



## ASKIA SOFTWARE AGREEMENT

FOR USE WHERE CLIENT HOSTS THE LICENSED APPLICATIONS "ON PREMISE"

The following terms and conditions (**Agreement**) is made on [DATE] between:

- (1) **Choose an item.**
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("You", "Your", "Customer")

### 1. Background

Askia is the owner and/or licensor of a suite of software applications relevant to the market research sector. You now wish to licence such software applications for installation at your premises under a non-exclusive licence subject to this Agreement.

### 2. Interpretation

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

**Affiliate:** means in relation to a Party, a company that directly or indirectly controls, is controlled by, or is under common control with any subsidiary or holding company of that Party, where control is defined as controlling a majority of the voting rights exercisable at shareholder meetings of the relevant company.

**Agreement Start Date:** the date set out at the top of this Agreement.

**Applicable Law:** means, where applicable to a Party and relevant to this Agreement, any and all (a) legislation, laws, statutes, decisions, rulings, codes, government policies, regulations, by-laws or licensing conditions (including Data Protection Laws); and (b) mandatory industry requirements and regulations, binding codes of practice, and decisions and directions of any relevant governmental or regulatory, co-regulatory or self-regulatory authority or agency of competent jurisdiction.

**Confidential Information:** means all information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), whether orally or in writing, if designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure. Confidential Information does not include any information that: (i) is or becomes generally known to the public, other than due to Receiving Party's breach of this Agreement; (ii) was rightfully known to the Receiving Party before obtaining it from the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

**Data Protection Laws:** means the EU General Data Protection Legislation ("GDPR"), the UK Data Protection Act 2018 and the Electronic Communications (EC Directive) Regulations 2003 each as may be amended, updated or replaced from time to time, as applicable. In this Agreement, unless the context otherwise requires, "Controller", "Processor", "Data Subject", "Personal Data", "process", "processing", "transfer" (in the

context of Personal Data transfers) and "appropriate technical and organisational measures" shall have the meanings and otherwise be interpreted in accordance with the GDPR.

**Documentation:** means the standard user instruction materials describing the use and operation of the Licensed Applications made available by Askia as at the date of this Agreement as may be modified by Askia from time to time.

**Effective Date:** means the date set out in the applicable Order Form.

**Fees:** means the fees set out in an Order Form.

**Initial Term:** has the meaning set out in the relevant Order Form.

**Intellectual Property Rights:** means: (i) patents; (ii) copyrights, moral rights, works of authorship (including copyrights in computer software), and rights in data and databases, design rights (whether registered or unregistered); (iii) trademarks, service marks, internet domain names, trade dress, and trade names, together with all associated goodwill; (iv) registrations, applications, renewals and extensions for any of the items in (i)-(iii); (v) know-how and trade secrets; and (vi) rights of privacy and publicity, as well as other forms of protection of a similar nature anywhere in the world whether or not registered or registerable.

**Licensed Applications:** means the computer software programs in object code form comprising the software products, applications and modules set out in an Order Form and all releases and versions thereof acquired by you during the Term in accordance with the terms of this Agreement.

**Order Form:** an order form entered into under this Agreement.

**Permitted Use Condition:** the limitations or conditions setting out the maximum number of, as applicable, licences, Users, Named Users, Agent Positions, Web Survey Completes or such other criteria or limitations for use of the Licensed Applications set out in an Order Form. "Named User" means a named individual User. "Agent Positions" means the number of Users that can connect to and use the Licensed Application at any one time. "Web Survey Complete" means a record that an online survey or questionnaire has been completed and returned by the respondent.

**Person:** means any: (i) individual; or (ii) partnership, firm, corporation, limited liability company, joint venture, association, trust, unincorporated organization, or other legal entity or organization.

**Renewal Term:** has the meaning given at 3.3

**Support Services:** means the technical support and other services, if any, set out in the Order Form as more particularly described in Schedule 2, *Support and Maintenance*.

**Term:** means the Initial Term together with all Renewal Terms (if applicable) and ending on termination of this Agreement in accordance with its terms.

**Third-Party Additional Terms:** any additional terms and conditions relating to Third-Party Software.

**Third-Party Software:** means, if applicable, any or all of the third-party software identified in Schedule 1, Third Party Software as made available to you pursuant to this Agreement.

**Users:** means, as applicable, your employees, representatives, agents, third party contractors and survey respondents each as authorised by Askia to use the Licensed Applications and who have been supplied licence keys or other permitted access details by you (or by Askia at your request) in accordance with this Agreement.

### 3. Term

3.1 This Agreement shall govern all Order Forms. This Agreement shall commence on the Agreement Start Date and shall, unless terminated in accordance with its express terms, continue until the expiry of all Order Forms between the parties.

3.2 Each Order Form shall commence on the Effective Date, and unless terminated in accordance with this Agreement, shall continue for the Initial Term or then current Renewal Term as applicable.

3.3 Unless terminated in accordance with this Agreement, each Order Form shall renew for a further 12 month period (or such other period as may be set out in an Order Form) ("**Renewal Term**"), unless either Party notifies the other Party in writing of its election not to renew an Order Form (or any part of an Order Form) at least 30 days prior to the expiration of the applicable Initial Term or then-current Renewal Term. Where either Party elects to renew only part of an Order Form, Askia may re-issue an Order Form to reflect the changes.

3.4 Termination of this Agreement shall terminate all Order Forms in effect under this Agreement but termination of any Order Form or part of an Order Form shall not affect any other Order Form or the rest of the partially terminated Order Form.

### 4. Delivery and installation

4.1 Askia will provide all reasonable instructions, including any necessary activation codes or licence keys for you to install and use the Licensed Applications.

4.2 Unless otherwise agreed in writing, you shall be responsible for installing the Licensed Applications in accordance with the instructions provided by or on behalf of Askia.

### 5. Licence

5.1 In consideration of the Fees, Askia hereby grants you, for the duration of the Term, a non-exclusive, non-transferable, non-sub-licensable, revocable (in accordance with Clause 13), worldwide right for you to allow Users to use the Licensed Applications and Documentation solely for your

normal business purposes in accordance with this Agreement. You shall ensure that Users comply with your obligations under this Agreement, and you are responsible for the use and misuse of the Licensed Applications and Documentation by your Users. Any use by your Users not in accordance with this Agreement will be deemed a breach by you of this Agreement.

5.2 You may make as many backup copies of the Licensed Applications as may be necessary for their lawful use. You shall record the number and location of all copies of the Licensed Applications and take steps to prevent unauthorised copying.

5.3 You have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Licensed Applications in whole or in part except in the case of reverse analysis where permitted by Applicable Laws, you may incidentally decompile the Licensed Applications only if it is essential to do so in order to achieve interoperability of the Licensed Applications with another software program or hardware ("**Permitted Purpose**"). Such decompilation shall only be permitted provided the information you obtain in doing so is only used for the Permitted Purpose and is not disclosed to any third party without the Askia's prior written consent and is not used to create any software which is substantially similar to the Licensed Applications and/or Documentation. No use in any manner which would be restricted by copyright shall be permitted.

5.4 If Third Party Software is licensed to you under this Agreement your use of the Third-Party Software may be subject to Third-Party Additional Terms.

5.5 You shall indemnify and hold Askia and its Affiliates harmless against any loss or damage which it may suffer or incur as a result of your use of the Third Party Software not in accordance with the Third-Party Additional Terms.

5.6 You shall:

- (a) ensure that you comply with the Permitted Use Conditions in respect of the Licensed Applications;
- (b) keep a complete and accurate record of all copying, disclosure and use of the Licensed

Applications and of your Users, and produce such record to Askia on request from time to time;

- (c) keep secure and confidential all licence keys, usernames and passwords necessary for accessing the Licensed Applications. Askia shall not be responsible for losses suffered by you resulting from unauthorised use of licence keys, usernames or passwords, where such unauthorised use was due to the fault of you or your Users;
- (d) notify Askia as soon as you become aware of any unauthorized use of the Licensed Applications;
- (e) within 10 days of request, pay for broadening the scope of the licences granted under this Agreement to cover any unauthorized use, an amount equal to the fees which Askia would have levied (in accordance with its then current price list) had it licensed any such use on the date it commenced.

5.7 You shall permit Askia to inspect and have access to any premises (and to the computer equipment located there) at or on which the Licensed Applications are being kept or used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring you are complying with the terms of this Agreement, provided that Askia provides reasonable advance notice of such inspections, which shall take place at reasonable times.

## 6. Support and Maintenance

6.1 Askia shall provide the Support Services in accordance Schedule 2, *Support and Maintenance*.

## 7. Fees

7.1 You shall pay all Fees and charges in accordance with the applicable Order Form and this Agreement. Fees are non-refundable. Save as otherwise set out in an Order Form, Fees are fixed during the Initial Term or, as applicable, any Renewal Term.

7.2 You may add additional users, products and services by executing an additional Order Form that, unless otherwise stated therein, will be co-terminus with the original Order Form. The fee for the added Users, products and services will be in accordance with Askia's then current price list, prorated for the remainder of the Initial Term or Renewal Term (as applicable).

7.3 Unless otherwise specified in an Order Form, all Fees must be paid in **Choose an item**, and are not subject to any deductions, credits, or other set-offs.

7.4 All amounts payable by you under this Agreement are exclusive of **Choose an item**.

7.5 You shall pay each invoice submitted to you by Askia within 30 days from the date of the invoice, unless otherwise stated in the applicable Order Form.

7.6 If you fail to pay any invoice when due, your liability shall be increased to include interest at a rate equal to **Choose an item**, plus 2% per annum on any outstanding balance plus expenses of collection.

7.7 In addition to the Fees, you shall pay Askia's and (as applicable) its third parties' reasonable expenses including, without limitation, for travel to the your offices and accommodation costs.

## 8. Data Protection

8.1 If Askia processes any Personal Data for and on your behalf when performing its obligations under this Agreement, the Parties acknowledge that you or your relevant customer shall be the Controller and Askia shall be a Processor and in such case the Parties shall each comply with their obligations at Schedule 3, *Data Protection Agreement*.

8.2 In addition, each Party may grant the other Party access to Personal Data concerning its personnel and/or personnel of its customers for the purposes of managing the Agreement (for example signing, invoicing...). The Party which is granted access to such data shall act in the capacity of Controller and must comply with the obligations imposed under the Data Protection Laws. In this regard, the Party granting access shall be responsible, on behalf of the receiving Party, for supplying to the relevant personnel all information relating to the corresponding processing.

## 9. Confidentiality and publicity

9.1 The Receiving Party of any Confidential Information will not disclose that Confidential Information, except to employees, officers, agents and/or professional advisors of the Receiving Party (and of its Affiliates) who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities: (a) use such Confidential Information only to exercise rights and fulfil obligations under this Agreement, and (b) keep such Confidential Information confidential. The Receiving Party may also disclose Confidential Information when required by law after giving reasonable notice to the Disclosing Party, such notice to be sufficient to give the disclosing party the opportunity to seek confidential treatment, a protective order or similar remedies or relief prior to disclosure.

9.2 Either party may disclose the existence of the applicable Agreement (but not its terms) without the prior written consent of the other party.

9.3 Askia shall be entitled to use your name and logo on its marketing materials (including its website) and on a press release for the purpose of describing you as a client of Askia.

## 10. Warranties

10.1 Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

10.2 Subject to clause 10.3 to 10.7 inclusive, Askia represents and warrants that the Licensed Applications will perform substantially in accordance with the Documentation under normal use and circumstances.

10.3 In respect of any Third Party Software provided under this Agreement, where possible, Askia will pass on to you the benefit of any third party warranty which may be supplied by a Third Party Software provider to Askia in connection with the Third Party Software. Askia expressly does not warrant the performance, functionality, capability or any other aspects of any Third Party Software.

10.4 Askia does not warrant that the use of the Licensed Applications will be uninterrupted or error-free.

10.5 You accept responsibility for the selection of the Licensed Applications to achieve your intended results and acknowledge that the Licensed Applications have not been developed to meet your specific requirements. You are entirely responsible for the selection and use of any hardware, firmware or software (including without limitation firewall, monitoring, SQL or backup software) as may be required by you in addition to the Licensed Applications and Askia shall not be responsible in any way for the same including for the selection, provision or maintenance thereof.

10.6 You acknowledge that any open-source software provided by Askia is provided "as is" and expressly subject to the disclaimer in clause 10.7.

10.7 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, fitness for purpose or the use of reasonable skill and care.

## 11. Limits of liability

11.1 Nothing in this Agreement will limit or exclude either Party's liability for: (i) death or personal injury resulting from negligence or for fraud, fraudulent misstatement, or fraudulent misrepresentation and (ii) any liability which may not be limited or excluded as a matter of law. Nothing in this Agreement will limit or exclude your liability for breach of your obligation to pay any undisputed fees.

11.2 Subject to Clause 11.1, neither Party shall be liable (in contract, tort (including negligence), strict liability, or otherwise): (i) for any loss arising from or in connection with loss of revenues, profits (whether direct or indirect), contracts or business, or failure to realize anticipated savings, loss of use or other economic advantage or (ii) for any indirect, special, incidental, exemplary, enhanced, punitive, or consequential losses or damages, suffered or incurred by the other Party in each case arising out of or in connection with

this Agreement even if such Party knew of, had been advised of the possibility of, or foreseen such damages in advance.

11.3 Subject to Clause 11.1 and excluding any liability pursuant to Clause 5.5 and Clause 12, neither Party's aggregate liability in connection with any Order Form will exceed 100% of the amount actually paid by you under that Order Form in the 12-month period preceding the event giving rise to such liability, regardless of whether such liability is based in contract, tort, strict liability, or otherwise.

11.4 Subject to Clause 11.1, Askia's total aggregate liability for any and all IP Claims under Clause 12 shall not exceed £1 million.

11.5 All dates supplied by Askia for the delivery of the Licensed Applications or the provision of Support Services shall be treated as approximate only. Askia shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

## 12. Intellectual property rights

12.1 Askia (or its third party licensor(s)) own all right, title and interest, including all related Intellectual Property Rights, in and to the Licensed Applications and Documentation.

12.2 Subject to Clause 12.3, Askia shall indemnify and defend you and your Affiliates from and against all claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) (collectively, "Losses") arising out of or in connection with any third party claim that your use of the Licensed Applications, infringe the Intellectual Property Rights of that third party (each, an "IP Claim").

12.3 Askia will have no obligation to indemnify or defend you or your Affiliates for any IP Claim to the extent arising out of or in connection with: (i) your use of Licensed Applications in combination with other materials, software, Intellectual Property Rights, services, technology or processes not provided or approved by Askia, where but for such combination, no IP Claim would have occurred; (ii) a modification of, or creation of any derivative work based on the Licensed Applications by anyone other than Askia; (iii) your breach of this Agreement or use of the Licensed Applications or Documentation other than as expressly permitted under this Agreement; (iv) your failure to implement a work around, release, update, or other modification to or for the Licensed Applications as provided or directed by Askia; or (v) your use of any software provided by a third party including any Third Party Software.

12.4 In the defence, settlement or avoidance of any IP Claim, Askia may, at its option and its expense: (i) replace or modify any allegedly infringing Licensed Applications or part thereof so the same become non-infringing; and/or (ii) obtain a licence for you to continue using any of the allegedly infringing Licensed Applications, or (iii) terminate this Agreement or any applicable Order Form.

12.5 In respect of any IP Claim, (i) you will give prompt notice to Askia of such claim; (ii) Askia shall have the sole authority

to defend or settle the claim and (iii) you will assist Askia in its defence or settlement of the claim, at the Askia's request and expense.

12.6 You acknowledge that this Clause 12 and Clause 11.4 states Askia's entire responsibility and liability and your sole and exclusive remedy for any actual or alleged infringement of third party Intellectual Property Rights in connection with this Agreement.

### 13. Termination

13.1 A Party may terminate this Agreement in its entirety or in relation to a specific Order Form with immediate effect at any time by providing written notice of termination to the other if the other Party:

(a) commits a material breach of this Agreement, and the breach continues unremedied for a period of 60 days after receiving notice describing the nature of the breach. You acknowledge that your failure to pay any Fees promptly when due is a material breach. A material breach of an Order Form by a Party shall not entitle the other Party to terminate the Agreement, only the applicable Order Form;

(b) commits a material breach of this Agreement which is incapable of remedy;

(c) the other Party enters into an arrangement or composition with or for the benefit of its creditors, goes into administration, receivership or administrative receivership, is declared bankrupt or insolvent or is dissolved or otherwise ceases to carry on business; or any analogous event happens to the other Party in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

13.2 Upon expiry or any termination of this Agreement, in its entirety or in relation to a specific Order Form: all rights and licences granted to you under this Agreement or the terminated Order Form (as applicable) shall terminate, and you shall promptly cease exercising those rights and licences; (ii) you shall take all actions necessary or appropriate to destroy or return to Askia all copies of the Licensed Applications in your or your Users' possession relating to the Agreement or Order Form (as applicable); and (iii) you shall promptly pay to Askia any amounts due under this Agreement or the terminated Order Form (as applicable).

13.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

13.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement that existed at or before the date of termination or expiry.

### 14. Force Majeure

14.1 Save for your payment obligations at Clause 7, neither Party shall 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 result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

14.2 Askia is not and will not be responsible or liable for any delay or failure of performance caused in whole or in part by your delay in performing, or failure to perform, any of your obligations under this Agreement.

### 15. Notice.

15.1 Any notice by one Party to the other under this Agreement will be in writing sent by first class mail, return receipt requested, or nationally recognised overnight delivery service.

15.2 Any notice will be deemed to have been given upon receipt (if sent by overnight delivery service) and five (5) business days after mailing (if sent by first class mail).

15.3 Notice to Askia will be addressed to: **Choose an item.** attention: CEO. Notice to you will be addressed to your address set out in an Order Form.

### 16. General.

16.1 **Interpretation.** A reference to a statute or statutory provision includes any legislation effected under it and any statute or statutory provision that modifies, consolidates, re-enacts or supersedes it, whether such statute or statutory provision comes into force before or after the date of this Agreement. A reference to any Party is a party to this Agreement and includes its successors in title and permitted assigns, and a Party, The words "includes" or "including" are not limiting and are to be read as if they were followed by the phrase "without limitation."

16.2 **Precedence.** If there is any conflict or inconsistency between an Order Form, any Clause or paragraph of this Agreement, any schedule or appendix to this Agreement, the Order Form will prevail, followed by the Clause or paragraph of this Agreement, followed by a schedule to this Agreement, followed by an appendix to this Agreement.

16.3 **Subcontracting.** You shall not assign, novate, sub contract or otherwise transfer your rights or delegate your obligations under an Agreement, in whole or in part, or allow the Licensed Applications to become the subject of any charge, lien or encumbrance, without the prior written consent of Askia. Save as otherwise expressly stated in Schedule 3, Data Processor Agreement, Askia may sub-contract, novate or assign or transfer any of its obligations or rights under an Agreement in whole or in part at its sole discretion

16.4 **Severability.** If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement and the enforceability of the remainder of the Agreement shall not be affected.

16.5 **No Partnership.** Both Parties are independent contractors under this Agreement. Nothing in this Agreement creates an employment, agency, joint venture, or partnership relationship between the Parties or any of their personnel, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party shall have any express or implied power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.

16.6 **No Third Party Beneficiaries.** This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16.7 **Waiver.** The failure of a Party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision by that Party unless acknowledged and agreed to by that Party in writing.

16.8 **Entire Agreement.** This Agreement (together with all Order Forms) and any schedules and appendices to this

Agreement constitute the whole agreement between the Parties and supersedes all previous or contemporaneous discussions, correspondence, negotiations, arrangements, understandings and agreements between the Parties with respect to its subject matter.

16.9 **Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

16.10 **Amendments.** Except in relation any Appendices to this Agreement which Askia may modify in its reasonable discretion from time to time, no purported variation of this Agreement shall be valid unless it is in writing (which excludes email) and signed by or on behalf of each Party.

16.11 **Governing Law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.12 **Jurisdiction.** Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement.

Signed by [NAME OF DIRECTOR] for and on behalf of [Choose an item.]

.....  
Director

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF CUSTOMER]

.....  
Director

**SCHEDULE 1:  
THIRD PARTY SOFTWARE**

Askia acts as a sub-licensor for its third party software partners in respect of the following products. Any of these applications purchased by you under this Agreement will be treated as Third Party Software for the purposes of this Agreement.

- Code-It (Digital Taxonomy)
- CTArchitect (MyForce)
- Any other third party software that may be sublicensed to you by Askia from time to time as agreed in an Order Form

**SCHEDULE 2:  
SUPPORT AND MAINTENANCE**

**1. Definitions**

**“Fault”**: means any defect, bug or error in the Licensed Applications which prevents the Licensed Applications from operating in accordance with the relevant Documentation and/or this Schedule (*Support and Maintenance*).

**“First Level Support”**: initial support and maintenance services including the receipt of incoming calls, emails and Fault logs, online collection of basic information (e.g. problem details, error codes, impact, actions taken by the Customer), simple diagnostics and if appropriate application of non-complex, standard remedial action.

**“Maintenance Release”**: release of the Licensed Applications that corrects faults, adds functionality or otherwise amends or upgrades the Licensed Applications, but which does not constitute a New Version.

**“Modification”**: any Maintenance Release or New Version that is acquired by the Customer.

**“New Version”**: any new version of the Licensed Applications which from time to time is publicly marketed and offered for purchase by Askia in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**“Non-Critical Fault”**: any reproducible Fault in the software in question other than a Severity 3 or Severity 4 Fault as defined at paragraph 4.1.

**“Infrastructure”**: any computer hardware, firmware, software and communications infrastructure.

**“Optional Services”**: any additional services agreed between the parties, including (i) survey scripting (delivery of a survey file to the Customer) (ii) survey hosting (putting a survey on our production platform) (iii) survey analysis (creating report tables from a survey data file) (iv) training (on site or at Askia's offices) and (v) custom feature development.

**“Response Time”**: in relation to a reported Fault, the amount of time taken for Askia to contact the Customer from the time the relevant Ticket is raised until the time that Askia responds to the Customer as more particularly set out in the table at paragraph 4.1.

**“Second Level Support”**: support & maintenance services other than First Level Support such as advanced diagnostics and problem solving, problem management, software workaround and software solution provision.

**“Supported Software”**: has the meaning set out at paragraph 2.1.

**“Target Resolution Time”**: the amount of time within which Askia (or the relevant Third Party Software provider as applicable) aims to resolve a particular Fault or deploy a work-around solution. The Target Resolution Time is measured from the time when the relevant Ticket is raised until the time the Fault has been resolved or the work-around solution is complete. Estimated guideline Target Resolutions Times are set out in the table at paragraph 4.1.

**“Ticket”**: a support ticket that describes a request for support or a Fault and that is opened using Askia's online support platform.

**2. Supported Software**

2.1 Askia shall provide the support services described at paragraph 3 below (**“Support Services”**) in respect of the Licensed Applications and in accordance with the Agreement.

2.2 Askia will provide First Level Support and Second Level Support in relation to the Licensed Applications save that in respect of Faults relating to Third Party Software (if any provided) First Level Support and/or Second Level Support may be provided by the Third Party Software provider on behalf of Askia. In such circumstances support will be provided in accordance with the support and maintenance procedures (including support hours, support locations, severity levels and response and resolution times) determined by the Third Party Software provider and the provisions of this Schedule shall not apply. Askia will ensure the Customer is made aware of such support and maintenance procedures in a timely manner.

### 3. Support Services

- 3.1 Support will be available Monday to Friday (excluding public holidays in the country where the Askia support team is located) from 09:00 am – 02.00 am (CET) (“**Support Hours**”).
- 3.2 Support will be provided from one or more of Askia’s support offices in London, Paris, Mannheim & Los Angeles (or such other office as Askia may notify to you from time to time) in Askia’s entire discretion according to the nature of the issue and availability of Askia staff.
- 3.3 The Support Services shall comprise:
- (a) An online help desk and telephone support to provide first-line technical support to users of the Supported Software to assist with general enquiries in connection with the Supported Software; and
  - (b) Remote diagnosis and, where possible, correction of faults using software management software, more specifically to correct errors, bugs and failures of the Supported Software, deliver resulting Maintenance Releases to the Customer for the Customer to install on its Infrastructure and carry out testing.
- 3.4 For the avoidance of doubt, the Support Services shall not include carrying out, testing or in any other way supporting the installation of the Licensed Applications or any modifications thereof on the Customer’s Infrastructure.
- 3.5 Unless agreed otherwise as part of any Optional Services selected by the Customer, it shall be the Customer’s entire responsibility to ensure that all users are appropriately trained on how to use the Licensed Applications in accordance with Askia’s instructions and to bear any costs associated with such training.
- 3.6 The Customer may from time to time request Askia to supply Optional Services at rates to be agreed between the parties. Askia shall use its reasonable endeavours to comply with the Customer’s request, but the Customer acknowledges that Askia’s ability to supply the Optional Services shall depend on the availability of appropriate resources at the time in question.
- 3.7 Any agreed Optional Services and related fees shall be set out in an Order Form executed in writing between the parties.

### 4. Severity Levels

- 4.1 Askia will resolve all Faults in respect of the Licensed Applications according to the Severity Levels set out in the table below. Severity Levels shall be as determined by Askia its entire discretion and will be based upon the information provided at the time the Ticket is raised. If the Customer is not satisfied by Askia’s classification of the Severity Level, then the Customer should discuss the matter with Askia’s Head of Support.

Severity Level	Business Impact/Description	Response Time	Target Resolution Time
<b>Severity 1</b> (Normal: Normal Support issue)	Minor anomalies in the software operation which have no discernible impact on the customer’s operations, and/or routine customer requests concerning the operation or features of the software or its documentation.  E.g.: Need for operational assistance or advice Request for a user license access code	[24 business hours]	[10 business days]

<p><b>Severity 2</b> (High Priority: Request high priority support action due to non-critical software operational impact)</p>	<p>Software functionality is limited to some degree. However, the loss of functionality has only minimal impact on the customer's operations, it does not prevent the usage of the software or a work-around solution exists which minimizes the operational impact of the problem.</p> <p>E.g.: Occasional system problem Issues with scripting or data processing or data manipulation environment (when using AskiaDesign or AskiaAnalyse, for example) Monitoring issues or isolated issues</p>	<p>[12 business hours]</p>	<p>[ 10 business days]</p>
<p><b>Severity 3</b> (Urgent: Request urgent action due to critical software operational impact)</p>	<p>A major function in the normal operation of the software has become unusable or there is intermittent failure. Software functionality is limited to the degree that critical business processes are impacted, and a workaround solution is not readily available.</p> <p>E.g.: Loss of some functionality. Moderate degradation in performance or functionality</p>	<p>[ 12 business hours]</p>	<p>[5 business days]</p>
<p><b>Severity 4</b> (Immediate: Request immediate action due to severe operational impact (loss of system availability))</p>	<p>Software environment defect causes complete loss of service and business cannot continue. The outage terminates the operation of the software, or a major function of normal operation has become unusable and there is no work around available.</p> <p>E.g.: Software crashes repeatedly: critical functionality is not available or the application cannot continue because a vital feature is not functioning System hangs indefinitely or there is severe performance degradation, causing unreasonable wait times for resources or a response as if the system is hanging</p>	<p>[5 business hours]</p>	<p>[3 business days]</p>

5. **Fault Reporting and Resolution Procedures**

5.1 The procedure for reporting and resolving a Fault are as set out below.

5.2 To report a Fault, the individual logging the Fault must:

- (a) be authorised to use the Licensed Applications under the Agreement and have previously completed training as instructed by Askia in relation to use of Askia's online support platform;
- (b) log the Fault on Askia's online support platform in accordance with any instructions provided by Askia from time to time. This will cause a Ticket to be opened and an automated response will be sent within 2 Business Hours to confirm the Fault has been logged.

5.3 Once the Fault has been reported, Askia will:

- (a) determine the Severity Level applicable to the Fault and confirm this to the Customer;
- (b) use all reasonable endeavours to respond within the Response Time in accordance with the table at paragraph 4.1 above;
- (c) provide an estimate of the Target Resolution Time to the Customer;
- (d) assign resources to correct the Fault within the Target Resolution Time and will keep the Customer informed of its progress, including the steps taken and expected time for resolution. Whilst Askia will use commercially reasonable endeavours to correct any Fault within the Target Resolution Time provided, and in any event in an expeditious manner, the Customer acknowledges that the attainment of such Target Resolution Time will depend on the amount of development work required in relation to the particular Fault.

5.4 General questions about software usage which are not Faults falling within the Severity Level classifications set in the table at paragraph 4.1, may be submitted in accordance with paragraph 5.1 however Askia does not guarantee a response to such questions within any particular time frame.

5.5 Askia may in its entire discretion opt to provide a suitable workaround solution rather than correcting the Fault to enable the Customer's continued use of the Licensed Applications or to enable use that is as close to normal as is possible under the prevailing circumstances.

5.6 Where a Non-Critical Fault is to be corrected in a forthcoming Modification, then for a reasonable period before the issue of such Modification, the Supplier may in its entire discretion decline to provide assistance in respect of that Non-Critical Fault.

5.7 Askia shall be under no obligation to provide Support Services in respect of:

- (a) problems resulting from any modifications or customisation of the Licensed Applications not made by or authorised in writing by Askia;
- (b) any software other than the Licensed Applications;
- (c) incorrect or unauthorised use of the Licensed Applications or operator error where these are defined as use or operation not in accordance with the Documentation;
- (d) save as otherwise agreed, any fault in computer hardware;
- (e) any Infrastructure used in conjunction with the Licensed Applications not provided by Askia or its third party suppliers;
- (f) use of the elements of the Licensed Applications in any combination other than those specified in the Documentation;
- (g) use of the Licensed Applications with computer hardware, operating systems or other supporting software other than those specified in the Documentation

5.8 The Customer shall:

- (f) co-operate with Askia and its selected third party partners, if applicable, in performing the Support Services and provide any assistance, information or access to systems, facilities and personnel as may reasonably be required, including in relation to the diagnosis of any faults;
- (g) report faults promptly to Askia; and
- (h) keep full backup copies of all of its data.

**6. Maintenance Releases and New Versions**

6.1 Askia shall update the Licensed Applications as follows:

- (a) Askia shall issue Modifications of the Licensed Applications as and when required and in whatever form (including by way of a local fix or patch or a temporary by-pass solution) in Askia's absolute discretion;
- (b) for the avoidance of doubt, the cost of providing such Modifications is included in the Fees however Askia reserves the right to charge sums in addition to the Fees in respect of the licence of any New Version based on Askia's then current price list; and
- (c) once any Modification has been installed by the Customer, the Customer shall return all copies of the software or any part of the software which is superseded by that Modification.

6.2 In relation to Maintenance Releases, the Customer agrees to install all Maintenance Releases within one month of Askia notifying the Customer that the Maintenance Release is available. If after this time, the Customer has failed to install the Maintenance Release then Askia may terminate the Support Services in respect of the relevant Licensed Application with immediate effect.

6.3 In relation to New Versions, if Askia has released two (2) New Versions since the version which forms part of the Licensed Application supported by Askia, and the Customer has not, within one (1) month of Askia having notified it that a New Version is available, acquired and installed that New Version, Askia may terminate the Support Services in respect of such Licensed Application by giving one (1) month's written notice at any time after the expiry of such period. Note that release cycles may vary depending on the whether the Customer has opted to purchase a particular Licensed Application based on a long-term support release or not.

6.4 Notwithstanding the above, Askia shall have no obligation to provide Support Services in respect of any version of a Licensed Application if the version has reached its end of life as determined by Askia in its absolute discretion, in which case you must either agree to acquire and install the New Version or Askia may terminate the Support Services in respect of such Licensed Application with immediate effect.

### SCHEDULE 3: DATA PROTECTION AGREEMENT

#### PART 1

- 1.2 **Compliance with Laws:** Both parties will comply with all applicable requirements of the Data Protection Laws. This Schedule is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Laws.
- 1.3 **Details of Processing:** Part 2 of this Schedule sets out the scope, nature and purpose of processing by Askia, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 1.4 **Customer obligations:** The Customer will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to Askia for the duration and purposes of this Agreement so that Askia may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf. In particular, the Customer shall ensure that it complies with its obligations of data minimization and purpose limitation under Data Protection Laws and undertakes not to make Personal Data available to Askia and its third party sub-processors unless this is strictly necessary for Askia to carry out its obligations under this Agreement. The Customer shall indemnify Askia and its Affiliates and hold them harmless in respect of any losses incurred by Askia or its Affiliates as a result of the Customer's breach of this paragraph 1.4.
- 1.5 **Processor obligations:** Askia shall, in relation to any Personal Data processed in connection with the performance by Askia of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless Askia is otherwise required to process the Personal Data to comply with European or European member state Applicable Law and in which case Askia shall promptly notify the Customer of this before performing the processing required by such Applicable Law unless such law prohibits Askia from so notifying the Customer on ground of public interests;
  - (b) ensure that persons authorized to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - (c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data ("**Security Breach**"), appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (d) not transfer any Personal Data outside of the EEA unless authorised pursuant to paragraph 1.6 below and unless the following conditions are fulfilled:
    - (i) the Customer (or its customer) or Askia has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) Askia complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) Askia complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) assist the Customer in responding to any request from a Data Subject for exercising their rights under the Data Protection Laws and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications and communications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Customer without undue delay on becoming aware of a Security Breach;
  - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this Schedule

- (i) allow the Customer or its third party auditors to access and inspect Askia's premises, records and personnel relevant to any processing of Customer Personal Data to enable the Customer to audit and verify that Askia is complying with its obligations under this Schedule 3 and under Data Protection Laws ("**Data Protection Audit**"). The Customer shall provide Askia with reasonable prior written notice of any Data Protection Audit, only conduct such audits during normal business hours and taking all reasonable measures to prevent disruption to Askia's business and operations. The Customer may not exercise its audit rights under this paragraph 1.5(d)(i) more than once in any twelve (12) calendar month period, except if (i) required by instruction of an authorised regulator; or (ii) if the Customer reasonably believes an audit is necessary due to a Security Breach suffered or which is likely to be suffered by Askia.

**1.6 Sub-processors:** The Customer hereby gives Askia its general written authorisation to appoint such third-party processors as are listed at <https://www.askia.com/privacy#data-processors> (as the same list may be updated from time to time) as may be required to process the Customer's Personal Data under this Agreement solely to the extent required in order for Askia to provide its obligations under this Agreement and in accordance with details of processing set out at Part 2 of this Schedule. Askia shall provide reasonable advance notice of the appointment of any additional or change of sub-processor (including details of the processing it performs or will perform). If within 30 days of receipt of such notice the Customer informs Askia in writing of its refusal to consent to the appointment of the sub-processor on reasonable grounds relating to the protection of Customer Personal Data, then the parties will try to resolve the issue in good faith. If after a further 15 days, the parties have not agreed a resolution, then the Customer shall be entitled to terminate the Agreement without penalty or cost to either party save that any portion of the Fees paid in advance in respect of services not yet delivered as at the date of termination shall be refunded to the Customer. Askia confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule 3. As between the Customer and Askia, Askia shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Schedule.

**1.7 Brexit:** If the United Kingdom leaves the European Union during the Term of this Agreement and does not remain part of the EEA, the parties will cooperate in putting in place any further measures necessary to ensure that any transfers of Personal Data to Askia under this Agreement are in accordance with Data Protection Laws. Such measures may include entering into model clauses in the form approved by the European Commission, unless or until an alternative arrangement for such transfers is formalised by the United Kingdom and the European Union (including if the European Commission adopts an adequacy decision under Article 45 (1) GDPR in respect of the United Kingdom).

## **PART 2: Details of Processing, Personal Data and Data Subject**

### **1.1 Subject-matter, nature and purpose of processing**

Personal Data may be made available to Askia (and its authorised third party sub-processors) by the Customer in order for Askia to provide the Support Services under this Agreement.

The parties acknowledge that in most cases it will not be necessary for Askia to process Survey Data containing Personal Data in order for Askia to provide technical support and the Customer shall not make such data available to Askia except where this is strictly necessary for Askia to deal with the support request, including by taking steps to anonymise unique respondent ids. If Personal Data is made available to Askia as part of a support request, the Customer shall identify this to Askia at the time of making the request so that Askia can ensure that the data is adequately protected.

### **1.2 Duration of the processing**

For so long as required for the purpose set out above, or such longer period as may be required by European or European member state Applicable Laws.

### **1.3 Types of Personal Data**

**Survey data:** responses to survey questions that indirectly identify a survey respondent. The specific nature of the data will be determined by the survey questions defined by the Customer (or the Customer's customer) in each case. Examples of Personal Data may include name, contact details, personal details such as gender and date of birth, financial details, employment and educational details, details of family members, lifestyle and social circumstances. Upon instruction from the Customer, Personal Data may also concern special categories of data such as racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health details.

**User account data:** data provided by Users in order to receive the Support Services including name, username, password, email addresses, telephone number or other contact information

### **1.4 Categories of Data Subject:**

Survey respondents

Users