Questionmark AI Scoring Supplementary Terms

These supplementary terms ("Terms") apply only if a Questionmark ("Licensor") customer is obtaining a license to use AI Scoring (as defined below) from Licensor. Otherwise, these Terms do not apply.

These Terms govern the provision and use of the optional AI Scoring feature of the scoring tool in the OnDemand Service, which offers AI-assisted scoring capabilities for scoring Assessments in the form of essay questions and other open-ended responses. Any terms and conditions in a purchase order, request for proposal, order acceptance or similar document from Customer are rejected. Customer's use of AI Scoring constitutes acceptance of these Terms. These Terms are part of the Agreement (as defined below) if an Order refers to licensing of AI Scoring. Any conflict or inconsistency between these Terms and the other parts of the Agreement shall be resolved in favor of these Terms in respect of AI Scoring. Capitalized terms used in these Terms without definition have the meanings given to those terms in the Licensor Standard Terms (as defined below). In the event a capitalized term is defined in each of these Terms and the Licensor Standard Terms or other Agreement, for the avoidance of doubt the definition in these Terms controls for purposes of these Terms.

IMPORTANT NOTE: Customers are responsible for the information provided to AI Scoring and use of Output (as defined below). Customers should not provide AI Scoring with any Input (as defined below) that is sensitive or special category personal data, Participant demographic personal data or other data not permitted to be provided by its organization. Due to the nature of generative artificial intelligence technologies, Output may contain flaws, bugs, inaccuracies and other defects. Output should be reviewed substantively, and if needed, adjusted by a human to confirm its accuracy, make it appropriate for needs and ensure it is unbiased.

1. Definitions

"Agreement" means the terms and conditions applicable to Licensor's provision of the OnDemand Service to Customer, which, in absence of other mutually executed contracts referring to these Terms, shall be the Licensor OnDemand Service Terms and Conditions at www.questionmark.com/go/agree-od-tc ("Licensor Standard Terms") supplemented by these Terms. In the event of a mutually executed contract (e.g. a master services agreement) between Customer and Licensor for provision of the OnDemand Service, the Agreement consists of that contract plus these Terms.

"AI Scoring" means the optional AI scoring feature of the scoring tool in the OnDemand Service, licensed by the Licensor under these Terms, as specified in the Order and encompassing a tool that can be used to produce draft scores and feedback for essays and other open-ended responses

based on a Customer pre-defined rubric and using artificial intelligence and machine learning technologies.

"Customer" means the legal entity that has entered into the Agreement with Licensor or the User of AI Scoring.

"Customer Data" means the data inputted or created by the Customer and/or its users in the use of AI Scoring. For the avoidance of doubt, Customer Data includes Input and Output.

"Effective Date" means the date on which these Terms and the Order become effective, as set forth on the Order.

"Fees" means the fees payable by Customer to Licensor, as set forth on the Order.

"Input" means a subset of Licensee Data in the form of data, instructions, questions, rubrics and Participant answers provided by Customer or its Users that is used as input into AI Scoring.

"Order" means Licensor's quotation that includes AI Scoring.

"Output" means the output received by Customer and Users from AI Scoring via Third Party AI Software based on the Input. Output may include text, feedback and estimated numerical scores.

"Renewal Term" means any period during which the Orders continue in effect following the initial Term.

"Term" means the initial duration of the Order and any additional Renewal Terms.

"Third Party AI Software" means computer software used by the Licensor in creating Output from the Input which is owned by a third party. Third Party AI Software may include one or more third party Large Language Models.

2   LICENSE

2.1 In consideration of the Fees payable by the Customer to the Licensor, the Licensor hereby grants to the Customer a limited, revocable, non-exclusive, non-transferable and non-sublicensable license to use AI Scoring for the Term and subject to compliance with the terms of the Agreement, including these Terms, and to the extent indicated on the Order.

2.2 If Customer is paying a license Fee for use of AI Scoring, then Customer may use AI Scoring as set out in and in accordance with any limits or conditions defined on the Order. If any limits or conditions specified in the Order are exhausted, then Licensor may suspend access to AI Scoring until a supplemental Order is placed to allow further use.

2.3 If Customer is evaluating AI Scoring or otherwise using it without having an Order or paying a license Fee, then Licensor may restrict duration, limits or other activity or use and may terminate Customer access to AI Scoring, in each case in Licensor's sole discretion with or without notice.

2.4 Customer may not use or share AI Scoring individual account credentials with multiple Users or any third parties and shall prohibit its Users from engaging in such activity.

2.5 Customer is prohibited (and shall not permit any User or third party) to copy, adapt, reverse engineer, reverse compile, decompile, translate, disassemble, modify, adapt, engage in model extraction or stealing attacks, make error corrections to or otherwise attempt to discover the source code or underlying components of AI Scoring, underlying ideas, algorithms, prompts and systems of AI Scoring in whole or in part (except to the extent such restrictions are contrary to applicable law).

2.6 Licensor shall provide support for AI Scoring in accordance with the support service level agreement for the OnDemand Service in the Agreement. For the avoidance of doubt, AI Scoring is not part of the Assessment Delivery Service component of the OnDemand Service.

3 OWNERSHIP AND CUSTOMER DATA

3.1 Licensor and its licensors exclusively own all right, title and interest in and to AI Scoring, including all associated intellectual property rights. The Licensor shall obtain on behalf

of the Customer all necessary licenses and consents for the use of any Third Party AI Software.

3.2   The Licensee has no rights in or to AI Scoring other than the right to use it in accordance with the terms of these Terms.

3.3   As between the parties and to the extent permitted by applicable law, the Customer shall own the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

3.4   Customer is solely responsible for its collection and use of Customer Data. The Customer shall restrict and disallow the upload and display in AI Scoring of any Input that is inappropriate, offensive, unlawful or copy-protected media, including trademarks or other materials protected by third-party intellectual property rights or that contains special categories of personal data, other sensitive data or Participant demographic personal data, including (without limitation) images, logos, iconography, text or other works of art ("Materials"). Upon becoming aware of any breach of this provision, the Customer shall promptly (within 24 hours) notify the Licensor and remove any such Materials in breach. The Customer shall indemnify and keep indemnified the Licensor and its licensors and each such party's parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents (the "Licensor Indemnified Parties") against all third party claims, actions and proceedings brought against and all costs, damages, liabilities and expenses incurred by the Licensor Indemnified Parties arising from any Materials in breach of this provision.

3.5   Customer grants to Licensor a non-exclusive, worldwide, royalty-free license to use, display, transmit and/or translate the Customer Data to provide AI Scoring and/or in accordance with the terms of the Agreement. Customer instructs Licensor to pass Input to one or more Third Party AI Software. Licensor confirms that it has written agreements in place with the providers of such Third Party generative AI Software that such Customer Data will be kept confidential and not be used for training generative AI models.

3.6   Licensor cannot guarantee the accuracy of Output and it is Customer's responsibility to evaluate the accuracy of all Output, including thorough human review. Customer is solely responsible for use of the Output. Due to the nature of generative AI technology, Output may not be unique, may not accurately score Input and may generate the same or similar output for others.

3.7   Output may not be protectable by intellectual property rights and Licensor provides no representation or warranty, express or implied, related to intellectual property rights or other rights in Output. As between Licensor and Customer and to the extent permitted by applicable law, Customer owns Output. Licensor hereby assigns to Customer all of Licensor's right, title and interest, if any, in and to Output.

3.8   The Licensor shall indemnify and defend the Customer and its licensees against all third party claims, actions and proceedings brought against and all costs, damages, liabilities and expenses incurred by the Customer arising from any claim or action that the AI Scoring feature infringes the Intellectual Property Rights of a third party, provided that (i) such alleged infringement does not arise from combining or using AI Scoring with any products, services, software business process(s) or data (including Customer Data) not provided by Licensor, and that the infringement would not have occurred but for such combination or use; (ii) for the avoidance of doubt, Licensor has no obligations under this Section 3.8 with respect to Output. Licensor's obligations under this Section 3.8 are subject to the Customer:

   3.8.1   On becoming aware of a covered claim, promptly giving notice of it to the Licensor (and remove same if in breach of Section 3.4);

   3.8.2   Making no admission of liability without the Licensor's written consent; and

   3.8.3   Allowing the Licensor to have sole conduct and control of the defense and any related settlement negotiations provided that the Licensor keeps the Customer informed of the progress of such action or negotiations.

3.9   The Licensor shall be entitled (without prejudice to any rights or remedies the Customer may have) at its own cost to replace or modify any infringing component of AI Scoring so that it becomes non-infringing.

4   NO WARRANTIES

4.1   For the avoidance of doubt, the express warranties in the Licensor Standard Terms apply for AI Scoring.

4.2   AI SCORING IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY SET FORTH IN THE AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, GUARANTEES AND CONDITIONS WITH RESPECT TO AI SCORING AND

ASSOCIATED SERVICES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF AI SCORING, OR THE INFORMATION, TEXT, INPUT OR OUTPUT, OR THE USE OF INPUT OR OUTPUT, INCLUDING WITHOUT LIMITATION, THE ACCURACY OF OUTPUT, AVAILABILITY, SUITABILITY, RELIABILITY OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF INPUT OR OUTPUT PROVIDED TO, THROUGH OR BY AI SCORING. LICENSOR CANNOT GUARANTEE THAT INPUT OR OUTPUT WILL NOT BECOME KNOWN OR USED BY THIRD PARTIES OR THAT AI SCORING WILL BE UNINTERRUPTED, ACCURATE OR ERROR FREE, OR THAT THE INPUT OR OUTPUT WILL BE SECURE OR NOT LOST OR ALTERED. LICENSOR WILL HAVE NO LIABILITY OR RESPONSIBILITY ARISING IN ANY WAY FROM THE USE OF AI SCORING OR ANY ERRORS OR OMISSIONS CONTAINED IN INPUT OR OUTPUT. DO NOT RELY ON OUTPUT WITHOUT INDEPENDENT CHECKING.

5   USE OF OUTPUT

5.1   AI Scoring may be used to produce Output in the form of estimated, draft scores and feedback in relation to a Participant's answer to a question seeking to assess that Participant's knowledge, skills and/or attitudes. Customer should understand that Output including scores and feedback is produced by imperfect AI and will sometimes contain errors, bias and other mistakes. Output is intended as draft only for an experienced human instructor or grader to review, amend and finalize.

5.2   Customer is responsible for all correspondence with Participants. Output including scores and feedback should be considered one piece of evidence about a Participant's knowledge, skill and/or attitude. When Output including scores or feedback is used to make decisions about a Participant or their educational or other outcomes, Customer is solely responsible for the fairness, quality and validation of the Output including scores and feedback and should review and evaluate the same to ensure appropriate decisions are made.

5.3   Customer will indemnify, defend and hold the Licensor Indemnified Parties harmless from and against any and all third party claims, actions and proceedings brought against and all costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) incurred by the Licensor Indemnified Parties to the extent arising out of or in connection with

Customer Data and any decisions or other actions taken relating to Participants, including related to, in connection with or as a result of the Output, including scores or feedback.

6   DATA PROTECTION

6.1   Any personal data provided by Customer for the purposes of using AI Scoring will be processed in accordance with the Agreement and with data protection laws applicable to Licensor.

7   FINAL PROVISIONS

7.1   *Feedback.* Customer may provide feedback regarding AI Scoring to Licensor ("Feedback"). If Customer provides Feedback, Licensor may use it without restriction or compensation to Customer. Licensor may monitor how Customer uses AI Scoring and use that information to improve AI Scoring or other products or services and for internal analysis purposes.

7.2   The liability provisions and any other commercial terms or allocation of commercial risk set out elsewhere in the Agreement (subject to any exceptions and qualifications therein) apply to any claim under these Terms. The limit of liability set out elsewhere in the Agreement shall constitute the total aggregate limit of liability of Licensor for all claims by Customer arising out of or related to the Agreement (including these Terms). Notwithstanding the foregoing and to the extent permitted by applicable law, Licensor has no liability with respect to AI Scoring or under these Terms in the event Customer is evaluating AI Scoring or otherwise using it without having an Order or paying a license Fee.