably anticipates an Indemnity Claim is reasonably likely to be made) the indemnifying party may, if applicable, either:
- 15.3.1. procure for the indemnified party the right to continue using the relevant item which is subject to the Indemnity Claim; and/or
 - 15.3.2. replace or modify the relevant item with non-infringing substitutes.
- 15.4. Nothing in this Clause shall restrict or limit either party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this Clause 15.

16.Limitation of liability

- 16.1. Subject to Clauses 16.2 and 16.3, the total aggregate liability of each party to the other in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall not exceed an amount equal to 100% of the Subscription Services Charge paid by the Customer to the Supplier in the twelve (12) months prior to the event giving rise to the liability.
- 16.2. Subject to Clause 16.3, neither party shall be liable to the other for any loss of profits; loss of anticipated savings; loss of revenue; loss or damage to reputation or goodwill; loss of opportunity; loss or corruption of data (in each case whether direct, indirect, special or consequential) or any other indirect, consequential or special loss or damage.
- 16.3. Nothing in this Agreement shall limit or exclude either party's liability for
- 16.3.1. death or personal injury resulting from negligence;

- 16.3.2. fraud or fraudulent misrepresentation; or
- 16.3.3. any other liability the exclusion or limitation of which is not permitted by Applicable Law.

17. Commencement and duration

- 17.1. This Agreement commenced on the Commencement Date, and then, subject to clause 18.1, shall continue for the Initial Term.
- 17.2. After the expiry of the Initial Term, this Agreement shall automatically renew for the Renewal Term , unless terminated earlier in accordance with Clause 18.

18. Termination and suspension

- 18.1. Either party may terminate this Agreement by providing twenty (20) days written notice to the other prior to the expiry of the PoC Term.
- 18.2. Provided the Agreement is not terminated in accordance with clause 18.1, either party may terminate this Agreement by providing sixty (60) days written notice to the other prior to the expiry of the Initial Term or any Renewal Term (such notice to take effect on the expiry of the Initial Term or Renewal Term).
- 18.3. Without prejudice to any rights or remedies that have accrued under this Agreement, during the Term either party may at any time terminate this Agreement (or any part thereof) with immediate effect by giving written notice to the other party if:
 - 18.3.1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Working Days after being notified in writing to do so;
 - 18.3.2. where permitted by law, the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 18.3.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 18.3.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 18.4. Without prejudice to any rights or remedies that have accrued under this Agreement, during the Term the Supplier may at any time terminate or suspend this Agreement, in whole or in part with immediate effect if:
 - 18.4.1. the Customer is in breach of any Applicable Law;
 - 18.4.2. any undisputed amount due under this Agreement is outstanding for thirty (30) Working Days following the applicable due date to make such payment;

- 18.4.3. in the Supplier's reasonable opinion, the security or integrity of the Site and/or Services has been, or may be, compromised or is otherwise at risk; or
- 18.4.4. required by a regulatory authority.
- 18.5. Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 18.6. On termination of this Agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any services that it has supplied, or work completed, but for which no invoice has been submitted, and the Customer shall pay these invoices in accordance with Clause 5.2.
- 18.7. Upon termination of this Agreement by the Supplier pursuant to clauses 18.3, 18.4.1 and 18.4.2, the Customer shall pay the Supplier any third party costs it incurs in connection with the early termination of this Agreement. The Supplier shall act reasonably in connection with incurring such costs and seek to mitigate them as far as possible.
- 18.8. Clauses 8, 10, 11, 15, 16, 18.5, 18.6, 18.7, 21, 22, 23, 24, 25 and 29 shall survive expiry or termination of this Agreement.

19. Assignment and novation

- 19.1. The Customer shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 19.2. The Supplier may assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement provided it gives written notice of such to the Customer as soon as reasonably practicable after such has occurred.

20. Waiver

Unless expressly stated otherwise in the Agreement, no failure or delay by a party to exercise any right or remedy provided under this Agreement shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

21. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. Entire agreement

- 22.1. This Agreement (together with any non-disclosure agreement signed by the parties in respect of the subject matter of this Agreement) constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

- 22.2. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

23. Severance

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

24. Third-party rights

No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement.

25. Force majeure

Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event.

26. Notices

- 26.1. Any notice required to be given pursuant to this Agreement shall be in writing and shall be delivered personally, or by prepaid post (by airmail post if to an address outside the country of posting), or by email to the relevant party at the address set out at the beginning of this Agreement or any other address as either party notifies to the other in writing from time to time.
- 26.2. A notice shall be deemed to have been received:
- 26.2.1. if delivered personally, at the time of delivery; or
 - 26.2.2. in the case of pre-paid first-class post, three (3) Working Days (or five (5) Working Days if to an address outside the country of posting) from the date of posting; or
 - 26.2.3. in the case of email, on the day it is sent provided that it is sent during Business Hours. If the email is sent on a day that is not a Business Day or after 5pm on any Business Day, the email will be deemed received at 9am on the following Business Day.
- 26.3. This Clause shall not apply to any notice given in legal proceedings.

27. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

28. Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the non-exclusive jurisdiction of the courts of England.

Schedule 1 - Service Level Agreement

Service Level Agreement

1. Definitions

- 1.1. For the Purposes of this Service Level Agreement the following terms shall have the meanings given to them below any defined term not described below shall be given the meaning provided in the Agreement:

“Available” means service is operational to perform critical business processes;

“Completed Restoration Time” means the time the Service is available after a Disaster Declaration;

“Disaster Declaration” means a written statement from Supplier informing the Customer of the declaration of a disaster affecting the Availability of the Service.

“Disaster Recovery Plan” means the Supplier plan to recover the Service in an alternate Data Centre;

“Force Majeure Event” means any delay, error, failure, or interruption of performance due to any act of God, terrorism, war, insurrection, riot, boycott, strike, or other labour or civil disturbance, interruption of power service, interruption of communications services, problems with the internet, epidemic, pandemic, act of any other person not under the reasonable control or direction of Supplier;

“Planned Downtime” means the time designated to allow Supplier to properly maintain and/or update the Service or to maintain the performance of the Service, as set out in this Service Level Agreement;

“Possible Available Uptime” means service operational hours (24/7 minus planned downtime);

“Service Credit” has the meaning given to that term in paragraph 5.1 of this Service Level Agreement;

“Service Level” means the level of Service provision by the Supplier as further set out in this Service Level Agreement; and

“Unplanned Downtime” means any time during standard service availability hours when the Service is not Available, other than Planned Downtime.

2. Service Levels & Service Credits

- 2.1. The Supplier acknowledges that any failure to meet a Service Level may entitle the Customer to the rights set out in this Service Level Agreement below, including the right to any Service Credits.
- 2.2. The Supplier acknowledges and agrees that any Service Credit is a price adjustment reflecting the value of any lost service caused by failure to meet a Service Level. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

3. Performance Monitoring

- 3.1. The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 3.2. The Supplier shall immediately notify the Customer in writing if the level of performance of any element of the Services during the term of the Agreement is likely to or fails to meet any Service Level.

4. Service Levels

- 4.1. Supplier shall work with the Customer to ensure that the Uptime SLA Percentage, exclusive of Planned Downtime and Unplanned Downtime, measured on a monthly basis, is at least **99.9%** ("**Uptime Availability Target**") based on forecasted volumes. Service performance against the Uptime Availability Target (the "**Uptime SLA Percentage**"), shall be calculated using the following formula:

$$\text{Uptime SLA Percentage (\%)} = \frac{(\text{Possible Available Uptime} - \text{Unplanned Downtime}) \times 100}{\text{Possible Available Uptime}}$$

5. Service Credit.

- 5.1. Subject to the applicable assumptions, dependencies, and exceptions provided in this Agreement, Customer shall, by written notice issued within 30 days of the end of each month during which a Service breach has been identified, be entitled to a credit ("**Service Credit**") determined by the percentage by which the Uptime SLA Percentage in the month concerned falls below the Uptime Availability Target, as detailed in the following table:

% Uptime SLA Percentage (per Calendar Month)	Service Credit (% of Service monthly fee)
< 99.9% - ≥ 99.5%	5% credit
< 99.5% - ≥ 98.0%	10% credit
< 98.0% - ≥ 95.0%	20% credit
< 95.0% - ≥ 90.00%	30% credit
< 90.00%	40% credit

For example: January 2023 has 31 days total. With a potential uptime of 24 hours a day. Equating to 744 hours.

Therefore 3 hours of unexpected outage would equate to the following calculation.

$$(3/744) * 100 = 0.4\% \text{ Total unplanned downtime}$$

This would result in the Supplier applying a 5% credit to the following month's invoice.

- 5.2. Service Credits will be applied against the usage fees next due from Customer. Where Customer pays annually, the Service Credit will be based on the attributable monthly fee, equal to 1/12th of the annual fee for the Service in question.

- 5.3. If Service Credits cannot be applied to future usage fees because the Order Form has expired or terminated, the Supplier will pay Customer the amount of the Service Credits applicable within ninety (90) days of the date of termination.

6. Service notifications

- 6.1. There are two types of notifications about times when services may not be available: **Planned Downtime** and **Unplanned Downtime**.
- 6.2. **Planned Downtime:** The Supplier must inform Customer of any planned maintenance notifications via email [INSERT CONTACT EMAIL ADDRESS], detailing the impact of the change/updates, date(s), time and duration, at least 2 weeks in advance. Where the Supplier cannot inform 2 weeks in advance, the Supplier must inform the Customer as soon as possible. Downtimes should be planned maintenance for times when service usage is expected to be, or historically at its lowest based on regional time zones. In the event a change request results in a Planned Downtime the Supplier shall ensure minimal disruption to the Customers use of the Services.

In the event the Supplier notifies the Customer that a Planned Downtime will take longer than eight hours (8) hours the Customer has the right to challenge the Supplier and request further explanation relating to such a Planned Downtime, should the Customer, in its reasonable opinion, determine that the length of the Planned Downtime is unreasonable an appropriate portion of the time specified shall be deemed Unplanned Downtime accordingly.

The Supplier must notify the Customer of any issues arising from the Planned Downtime and shall be responsible for implementing sufficient processes to recover from any issue during Planned Downtime.

- 6.3. **Unplanned downtime:** Unplanned service incidents occur when one of the services is unavailable or unresponsive due to a failure within the Supplier-managed environment. Where the cause of downtime may be identified as the result of an issue outside the Supplier-managed environment (Brolly) then this shall be excluded from the Uptime calculation. The Supplier is to notify Customer of known service incidents as soon as the Supplier is made aware by email to [INSERT CONTACT EMAIL ADDRESS].
- 6.4. If there is an issue with the integration between Supplier-managed services and Customer-managed services then the Customer may request that the Supplier-managed chat flows should be updated to inform end-users. The resolution of any issue relating to the integration will require involvement from both the Supplier and Customer teams.

7. Service incidents:

- 7.1. A service incident is an event that affects the delivery of a service. Service incidents may be caused by hardware or software failure in the data centre, a faulty network connection due to a change made by the Supplier, or a major data centre challenge. Interruptions caused by third party service providers, or changes made within customer managed environments, aren't considered service incidents. Most service incidents can be addressed using technology and process solutions and are resolved within a short time. However, some service incidents are more serious and can lead to longer term outages as described below:
- 7.1.1. **“Severity Level 1”** means the Site is down or major malfunction resulting in an inoperative system. End Users unable to reasonably perform their normal functions. The specific functionality is mission critical to the business and the situation is considered an emergency.
- 7.1.2. **“Severity Level 2”** means critical loss of functionality or performance resulting in a high number of End Users unable to perform their normal functions. Major failure, inconvenient workaround or no workaround exists. The Site is usable but severely limited.

7.1.3. **“Severity Level 3”** means moderate loss of functionality or performance resulting in multiple End Users impacted in their normal functions. Minor failure, convenient workaround exists/minor performance degradation/not impacting use of the Site.

7.1.4. **“Severity Level 4”** means minor loss of functionality, how-to questions. The issue consists of “how-to” questions including issues related to one or multiple modules and integration, installation and configuration inquiries, enhancement requests, or documentation questions.

System Availability	24/7
Support Hours	9am - 5pm on each Business Day
Procedure For Reporting Issues	https://cs.askporter.com
Minimum System Requirements	Latest major version of Chrome, Edge or Safari

The Supplier shall use reasonable endeavours to fix any incidents in accordance with the response and resolution times below:

Severity	Target Response Time	Resolution Time
Severity Level 1	1 hour	4 hours
Severity Level 2	6 hours	24 hours
Severity Level 3	12 hours	4 days
Severity Level 4	36 hours	14 days

8. Reporting:

8.1. The Supplier is to provide monthly reports on unplanned downtime which can be discussed at quarterly review.

8.2. The Customer and the Supplier will work together to prioritise the resolution of any;

8.2.1. **Post-incident reviews :** For unplanned Customer-impacting service incidents in which there was broad and noticeable impact, a preliminary post-incident review (PIR) should be delivered within 48 hours of incident resolution, followed by a final PIR within five Business Days. The Customer will support the Supplier in identifying the root cause;

8.2.2. **PIR reports:** The detailed PIR report includes: User experience and customer impact, Incident start and end date/time, detailed timeline of impact and resolution measures, and root cause analysis and actions being taken for continuous improvement; and

8.2.3. all other service incidents.

9. Service continuity: The Supplier shall be responsible for providing data backups.

10. Change Process

10.1. **API:** When the Customer makes a change within the platform that will impact a customer managed or supplied API with the Supplier, the change will first need to be tested through the pre-production environment with approval that it meets requirements ahead of the date being planned for when it is to be released into the production environment. There is to also be monitoring by both parties for the first 3 days post live.

10.2. **Performance Reviews.** The Customer and the Supplier will review performance on a quarterly basis. During the POC, the Customer & the Supplier will meet on a monthly basis to review the performance of the system and flow performance. performance.

11. Disaster Recovery

11.1. Supplier shall maintain a Disaster Recovery Plan in the event of a catastrophe or other Force Majeure Event that prevents Supplier from delivering the Services and will use commercially reasonable efforts to have the Services restored to operation as soon as practicable. Target service levels as follows:

11.1.1. Recovery Point Objective (“RPO”) of less than one (1) hour. “Recovery Point Objective” or “RPO” shall mean the maximum amount of data that may be lost when the Services are restored after an interruption. Recovery Point Objective is expressed as a length of time before the failure; and

11.1.2. Recovery Time Objective (“RTO”) no more than eight (8) hours. “Recovery Time Objective” or “RTO” shall mean the maximum time allowed for recovery of the Services following an interruption. Recovery Time Objective is expressed as the length of time between a Disaster Declaration and the Completed Restoration Time to the SaaS Service.

12. Data Backup and Retention.

The Supplier shall back up on a daily basis using a combination of full and incremental backup procedures. Backups will be executed automatically using a predefined schedule.

13. Multi-tenant Configuration.

All environments may be provisioned, at the inception of the Services or in a subsequent upgrade, update or release, in a multi-tenant configuration on shared infrastructure with other Supplier customers. Supplier will implement appropriate controls to provide security and privacy using logical separation of Customer’s data, compute, and storage.

Schedule 2

End User Licence Agreement (EULA)

About our terms of use and services

These terms of use apply to your use of our site and the services provided through our site which include accessing content and information (“**Content**”) from our site (the “**Services**”).

We reserve the right to change the terms of this EULA from time to time and we will notify you of such changes the next time you access the Site. These terms and conditions were last updated on 13/05/2022. Your continued access or use of this Site after such change signifies your acceptance of the updated or modified EULA.

The Services are provided by ask innovations GmbH & Co. KG (we, us and our). We are a company registered at local court Frankfurt am Main, no. HRA 52482 the company's registered address is Herriotstrasse 3, 60528, Frankfurt am Main, Germany.

We may make these Services available to you by a third party (such as your letting agency or your employer) or you may download our app directly from a third party app store onto your mobile, tablet or other electronic device (“**App**”). You are responsible for complying with any terms governing your use of the third party app store. These terms shall apply to you as an individual whether you access our site via our website, by downloading our App or otherwise through online access provided via a third party (our “**Site**”).

You will be assumed to have obtained permission from the owner of any device that is controlled, but not owned, by you to download our App or any Content to that device. You accept responsibility, in accordance with this EULA, for all access to, and use of, any App and Content by you on any device, whether or not it is owned by you.

You acknowledge that the mobile service provider for the device to which you download, or on which you access or use, our App may charge for internet access (including mobile data usage) on that device.

BY DOWNLOADING OUR APP OR OTHERWISE ACCESSING AND/OR USING OUR SERVICES OR SITE, YOU CONFIRM THAT YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS AND ACKNOWLEDGE THAT THEY CONSTITUTE A LEGALLY BINDING CONTRACT BETWEEN US AND YOU. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU ARE NOT PERMITTED TO ACCESS OR USE OUR APP, SERVICES, SITE OR CONTENT AND YOU SHOULD NOT PROCEED FURTHER.

Making changes to the Site

We reserve the right to change the design, features and/or functionality of any App, the Site and the Content at any time. We will either make the updated Site available for you by downloading an updated App or, where your device settings permit it, by automatic delivery of updates. You are not obliged to download any updated App, but we may cease to provide and/or update Content to prior versions of Apps and, depending on the nature of the update, in some circumstances you may not be able to continue using an App until you have downloaded the updated version.

The Services and Content

You may review Content on the Site in accordance with the guidelines on User Content below for personal purposes provided you do not share that Content with third parties or publish or modify it in any way.

We do not guarantee the accuracy or reliability of the Content.

We make or give no representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, quality or fitness for purpose of any Content and, to the fullest extent permitted by law, all implied warranties, conditions or other terms of any kind are hereby excluded. To the fullest extent permitted by law, we accept no liability for any loss or damage of any kind incurred as a result of you or anyone else relying on the Content unless we have fraudulently misrepresented the Content.

The Services can be used offline however this may limit accuracy and may not include information updates.

We will provide the Services with reasonable skill and care.

We cannot and do not guarantee the continuous, uninterrupted or error-free operability of our App, Site or our Services.

Restriction on accessing our Site

You shall not:

distribute or transmit any virus through the Site;

attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Site or the Content except to the extent expressly set out in this EULA or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Site, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties;

circumvent any of the technical limitations of the Site, or decompile or otherwise reconstruct the Site;

not use the Site in a way that could damage, disable, overburden, impair or compromise the Services or the Site;

not collect or harvest any information or data from the Site or Services or attempt to decipher any transmissions to or from the Site;

access, monitor or copy any content or information of this Site using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission;

access all or any part of the Site in order to build a product or service which competes with the Site or Services;

use the Site or Services to provide services to third parties or allow third parties to use the Services;

attempt to obtain, or assist third parties in obtaining, access to the Site;

create a database using the Content;

infringe our intellectual property rights or those of any third party in relation to your use of the App or Service, including by the submission of any User Content (to the extent that such use is not licensed by these terms);

copy, publish or otherwise make available to third parties any of the Content; or

use the Content or Site for commercial purposes. The Site should only be used for your personal use and as one tool to aid and assist your learning.

In your use of the Services, you shall:

comply with all applicable laws and regulations (as updated and amended from time to time,);
be responsible for your use of the Services and Content including your access to the Site; and
comply with any rules, regulations or codes that are imposed by the third party that makes the Site available to you.

User Content

Our Site allows you to submit user-generated content in the form of text, images, videos and other types of media (“**User Content**”). We do not control or review User Content and will not be in any way responsible or liable for such User Content. You are solely responsible for User Content as submitted by you and you acknowledge that User Content submitted by others expresses the views of its respective authors, and not our views. User Content cannot be seen by other users of the Site unless you share it with them.

If you submit any User Content, you must not submit any User Content that:

is racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

contains any viruses and/or other code that has contaminating or destructive elements;

contains any personal data and if you do you shall be wholly responsible for any breach of applicable data protection legislation in doing so;

contains private information of any third party, including, without limitation: surname, addresses, phone numbers, email addresses, social security numbers and credit card numbers;

is unsolicited promotions, mass mailings or “spamming”, transmission of “junk mail”, “chain letters”, political campaigning, advertising, contests, raffles, or solicitations

is false, unlawful, misleading, libellous, defamatory;

not impersonate, or misrepresent an affiliation with, any person or entity.

You agree that, by submitting any User Content, you grant us and our affiliates a perpetual, worldwide, non-exclusive, royalty-free and fully sub-licensable right and licence to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display such User Content (in whole or part) and/or to incorporate it in other works in any form, media or technology, and you waive any moral rights you may have in, or to be identified as the author, of such User Content. However please note that if User Content contains any personal data we will only use this in accordance with our [Privacy Policy](#).

Whilst we do not pre-screen User Content, we reserve the right, in our sole discretion, to delete, edit or modify any User Content submitted by you, at any time. We shall notify you of any material deletions, edits or modifications where reasonably possible.

Your use of the Site

As a condition of your use of the Site, you warrant that (i) all User Content supplied by you on the Site is true, accurate, current and complete, (ii) if you have user login details, you will safeguard your account information and will supervise and be completely responsible for any use of your account by anyone other than you, (iii) you are eighteen (18) years of age or older and (iv) you possess the legal authority to enter into this EULA and to use this Site in accordance with all the terms and conditions herein.

Intellectual Property Rights

All intellectual property rights in the Site, Services and Content (including text, graphics, software, photographs and other images, videos, sound, trademarks and logos), are owned by us or our licensors. Except as expressly set out here, nothing in this EULA gives you any rights in respect of any intellectual property owned by us or our licensors and you acknowledge that you do not acquire any ownership rights by downloading any App or Content or accessing our Site.

We grant you a limited and personal licence to use our Services and Content via the Site in accordance with this EULA.

You agree not to otherwise modify, copy, distribute, transmit, display, perform, reproduce, publish, licence, create derivative works from, transfer, or sell or re-sell any information, software, products, or services obtained from or through this Site, including the Content.

Termination of this EULA

We may end your rights to use the Site and Services at any time by contacting you if you have broken these terms in a serious way.

If we end your rights to use the Site and Services:

You must stop all activities authorised by these terms, including your use of the Site and any Services.

You must delete or remove the App from all devices in your possession and immediately destroy all copies of the App or your access details which you have and confirm to us that you have done this.

We may remotely access your devices and remove the App from them or de-activate your account and cease providing you with access to the Services.

Your personal information

Use of your personal information submitted to us (whether via our App, Site or provided by a third party on your behalf) is governed by our [Privacy Policy](#). Additionally, by using our Site, you acknowledge that internet transmissions are never completely private or secure and that it is always possible that any message or information you send using our Site or by emailing us may be read or intercepted by others.

External links

Our Site may, from time to time, include links to external sites, which may include links to third party offers and promotions. We include these to provide you with access to information, products or services that you may find useful or interesting. We do not control these sites and are not responsible for the content of these sites or for anything provided by them and do not guarantee that they will be continuously available. The

fact that we include links to such external sites does not imply any endorsement of, or association with their operators or promoters.

Our liability to you if you are a consumer (for example, a Service User)

Except for any legal responsibility that we cannot exclude in law (such as for death or personal injury) or arising under applicable laws relating to the protection of your personal information, we are not legally responsible for:

losses that:

were not foreseeable to you and us when the contract was formed; or

that were not caused by any breach on our part;

business losses; and

losses to non-consumers.

This Site, Services and Content are only available for your personal use and in no event shall we be liable to you for any business losses, or for any loss of profit, revenue, contracts, data, goodwill or other similar losses.

If defective digital content that we have supplied damages a device or digital content belonging to you, we will either repair the damage or pay you reasonable compensation. However, we will not be liable for damage that you could have avoided by following our advice to apply an update offered to you free of charge or for damage that was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations that are caused by events outside our reasonable control. We recommend that you back up any content and data used in connection with the Site or App, to protect yourself in case of problems with the Site, App or the Service.

Our liability to you if you are a business user (for example, an employee of a managing agent)

We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; and for fraud or fraudulent misrepresentation.

We shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract between us.

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations that are caused by events outside our reasonable control. We recommend that you back up any content and data used in connection with the Site or App, to protect yourself in case of problems with the Site, App or the Service.

Our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total sums paid by you for the Goods and Services under such contract.

General

You may not transfer or assign any or all of your rights or obligations under this EULA.

All notices given by you to us must be given in writing to the address set out at the beginning of this EULA.

If we fail to enforce any of our rights, that does not result in a waiver of that right.

If any provision of this EULA is found to be unenforceable, all other provisions shall remain unaffected.

These terms and conditions may not be varied except with our express written consent.

These terms and conditions and any document expressly referred to in them represent the entire agreement between you and us in relation to their subject matter. We are required by law to advise you that any contract formed on the terms of this EULA may be concluded in the English language only and that no public filing requirements apply.

This EULA does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

Jurisdiction and governing law

These terms and conditions shall be governed by English law, and you agree that any dispute between you and us regarding them or any application will only be dealt with by the English courts, provided that, if you live in a part of the United Kingdom other than England or outside the United Kingdom, the applicable law of that part of the United Kingdom or the applicable country or state in which you live will govern and any dispute will only be dealt with by the courts there. Nothing shall prevent us from bringing proceedings to protect our intellectual property rights before any competent court.

Contacting us, support and complaints

If you have any questions, require support in respect of your use of the Site and Services or if you think the Site or Services are faulty or mis-described, please contact us by emailing: support@askporter.com.

Schedule 3
Data Processing Addendum

1. Introduction

This data processing addendum (“DPA”) is made in light of the requirements set out in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (the “GDPR”) and applicable Data Protection Laws (as that term is defined below). Terms used, but not otherwise defined, in this DPA shall have the same meaning as set out in the GDPR. This DPA is based on the requirements set out in article 28 of the GDPR.

The purpose of this DPA is to ensure that Supplier provides the Services to Customer in a manner that complies with the Data Protection Laws. In the event of any conflict between the terms of this DPA and the terms of the Agreement, the terms (including definitions) of this DPA shall prevail so far as the subject matter concerns the processing of Personal Data.

2. Definitions

“Data Protection Laws” means all privacy laws applicable to any Personal Data processed under or in connection with this Agreement, including, without limitation, the GDPR and all national legislation implementing or supplementing the foregoing and all associated codes of practice and other guidance issued by any applicable data protection authority, all as amended, re-enacted and/or replaced and in force from time to time;

“Personal Data” has the meaning set out in the GDPR and relates only to personal data of which Customer is the data controller and in relation to which Supplier is providing the Services under the Agreement;

3. General

In respect of the parties’ rights and obligations under this DPA regarding the Personal Data, the parties hereby acknowledge and agree that to the extent that the Customer is the data controller and Supplier is the data processor of the Personal Data processed under this Agreement, Supplier agrees that it shall process all Personal Data in accordance with its obligations pursuant to this DPA.

To the extent that Supplier is the data controller of personal data processed in connection with the provision of the Services, Supplier shall process such personal data in accordance with its privacy policy which can be found on Supplier's website at https://uploads-ssl.webflow.com/645a47774600c916d8fd7fd5/646b386b87313ad336e7e1cc_170423_APPrivacyPolicy%20.pdf

Each party will comply (and will procure that its personnel comply and use commercially reasonable efforts to procure that its sub-processors comply), with all Data Protection Laws applicable to such party in the processing of Personal Data.

As between the parties, Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which the Personal Data was acquired and is shared with Supplier.

4. Details of the Processing

The performance of the Services will involve the processing of Personal Data as set out in Annex 1 to this DPA.

5. Compliance with Controller's Instructions

Supplier shall process the Personal Data only on documented instructions from Customer. As soon as reasonably practicable upon becoming aware, Supplier shall inform Customer if, in Supplier's reasonable opinion, any instructions provided by Customer infringe applicable Data Protection Laws. Supplier will notify Customer (unless prohibited by applicable law) if it is required under applicable law to process Personal Data other than pursuant to the Customer's instructions.

6. Engagement of Sub-Processors

Customer grants to Supplier general authorisation for Supplier to engage another data processor (sub-processor) to carry out processing activities envisaged under this DPA, provided that: (i) Supplier enters into an agreement with each sub-processor containing materially the same terms as contained in this DPA; (ii) Supplier remains fully liable to Customer for any act or omission of its sub-processor; and (iii) to the extent that the sub-processing involves a transfer of Personal Data to a Third Country, Supplier enters into an applicable transfer mechanism with the sub-processor in accordance with clause 7.

The Customer hereby authorises the appointment of each of the sub-processors as listed in Annex 2 of this DPA. Supplier will inform Customer of any intended changes concerning the addition or replacement of sub-processors, 14 days before such change having effect, thereby giving Customer the opportunity to object to such changes.

7. Requests by Data Subjects

As further set out in Chapter III of the GDPR, data subjects have certain rights (e.g. information and access to Personal Data, rectification and erasure, restriction of processing, data portability, right to object and automated individual decision-making). The Customer is obliged to facilitate the exercise of these data subject rights under articles 15 to 22 of the GDPR. Supplier shall, on Customer's written request, assist Customer by appropriate technical and organisational measures for the fulfilment of Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR.

8. Security of Processing, Personal Data Breach, Impact Assessment and Prior Consultation

Supplier shall implement appropriate technical and organisational measures in accordance with article 32 of the GDPR to ensure a level of security appropriate to the risk of the processing. [LM1] As further set out in articles 32 to 36 of the GDPR, Customer has certain obligations (e.g. notification of data breach to the supervisory authority, communication of data breach to the data subject, making a data protection impact assessment and prior consultation with the supervisory authority in certain cases).

Taking into account the nature of processing and the information available to Supplier, Supplier will provide such assistance as Customer reasonably requests in relation to Customer's obligations under Data Protection Laws with respect to (i) data protection impact assessments, (ii) notifications to a supervisory authority and/or communications to data subjects by Customer in response to a security breach, or (iii) the Customer's compliance with its obligations under Data Protection Laws with respect to the security of processing.

Supplier shall notify Customer of any data breaches relating to Personal Data processed under the Agreement as soon as reasonably practicable upon becoming aware.

9. International Transfers

Supplier will ensure that any transfer of Personal Data to a jurisdiction not officially recognised as providing an adequate level of protection of personal data by the UK Secretary of State or the European Commission will comply with applicable Data Protection Laws.

10. Return and Deletion of Personal Data

Supplier shall, at the choice of Customer, delete or return all the Personal Data to Customer at the end of the provision of Services, and delete any existing copies unless Union or Member State law requires storage of the Personal Data.

11. Audit and Records

Supplier shall maintain written records of all categories of processing activities carried out on behalf of the Customer. Supplier shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer. The Customer, or another auditor mandated by the Customer) is entitled to conduct an audit for the purposes set out in this clause 11 once in any twelve month period.

Annex 1

Processing of the Personal Data by the Supplier under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of data subjects set out in this Annex 1.

1. Subject-matter of processing:

askporter will provide cloud hosted services to the customer to provide access and use of the askporter platform(s)

2. Duration of the processing:

The duration of the Agreement.

3. Nature and purpose of the processing:

The purpose of the processing is to allow the customer to upload information and facilitate the exchange of information between the customer, its Authorised Users and Tenants, including handling incoming phone calls, making calls, recording and analysing the conversation and data within these activities.

The nature of the processing is the storage of Personal Data for the purpose of permitting access to the Platform.

4. Type of Personal Data:

- Identification information: name, birthday and gender
- Address
- Contact details (private & business)
- Passwords and phone number
- Messages that Data Subjects write and receive
- Documents that Data Subjects create or sign on the Platform
- Credit Card / Bank account Information

5. Categories of Data Subjects:

Customers, Employees, contractors and suppliers of The Customer, its Authorised Users and the Tenants.

Annex 2

List of Sub-Processors

Twilio Inc.

www.twilio.com

+1 415 390 2337

375 Beale St, San Francisco, CA 94105, United States

Purpose: Handles communication via phone and sms to and from our users.

Google LLC

www.google.com

+1 650 253 0000

1600 Amphitheatre Parkway Mountain View, CA 94043, United States

Purpose: Hosting specialist data services and natural language processing.

Amazon

www.amazon.com

+1 206 266 1000

410 Terry Avenue North, Seattle, WA 98109, United States

Purpose: We are hosting most backend services and databases using their cloud service, Amazon Web Services.

Microsoft

www.microsoft.com

+1 888-725-1047

One Microsoft Way, Redmond, WA, 98052, United States

Purpose: Natural language processing and assistant related services.

Datadog, Inc.

www.datadog.com

20 8th Avenue, New York, NY, 10018, United States

Purpose: System monitoring and alerting.

Schedule 4

Additional Services Purchase Order Pro-Forma

Pro-Forma Purchase Order

PO Number	[INSERT PURCHASE ORDER NUMBER]			
Date	[INSERT DATE]			
Terms and conditions	Agreement for the provision of Software Services for access to the askporter platform between ask innovations GmbH & Co. KG and [INSERT COMPANY NAME] dated [INSERT DATE]			
Item	Description	Quantity	Cost per Credit	Total
Support Credits	[INSERT PACKAGE OF SUPPORT CREDITS]	[INSERT]	[INSERT]	[INSERT TOTAL]
Sub Total				
VAT				
Grand Total				
Payment terms	[INSERT PAYMENT TERMS]			
Issued by	[INSERT BUYER NAME] on behalf of [INSERT COMPANY NAME]			[Signed]
Approved by	[INSERT SUPPLIER NAME] on behalf of ask innovations GmbH & Co. KG			[Signed]