Questionmark OnDemand Service Terms and Conditions

These terms and conditions ("Agreement") apply to the OnDemand Service (as defined below), related support and other services referred to herein and govern all Orders (as defined below) for such Services (as defined below). Licensor (as defined below) and Customer are referred to individually as a "Party" and collectively as the "Parties".

Licensor limits acceptance to the terms and conditions in this Agreement. Any terms and conditions in a purchase order, request for proposal, order acceptance or similar document from Customer are rejected. Customer's registration for, or use of, the Services constitutes acceptance of this Agreement.

1. Definitions

1.1 In this Agreement, the following words have the following meanings:

Admin User means a person that uses Licensor Technology to manage, monitor and report on Assessments and/or Participants.

Affiliate means an entity that directly or indirectly through one or more intermediaries majority owns or controls, is majority owned or controlled by, or is under common majority ownership or control with, Licensor or Customer.

Assessment means the exam, test, quiz, survey or other systematic way of collecting data produced using Licensor Technology.

Assessment Delivery Service means the part of the OnDemand Service used by Participants to answer online Assessments and excludes other parts of the OnDemand Service, including those relating to authoring, administering, printing, scanning and reporting on Assessments.

Benchmarks mean aggregated data received, collected, analyzed, and maintained by Licensor or its Affiliates that does not contain any personally identifiable data, for example item statistics and average scores.

Business Day means every day excluding Saturdays, Sundays and any national holidays throughout: (a) the United States of America, if the Licensor is Questionmark Corporation; (b) the United Kingdom, if the Licensor is Questionmark Computing Limited (Australia for Orders for the Australian OnDemand Service), unless otherwise defined in the Order.

Commencement Date means the date of Licensor's invoice or as otherwise set out in the Order.

Confidential Information means all information (in whatever format) which relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of

the Disclosing Party (as defined below), its Affiliates or licensors or information which is marked as confidential or which may reasonably be regarded as confidential to the Disclosing Party (as defined below), its Affiliates or licensors. Confidential Information includes but is not limited to Licensor Technology, Documentation, Customer Data, usernames, passwords, Licensor's pricing, Licensor's, its Affiliates' or its licensors' security information and any information of public bodies or public institutions that is defined or to be treated as such under applicable laws.

Consulting Services mean the consulting and/or training services provided by Licensor to Customer as set forth on an Order or SOW.

Customer means the Party obtaining a license to use the Services.

Customer Data means the data, information and material provided or submitted by the Customer or Users in the creation, participation or reporting of Assessments and any output of Assessments. Customer Data does not include the software, scripts, documentation and templates provided by Licensor.

Customized Service Configuration means a customized configuration of the OnDemand Service that Licensor develops and provides specifically for Customer as set forth on an Order. Customized Service Configuration does not include the standard OnDemand Service or any feature thereof.

Documentation means the audio and visual information and documents contained in the OnDemand Service or made available to Customer in the course of using the OnDemand Service.

Emergency Maintenance means required maintenance that cannot be safely postponed until the next Scheduled Maintenance period to fix software and/or hardware issues and apply security patches.

Fees means the sums payable by the Customer to Licensor in consideration of the Services.

Force Majeure Event means any act, event, omission or accident beyond the reasonable control of either Party including, but not limited to, acts of God, war, threat of or preparation for war, sanctions, embargo, breaking off of diplomatic relations, terrorist attack, civil commotion, nuclear, chemical or biological contamination, acts of any Government agency (including restrictions on open internet access), fire, flood, earthquake, explosion or accidental damage, failure of machinery or computers, pandemic or epidemic, labor dispute, denial of service attacks, non-performance by suppliers (that is caused by a force majeure event), interruption or failure of utility or transport service and the unavailability of labor or materials.

Initial Term means the initial period specified in the Order, starting on the Commencement Date.

Licensor means the Questionmark company listed on Licensor's invoice, which will be either Questionmark Corporation of 260 Madison Avenue, 8th Floor, New York, NY 10016, United States of America or Questionmark Computing Limited with an address 3rd Floor 1 Ashley Road, Altrincham, Cheshire WA14 2DT, United Kingdom.

OnDemand Service means the software-as-a-service using Licensor Technology for the creation, delivery, monitoring and reporting of Assessments.

Order means the written quotation for Services provided by Licensor to Customer.

Participant means a User that has access to the OnDemand Service to participate in an Assessment.

Permitted Use means the use of the OnDemand Service that is agreed on the Order and/or in the Questionmark OnDemand section of the Standard Product Descriptions.

Licensor Technology means all and any part of Licensor's and its licensors' proprietary services, software, hardware, products, processes, algorithms, user interfaces, know how, techniques, designs and other tangible and intangible material or information provided by Licensor to the Customer (and, at the Customer's request, Users) as part of the Services.

Renewal Fees mean the Fees payable for each Renewal Term.

Renewal Term means the period specified in the Order for which the Order automatically renews following the end of the Initial Term or a Renewal Term, running from the end of the Initial Term or the then current Renewal Term unless the Order is terminated in accordance with Section 5.

Scheduled Maintenance means maintenance that is planned in order to add features, resolve issues and/or enhance functionalities.

Service Configuration means options and application program interfaces ("APIs") enabled for the OnDemand Service and the limits on the number of Assessments, Users, as described in the Order and/or in the Questionmark OnDemand section of the Standard Product Descriptions.

Service Incident means an incident adversely affecting the performance or accessibility of the OnDemand Service that prompts an inquiry from Customer and/or response by Licensor.

Services mean the services provided by Licensor to Customer as described in the Order or applicable SOW. The Services may include access to the OnDemand Service and Support (as defined in Schedule 1), and, if selected by Customer, Consulting Services and other related services.

Severity Level means the severity of a Service Incident as reasonably determined by Licensor's Service Desk for Support, considering any Customer input.

SOW means a statement of work entered into between the Parties for Consulting Services.

Standard Product Description means the Licensor standard product descriptions, as referenced on the Order.

Term means the Initial Term together with any Renewal Terms.

User Account means a User profile stored in the OnDemand Service.

Users mean Admin Users and Participants.

Unscheduled Downtime means unavailability of the Assessment Delivery Service for any reason except Scheduled Maintenance, Emergency Maintenance and a Force Majeure Event. Unavailability due to Customer actions or requests, or some specific functions not material to the Assessment Delivery Service, is not Unscheduled Downtime.

2. Licensor Obligations

2.1 OnDemand License and Authorization. In consideration of, and subject to, payment of the Fees, Licensor grants to Customer (together with its Affiliates) a non-exclusive, worldwide, royalty-free, non-transferable (except on assignment pursuant to Section 14.2), non-sublicensable license and authorization to access and use the Services for the Term. This license is subject to the terms of this Agreement. All rights not expressly granted to Customer are reserved by Licensor, its Affiliates, suppliers, and licensors. Customer is responsible for all use of the Services by its Affiliates.

2.2 Services. Without releasing it from any of its obligations, Licensor may use Affiliates or subcontractors to perform some or all of its obligations under this Agreement. Licensor may change the configuration of its network, equipment or any other item material to the Services at any time provided the change does not adversely affect the Services.

2.3 Consulting Services. Any Consulting Services will be agreed in an Order or SOW. Customer is responsible to confirm that the Order or SOW satisfies Customer's operational requirements. Consulting Services will be performed and delivered at the times and places listed in the Order or SOW. Licensor will use commercially reasonable efforts to meet the timelines on the Order or SOW.

2.3.1 Customized Service Configuration. If an Order requires Licensor to develop a Customized Service Configuration, on delivery Customer has twenty-one (21) days to review such Customized Service Configuration for material non-conformance with the Order or SOW. If the Customer reports material non-conformance to Licensor in writing within the twenty-one (21) day period, Licensor will remedy such material non-conformance within a commercially reasonable time, targeted to be within thirty (30) Business Days, to bring the Customized Service Configuration into material compliance with the Order or SOW. If no material non-conformance is reported within the twenty-one (21) day period, Customer is deemed to accept the Customized Service Configuration, provided Licensor has made reasonable efforts to confirm material conformance with Customer. If Licensor is unable to bring the Customized Service Configuration into material conformance with the Order or SOW after following this process three (3) times, Customer may terminate the Order or SOW with respect to the Customized Service Configuration and receive a refund for the returned, non-materially conforming Customized Service Configuration. A Customized Service Configuration is not covered by Schedule 1.

2.4 Licensor Reseller Terms. Notwithstanding the definition of "Order" in Section 1, if Customer obtains a license to use the Services from a Licensor reseller, the definition of "Order" refers to the order between Licensor and such reseller. Licensor is obligated to provide the Services only in conformity with such Order, including with regard to the Term and Service

Configuration, regardless of whether the order or other documentation between Customer and such reseller provides otherwise. Customer's sole recourse and remedy for any loss, damage, expense or other liability caused by such discrepancy is against such reseller.

3. Customer Obligations

3.1 Service Configuration. Customer may use the Services solely in conformance with the Service Configuration, Permitted Use and applicable laws. If Customer requires an increase in the Service Configuration, further charges may be due. If Customer exceeds Service Configuration limits, Licensor may charge Customer for excess use calculated with reference to the then current Order pricing. Licensor will use commercially reasonable efforts to advise Customer of excess use.

3.2 Access Control and Usernames. Customer will not allow any persons to be registered in, access or use the Services in excess of the Service Configuration, measured in any twelve (12) month period from the Commencement Date or its anniversary. If a Participant is removed from or no longer uses the Services his or her allocated username may not be reassigned to another individual. Assessments taken by removed Participants continue to count against the Service Configuration. Customer will not allow more than one individual to use a User Account and will not share User Account credentials with more than one individual. Use in excess of the Service Configuration will be invoiced at Licensor's then current applicable rates. Customer will permit and provide cooperation and information requested by Licensor in any audit regarding Service Configuration compliance.

3.3 Password Security. Customer will keep confidential usernames, passwords, identification and security codes provided by Licensor and will notify Licensor promptly if it suspects loss or unauthorized use or disclosure of any such username, password or code. Except for activity occurring more than one (1) Business Day after notifying Licensor of such suspicion, Customer is responsible for activity carried out by a User or under any username, password, identification or security code issued to it and shall take all reasonable efforts to prevent such breach and mitigate any losses.

3.4 Restrictions on Use. Customer may not modify or make derivative works based on the Services or Documentation or hide or attempt to hide copyright information or identification of Licensor's or its licensors' ownership of the Services. Customer is prohibited from reverse engineering or accessing the Services to (a) build competitive products or services, (b) build products using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services. Customer may monitor performance of the Services but such information is Confidential Information of Licensor.

3.5 License to Customer Data. Customer grants Licensor a non-exclusive, royalty-free licence to use Customer Data in connection with the Services. Customer authorizes Licensor and its Affiliates to use Assessment results and other Customer Data (including personal data) for analysis purposes and to produce aggregated data for Assessment validation, anti-cheating, security, statistical analysis and product improvement purposes, including creating or updating Benchmarks. Benchmarks and other aggregated data will not contain any information from which any individual is identifiable. Benchmarks are owned by Licensor.

Licensor will not disclose Benchmarks or other aggregated data that include (directly or by inference) any information identifying Customer or from which Customer is identifiable to any other Licensor customers.

3.6 Use of Assessments. The Services may be used to correspond with Participants and to assess a Participant's knowledge, skills and attitudes and allocate a score. Customer is responsible for all correspondence with Participants. Scores should be considered one piece of evidence about a Participant's knowledge, skill and/or attitude. When the Services are used to make decisions about a Participant (such as whether to hire, promote or terminate the Participant), Customer is solely responsible for the fairness, quality and validation of the Assessment and should review and evaluate the Assessment and the Participant's score to ensure the appropriate decision is made. Customer is solely responsible for its use of the Services, including entering and maintaining any of its own Assessment material, validating the Assessment, checking all material, scores and reports.

3.7 Acceptable Use. Customer will use the Services in compliance with Licensor's acceptable use policy at https://www.questionmark.com/ondemand-use-policy ("AUP"). No updates to the AUP will apply to Customer until commencement of the Renewal Term immediately following the update.

3.8 Export Laws. The OnDemand Service may use encryption technology that may be subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 428/2009 (as amended), and the export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and any other U.S. governmental agencies, and the export control regulations of Switzerland, the European Union and United Kingdom. As applicable, Customer will not use the OnDemand Service in, and shall not transfer or otherwise export or re-export any of the underlying or associated information, software, or technology to, countries as to which the United States, Switzerland, European Union and/or United Kingdom maintain an embargo (collectively, "Embargoed Countries"), and shall not permit use by or transfer to a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals, the U.S. Department of Commerce's Table of Denial Orders or any equivalent prohibitions of Switzerland, the European Union or United Kingdom (collectively, "Designated Nationals"). Customer represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer will comply with all applicable U.S., Swiss, European Union and United Kingdom export laws and assumes sole responsibility for obtaining licenses to export or re-export if required. As at the Commencement Date, as far as Licensor is aware, the Export Control Classification Number (ECCN) for the OnDemand Service in accordance with the Commerce Control List contained in the U.S. Export Administration Regulations or other relevant export regulations promulgated by a U.S. federal agency is EAR99.

3.9 Connections to OnDemand Service. Customer will, at its own cost, provide all Internet connections, hardware, software and all other equipment necessary to use the Services. Customer is responsible for ensuring it can access and use the open internet in all jurisdictions in which it intends to use the Services. The inability of Customer or Participants to access and use the Services due to open internet restrictions and/or any blocking or

interference imposed by governmental authorities or other actors is not a Service Incident, Unscheduled Downtime or failure by Licensor to perform under this Agreement.

3.10 Application Program Interfaces. Where the Service Configuration permits access to the OnDemand Service through Questionmark Application Program Interfaces ("APIs"), Customer will only access the OnDemand Service through the APIs and in accordance with the Documentation and Licensor's instructions.

3.11 System Requirements. The Services may only be used via compatible systems/browsers. Licensor maintains a list of compatible systems/browsers on its web site and may update this at its reasonable discretion.

3.12 Cooperation. Customer will provide Licensor all access to information reasonably requested to enable Licensor to provide the Services. Licensor has no liability for any failure or delay to provide the Services to the extent caused by Customer's failure to provide such information.

3.13 Data Backup. The OnDemand Service includes a function for archiving and exporting Assessments, results and other data. Licensor makes at least daily backups of Customer Data In the OnDemand Service but is not responsible for Customer's deletion, correction, destruction, damage, loss or failure to store any such information or Customer Data including but not limited to Customer's failure to make its own regular backups.

3.14 Code Upload. If Customer wants to upload executable software code into the OnDemand Service, Customer will pass such code to Licensor prior to upload, so Licensor can undertake an appropriate security vulnerability review. Customer will pay Licensor's reasonable, pre-agreed associated service charge for this review. For clarity, such review is undertaken by Licensor for the purposes of security of the OnDemand Service without warranty to Customer with respect to the executable software code.

4. Fees

4.1 Fees. In consideration of the Services, Customer shall pay all Fees to the account or address designated by Licensor. All Fees are non-refundable except on termination by Customer for cause under Section 5.1, as set out in Section 5.3.3. Renewal Fees will be documented on Licensor's quotation for each Renewal Term and shall automatically increase over the then current Fees by an amount that is not less than the higher of (i) when the Licensor is Questionmark Corporation, the percentage increase in the Consumer Price Index – All Urban Consumers (CPI-U) during the Term immediately preceding the Renewal Term and when the Licensor is Questionmark Computing Limited, the percentage increase in the United Kingdom national rate of inflation (as reflected by the consumer price index (CPI), published by the United Kingdom Office of National Statistics) during the Term immediately preceding the Renewal Term, or (ii) five percent (5%).

4.2 Invoicing and Payment Terms. Licensor will invoice Customer for the Services on or after the Order date. All valid and undisputed invoices are due and payable by Customer within thirty (30) days of receipt, unless otherwise stated in the Order.

4.3 Taxes. Except where the Parties expressly agree otherwise in writing, all Fees are exclusive of any applicable sales, goods and services (GST), use or value added taxes (VAT), import duties or other taxes, fees or levies imposed on the Services, which if applicable Licensor may collect via its invoice from Customer for remittance to an applicable governmental entity. Licensor will provide Customer with required tax information and tax invoices on request, including where applicable a valid tax identification number on a U.S. Internal Revenue Service Form W-9. All payments to be made by Customer will be without set-off, deduction or withholding for any taxes, duties, imports, fees or charges. Any taxes due or demanded based on use of the Services by Customer outside of the country of Licensor's address on its invoice will be wholly payable by Customer. Customer is not responsible for taxes based on Licensor's net income. No taxes will be collected by Licensor when Customer provides a valid tax exemption certificate.

4.4 On-site Services. The Services will be provided remotely unless expressly agreed otherwise on the Order. For any on-site visits, Customer will pay Licensor's reasonable out of pocket expenses including travel, lodging and subsistence, where applicable consistent with Customer's reasonable travel and expenses policy.

4.5 Licensor's Remedies for Non-Payment. Licensor may suspend or terminate an Order when payment is not received within sixty (60) days of the due date. Licensor will give Customer notice of non-payment and proposed suspension or termination. Licensor may impose a reasonable reconnection fee if Customer's account is suspended or terminated. Customer Data may be irretrievably deleted if Customer's account remains delinquent for more than ninety (90) days from date of suspension or termination. Licensor may also charge interest on any sum unpaid after the due date, calculated from the due date until payment (whether before or after judgment) at the monthly rate of 1.5% above the base rate from time to time applying in the country of Licensor's address on its invoice.

4.6 Licensor Reseller Terms. If Customer obtains a license to use the Services from a Licensor reseller, the terms of this Section 4 contemplating payment directly from Customer to Licensor are superseded by Customer's payment arrangement with such reseller and payment to Licensor will be made by such reseller. If such reseller fails to make timely payment to Licensor, Licensor is entitled to all remedies in this Agreement, including termination or suspension of the Services as if payment had been due directly from Customer. If Customer has made payment to the reseller, Customer's sole recourse and remedy is against such reseller.

5. Termination

5.1 Termination for Cause. In addition to any other remedy either Party has pursuant to this Agreement, either Party may terminate an Order for cause on written notice to the other Party if: (i) the other Party materially breaches this Agreement, including, but not limited to, with respect to payment of Fees, and if such breach is curable, fails to cure such breach within thirty (30) days after written notice of the same; (ii) the other Party becomes the subject of a petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, administration, liquidation, or composition for the benefit of creditors, passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or

reconstruction) or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by applicable law to be unable to pay its debts, provided that any such petition or proceeding which is involuntary is not dismissed within ninety (90) days of filing; or (iii) if a Force Majeure Event continues for more than sixty (60) days.

5.2 Renewal Terms. An Order automatically renews for successive Renewal Terms unless Customer provides Licensor with at least ninety (90) days' written notice of non-renewal prior to the last day of the Term then in effect.

5.3 Effect of Termination.

5.3.1 On termination of the Services, Licensor will on request make available to Customer a file of the Customer Data stored in the OnDemand Service within thirty (30) days of the effective date of termination in a reasonable standard file format. If Customer Data is requested in a different format, Licensor may charge Customer at its reasonable standard rates for such services.

5.3.2 On termination of an Order by Licensor for cause, all undisputed Fees for the entire Term stated on the Order are due by Customer to Licensor, and Licensor's obligations to provide the Services will end.

5.3.3 On termination of an Order by Customer for cause, subject to applicable laws all prepaid Fees applicable to the unused portion of the Services that were to be provided after the effective date of termination, if any, are payable by Licensor to Customer and Licensor's obligations to provide the Services will end.

5.3.4 If Customer requests assistance with termination or transition of the Services, the Parties may agree a separate Consulting Services Order.

6. Confidential Information

6.1 Any prior non-disclosure agreements between the Parties remain valid and binding in respect of disclosures made before the Commencement Date.

6.2 During the Term each Party (the "Disclosing Party") might disclose to the other Party or its Affiliates (the "Receiving Party") written and/or oral information that the Disclosing Party considers to be Confidential Information. Confidential Information does not include information that (i) becomes generally available to the public, except as a result of a breach of this Agreement by the Receiving Party; (ii) is in the possession of the Receiving Party before disclosure by the Disclosing Party, provided that the Receiving Party did not receive the information from a third party bound by confidentiality obligation(s) to the Disclosing Party; and/or (iii) is developed by the Receiving Party independent from and without reference to Confidential Information.

6.3 The Receiving Party will keep the Confidential Information of the Disclosing Party confidential during and after the Term. The Receiving Party will use the Confidential

Information only in connection with performance under and in compliance with this Agreement and will not disclose Confidential Information to any third parties without the Disclosing Party's prior written consent. The Receiving Party may disclose Confidential Information to its Representatives on a "*need-to-know*" basis only in connection with such Representatives' performance under and compliance with this Agreement; provided that the Receiving Party informs such Representatives of the confidentiality obligations of this Agreement. The Receiving Party is responsible for any breach of this Agreement by its Representatives. "Representatives," means a Party's Affiliates and its and their respective directors, officers, employees, subcontractors, advisors and/or agents (including, without limitation, attorneys and accountants).

6.4 Receiving Party may disclose the Disclosing Party's Confidential Information pursuant to statutory or governmental regulations, requirements and/or subpoenas or other legal process, as long as Receiving Party provides Disclosing Party with prompt written notice, as permitted by applicable law. Receiving Party will reasonably cooperate with Disclosing Party in its attempts to seek a protective order or otherwise limit or restrict disclosure of Confidential Information. If the Disclosing Party is unable to obtain a protective order or otherwise limit or restrict disclosure of its Confidential Information, Receiving Party may disclose the Disclosing Party's Confidential Information, but only to the extent required.

6.5 On termination or expiration of an Order, and on request of the Disclosing Party, Receiving Party will return or delete all of the Disclosing Party's Confidential Information, including but not limited to copies and derivative works created therefrom, in whatever form, format or media with no copies retained, except that any Confidential Information stored in archive or back-up that is not reasonably capable of being deleted without undue burden or expense is not required to be deleted, destroyed or returned, subject to such Confidential Information not being used. On request, Receiving Party will certify in writing to Disclosing Party its compliance with this paragraph. Any Confidential Information retained pursuant to this paragraph will be held in continued compliance with this Agreement.

6.6 Receiving Party's breach of this Section 6 will cause irreparable injury and damage to Disclosing Party that might not be susceptible to monetary calculation or have an adequate remedy at law. Accordingly, in the event of a breach or anticipated breach of this Section, in addition to any other rights and remedies available to the Disclosing Party at law and/or in equity, the Disclosing Party will be entitled to seek, and the Receiving Party hereby waives any objection to the Disclosing Party's receipt of, specific performance and injunctive relief (both temporary and permanent) without the posting of a bond.

7. Security

Licensor will maintain security policies and procedures to protect Customer Data consistent with good industry practice. Licensor and its production data centers used to deliver Assessments are certified by a reputable third party against the SSAE 18 or ISO 27001 standards or comparable successor standards. Licensor will use commercially reasonable efforts not to include in the OnDemand Service any computer viruses, malware, disabling devices or contaminants the purpose of which is to damage Customer's computer systems.

8. Compliance with Laws and Data Privacy

8.1 Customer Data. Customer is responsible for the accuracy, quality, legality, reliability, appropriateness, intellectual property ownership and right of use of Customer Data, including ensuring Customer Data is transmitted to and processed in the Services by Customer and provided to Licensor in accordance with applicable laws, including for operation and maintenance of the Services.

8.2 Data Privacy. Customer will use the Services and all information that the OnDemand Service receives and transmits pursuant to such use in compliance with all applicable local, state, national and foreign laws, treaties and regulations, including, without limitation, any applicable data privacy and human rights laws. The Parties shall comply with the additional data privacy terms at www.questionmark.com/go/oddpa and/or such other data privacy terms expressly agreed between the Parties in writing.

8.3 Anti-Corruption. The Parties will comply with all applicable anti-bribery and anti-corruption laws, including where applicable the U.S. Foreign Corrupt Practices Act and UK Bribery Act. The Parties will not, either directly or indirectly, in order to assist in obtaining or retaining business for or with, or directing any business to, any person, make or cause to be made, a payment of money or offer, gift, promise to give or authorize the giving of anything of value to any foreign official or to any foreign political party or official thereof for the purposes of influencing any act or decision of that person in his, her or its official capacity, inducing that person to do or omit to do any act in violation of his, her or its lawful duty, securing any improper advantage or inducing that person to use influence to affect or influence any official act or decision. Each Party will maintain its own policies and procedures to comply with this Section 8.3, and will enforce those policies and procedures where appropriate. The Parties will promptly report to each other any request or demand for any undue financial or other advantage of any kind offered or received in connection with this Agreement.

9. Intellectual Property

9.1 Licensor Intellectual Property. Customer agrees:

9.1.1 That any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, in the Services, Licensor Technologies and any relevant Documentation or material provided by Licensor is and remains the sole property of Licensor and its licensors.

9.1.2 Licensor retains ownership of all proprietary rights to any Customized Service Configuration, including pursuant to any license Licensor has from any third party. On full payment of the Fees, Licensor grants Customer a license to use such Customized Service Configuration in accordance with the Service Configuration.

9.1.3 Licensor is the owner, licensee or sub-licensee of various pre-existing development tools, routines, subroutines and/or other programs, data, and materials that Licensor may use or implement in the development of any Customized Service Configuration ("Background Technology").

9.1.4 Licensor and/or its licensors retain all right, title and interest in and to the Background Technology, and grants Customer a non-exclusive license to use the Background Technology only to the extent necessary to use the OnDemand Service and any Customized Service Configuration during the Term consistent with the terms of this Agreement.

9.2 Customer Intellectual Property. Licensor acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable in Customer Data will remain the sole property of Customer and its licensors.

10. Warranties

10.1 Mutual Warranties. Each Party represents and warrants that (i) the terms of this Agreement do not violate or cause a breach of any other agreement or any applicable law or regulation to which it is a party or bound; (ii) it is, and during the Term will remain, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (iii) this Agreement is, and will remain, a valid and binding obligation, enforceable in accordance with its terms, as limited by applicable laws; (iv) the Services are provided on an "as is" basis and the Customer has satisfied itself as to the Services meeting its needs and requirements; (v) it has any licenses and/or other authorizations or rights needed under any applicable laws in respect of the Services.

10.2 Licensor Warranties. Licensor represents and warrants that (i) it will provide the Services with reasonable care and skill and in a manner consistent with reasonably applicable general industry standards; (ii) the OnDemand Service will perform substantially in accordance with the online Documentation under normal use and circumstances; (iii) it will comply with applicable local, state, national and foreign laws, treaties and regulations including data privacy laws of jurisdictions from which Licensor provides the OnDemand Service in connection with this Agreement; and (iv) as delivered, the OnDemand Service and Documentation will not violate any third party intellectual property rights.

10.3 Disclaimer of Warranties. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, GUARANTEES AND CONDITIONS WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. Where Licensor is not able to exclude a warranty, guarantee or condition according to applicable law, Licensor limits, to the extent permitted by law, its liability for a breach of that warranty, guarantee or condition to one or more of the following, at its option: (a) the supplying of the Services again; or (b) the payment of the cost of having the Services supplied again.

Except as expressly provided herein, Licensor does not represent or warrant that use of the Services will be secure, timely, uninterrupted, error-free or operate in combination with any other system or data. Licensor is not responsible for any damage to, or loss of, Customer

Data or any third party data provided by Customer, except to the extent caused by Licensor. The Services might be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Although Licensor will use commercially reasonable efforts to take appropriate actions to remedy and avoid such events consistent with good industry practice and except as otherwise expressly provided in Schedule 1, Licensor disclaims all responsibility resulting from or related to such events.

10.4 Corrective Action. If Customer's use of the Services is prevented by injunction for infringement of third party intellectual property rights, or if in Licensor's reasonable determination this is likely, Licensor will: (i) modify the Service so that it becomes non-infringing, but of equivalent functionality; (ii) replace the Service with a non-infringing service of equivalent functionality; or (iii) if neither of options (i) or (ii) is commercially reasonable, in Licensor's determination, terminate the Service and refund any prepaid Fees attributable to such infringing Service paid by Customer for the period during which Customer's use of the Service is prevented as described in this Section 10.4.

11. Indemnity

11.1 Customer's Indemnification. Customer will indemnify, defend and hold Licensor, its licensors and each such party's parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents (the "Licensor Indemnified Parties"), harmless from and against any and all third party claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) (collectively, "Losses") to the extent arising out of or in connection with (i) Customer's use of, or the Customer Data used in connection with, the Services (including processing by Licensor in accordance with this Agreement) and any decisions taken by Customer relating to Users, other than to the extent due to reasons for which Licensor is providing indemnification in Section 11.2, and (ii) infringement or misappropriation of a patent, copyright, trademark or other similar intellectual property or ownership right of a third party resulting from combination of the Services with Customer Data or any other products, services, or business process(s) used, provided, licensed, or owned by Customer, that would not have occurred but for such combination.

11.2 Licensor's Indemnification. Licensor will indemnify, defend and hold Customer and Customer's parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents ("Customer's Indemnified Parties") harmless from and against all third party Losses to the extent arising out of or in connection with (i) Licensor's infringement or misappropriation of a UK or U.S. patent, copyright, trademark or other similar UK or U.S. intellectual property right of a third party other than to the extent resulting from the circumstances described in Section 11.1(ii); (ii) personal injury (including death) and damage to tangible property caused by Licensor's negligence or willful misconduct. Licensor's obligations under Section 11(2)(i) do not apply if infringement or misappropriation arises from (a) an infringing instruction from Customer; or (b) modification of the Services without Licensor's approval and without which such infringement would not have occurred.

11.3 Indemnification Procedure. The indemnifying Party's obligations in this Section 11 are subject to: (i) indemnifying Party being notified in writing promptly of any such claim or demand, but failure to do so will not relieve the indemnifying Party of its obligations except to the extent

such delay adversely impacts the indemnifying Party, (ii) indemnifying Party having sole control of the defense of any action, claim or demand and of negotiations for its settlement or compromise; and (iii) indemnified Party reasonably cooperating with indemnifying Party, at indemnifying Party's expense, to facilitate settlement or defense of such claim or demand. Indemnifying Party will not settle or otherwise dispose of a claim or demand that includes a finding or admission of culpability of, requires payment or performance by, or otherwise materially adversely affects or admits fault or liability on the part of, the indemnified Party without indemnified Party's prior written consent, which will not be unreasonably withheld. The term "third party" as used in Sections 11.1 and 11.2 does not include an Affiliate of either Party.

12. Limitation of Liability

Except to the extent otherwise contemplated in Schedule 1, if an Assessment does not perform properly due to the fault of Licensor Technology, Licensor will allow the affected Participants to retake the Assessment at no additional charge to Customer.

IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY EXCEED THE GREATER OF AMOUNT OF FEES ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM OR FIFTY THOUSAND UNITED STATES DOLLARS ($50,000) AND IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, COSTS OF COVER, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICES, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE ABOVE LIMITATIONS OF LIABILITY SHALL NOT APPLY TO (A) INDEMNIFICATION FOR THIRD PARTY CLAIMS, (B) MISAPPROPRIATION OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS, (C) A MATERIAL BREACH OF SECTION 6 OF THIS AGREEMENT OR (D) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. FURTHER, NOTHING IN THIS AGREEMENT SHALL EXCLUDE EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE, FRAUD, OR ANY OTHER LIABILITY WHICH CANNOT BE PROPERLY EXCLUDED BY LAW. LICENSOR HAS NO LIABILITY WHERE LICENSOR IS PROVIDING A FREE TRIAL. THE LIMITATIONS IN THIS SECTION 12 DO NOT APPLY TO CUSTOMER'S OBLIGATION TO PAY FEES.

13. Insurance

Subject to Licensor's discretion to reasonably adjust its insurance due to changes in circumstances or applicable laws, Licensor will maintain the following insurance during the Term with reputable insurance companies: (A) For Agreements with Questionmark Corporation: (i) Workers Compensation meeting minimum statutory requirements; (ii) Employers Liability insurance - limits of not less than US$1,000,000 each accident; (iii) Commercial General insurance - limits of not less than US$2,000,000 each occurrence, US$4,000,000 general aggregate and US$4,000,000 products – completed operations

aggregate; (iv) Automobile Liability insurance covering hired and non-owned autos - combined single limit of not less than US$1,000,000 each accident; (v) Umbrella Liability insurance - limits of not less than US$4,000,000 each occurrence and US$4,000,000 aggregate; and (vi) Technology Errors and Omissions insurance with limits of not less than US$5,000,000 each claim and US$5,000,000 aggregate. (B) For Agreements with Questionmark Computing Limited: (i) public liability insurance - €10,000,000 any one occurrence; (ii) employers liability insurance - €10,000,000 per any one claim; (iii) professional liability insurance – €5,000,000 in the aggregate; (iv) cyber insurance – limit of indemnity of €5,000,000 in the aggregate for third party liability and €1,000,000 in the aggregate for first party liability. All coverages described in this Section 13 are provided subject to the terms, conditions, exclusions, deductibles and sub-limits of the applicable insurance policies as in effect from time to time.

14. Miscellaneous

14.1 Notices. Notices will be given by first class mail or pre-paid registered post to the addresses on page one of this Agreement or as specified by a Party from time to time. Notices will be deemed given two (2) Business Days after mailing. Any notice to Licensor must be contemporaneously copied to legalnotices@learnosity.com. Licensor may provide general operational announcements to all users of the OnDemand Service by other means, including email.

14.2 Assignment. This Agreement may not be assigned by a Party without the prior written consent of the other Party, except to (i) a parent, Affiliate or subsidiary of either Party, (ii) an acquirer of substantially all of the assets or business of either Party, or (iii) a successor of either Party by merger. In the event of any actual or proposed change in control of Customer that results or would result in a direct competitor of Licensor directly or indirectly owning or controlling 25% or more of Customer, Licensor may immediately terminate this Agreement for cause.

14.3 Force Majeure. Neither Party will be in breach of nor liable for any failure or delay in performance of any obligations under this Agreement (save for Customer's payment obligations) arising from or attributable to a Force Majeure Event provided that it promptly notifies the other Party in writing and uses all reasonable endeavors to mitigate the effect of the Force Majeure Event.

14.4 No Waiver. Failure by either Party to exercise or enforce any right or benefit conferred by this Agreement will not be deemed a waiver of any such right or benefit nor operate to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

14.5 Severability. If any provision, or part provision, of this Agreement is held by a court of competent authority to be invalid, illegal, or unenforceable, that provision or part provision will be deemed deleted and the remainder of this Agreement will continue in full force and effect.

14.6 Amendments. No amendment of this Agreement is effective unless in writing and signed by the Parties.

14.7 Entire Agreement. This Agreement, which includes the applicable Schedules contains the entire understanding of the Parties and supersedes any prior discussions or agreements concerning such subject matter. If Customer has obtained a license to use the Services from a Licensor reseller and the terms of any agreement or documentation between Customer and such reseller conflict with the terms of this Agreement, (i) Licensor is entitled to perform and enforce this Agreement in accordance with its terms, (ii) as between Licensor and Customer, the terms of this Agreement shall govern, and (iii) Customer's sole recourse and remedy for any loss, damage, expense or other liability including as caused by such conflict is against such reseller.

14.8 Reliance. Customer acknowledges that Licensor has set its prices and entered into this Agreement in reliance on the limits of liability and disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential part of the bargain.

14.9 Independent Contractor. The Parties are independent contractors. Nothing herein creates a partnership, joint venture, franchise, employment, or agency relationship between the Parties. Neither Party has authority to enter into agreements of any kind on behalf of the other Party nor bind the other Party in any manner to any third party.

14.10 Governing Law and Forum. For Agreements with Questionmark Corporation, this Agreement is governed by Connecticut law (Connecticut being a state of the United States of America), without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services are subject to the exclusive jurisdiction of the state and federal courts in Bridgeport, Connecticut. For Agreements with Questionmark Computing Limited, this Agreement shall be governed and construed in accordance with the laws of England and Wales and the Parties irrevocably agree to the exclusive jurisdiction of the courts of England.

If Customer is domiciled in a country outside the United States or United Kingdom, Customer is responsible for any issues triggered by the applicability and/or enforcement of the laws of that country related to this Agreement. Customer waives any right granted by that country that may confer to Customer any rights different than those specifically contemplated and provided under this Agreement. Customer will defend, indemnify and hold Licensor harmless against any claims resulting from additional obligations imposed on Licensor due to the application and/or enforcement of law in non-U.S. or non-United Kingdom jurisdictions.

14.11 U.S. Government Restricted Rights. This Section 14.11 only applies for Agreements with Questionmark Corporation. If the OnDemand Service is licensed to or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with RESTRICTED RIGHTS. To the extent that a license of the OnDemand Service is considered a license of software, the OnDemand Service and accompanying Documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display or disclosure of the OnDemand Service and

accompanying Documentation by the U.S. Government are subject to restrictions as set forth in this Agreement and pursuant to 48 C.F.R. 12.212, 52.227-14 (Alternate III), 52.227-19, 227.7202, and 1852.227-86, as applicable.

14.12 Third Party Rights. This Section 14.12 only applies for Agreements with Questionmark Computing Limited. This Agreement is not intended to convey on any person who is not a Party any rights to enforce this Agreement, including under the Contracts (Rights of Third Parties) Act 1999.

14.13 Survival. The indemnity obligations in this Agreement, together with any other obligations which by their nature or essential purpose should survive termination or expiry of an Order, shall survive termination or expiry of an Order.

Schedule 1 – Support

1. Definitions. In this Schedule, the following terms have the following meanings:

Support means the support and maintenance of the OnDemand Service as described in this Schedule.

Working Hours means as follows on Business Days (unless otherwise defined in the Order or agreed with Licensor in writing):

OnDemand Service	Working Hours
US OnDemand Service	9 am (09:00) to 6 pm (18:00), U.S. Eastern Time Zone
UK OnDemand Service	9 am (09:00) to 6 pm (18:00), UK time
EU Central OnDemand Service	9 am (09:00) to 6 pm (18:00), Central European Time.
Australian OnDemand Service	9 am (09:00) to 6 pm (18:00), Sydney, Australia

2. Support Generally.

2.1 Support is provided for all Customers.

2.2 Licensor will use reasonable efforts to respond to requests for assistance during Working Hours to the extent described below.

3. Support Designated Contacts. Customer will notify Licensor of the individuals who will be Customer's designated contacts for requesting support via phone and email ("Designated Contacts"). The maximum number of Designated Contacts unless otherwise defined in the Order shall be three (3). Customer may substitute Designated Contacts on a permanent or temporary basis on written notice to Licensor. Customer will ensure that Customer's Designated Contacts subscribe to Licensor's OnDemand Service news feed during the Term.

4. Support Details.

4.1 Licensor will provide support services in English (unless otherwise specified on the Order) to Designated Contacts. Licensor will provide Designated Contacts access to product and technical support information, online knowledge bases, manuals, best practice guides, white papers and news feeds.

Service Name	Description	Provision
OnDemand Service Support	Maintenance of the OnDemand Service 24 x 7 to maintain uptime. Maintenance of the OnDemand Service does not consume support hours.	Provided by Licensor and/or its sub-contractors 24 x 7.
1st Line Technical Support	Assistance by phone and email to Designated Contacts to resolve technical issues that might result in resetting servers, keeping people informed of server status, and answer questions where the answers could be found in the Licensor manuals or knowledge base items.	Provided by Licensor during Working Hours as standard and 24 x 7 for an additional fee.
2nd Line Technical Support	Assistance by phone and email to Designated Contacts to answer questions and provide workarounds where answers could not be found in the manuals or knowledge base items.	Provided by Licensor during Working Hours as standard and 24 x 7 for an additional fee.
3rd Line Technical Support	Resolve software issues with the OnDemand Service in a manner that does not consume support hours.	Provided by Licensor and included as standard.
Chat Technical Support	Assistance to Designated Contacts using 24 x 7 browser text chat sessions and VoIP to help resolve issues.	Provided by Licensor and included as standard.
Participant Support	Assistance by phone, email, chat sessions, etc. to the Participant to assist them to use any part of the Service.	This is NOT a service currently provided by Licensor for the OnDemand Service, and is the responsibility of Customer. Support provided for online proctoring and record and review proctoring is described at https://www.questionmark.com/go/od-opss and https://www.questionmark.com/go/od-rrss.
Proctor/Invigilator Support	Assistance by phone, email, chat sessions, etc. to proctor/invigilators to assist them with the	This service is available from Licensor for an additional fee.

	proctoring/invigilation process including but not limited to the use of the Service.	
Consulting Support	Assistance with template creation and modification to change look-and-feel of assessment, assessment content import, content transformations, custom development, support of custom development, consulting services, training services, data format changes, etc.	Defined within an Order and delivered for a fee that depends on the scale of the work required.

4.2 During Scheduled Maintenance and Emergency Maintenance, the OnDemand Service may not be accessible by Users. Licensor will provide Customer with details of Scheduled Maintenance, which typically occurs during non-peak and non-business hours. Licensor will, where possible, provide notice of Emergency Maintenance. Licensor will use good faith efforts to minimize the duration of and perform any Scheduled Maintenance and Emergency Maintenance during off peak hours and, whenever possible, minimize impact to Customer.

4.3 Customer will use commercially reasonable efforts to provide accurate and prompt notice of any Service Incident with the OnDemand Service so that Licensor may take remedial action. Licensor is not obligated to remedy a Service Incident caused by User error or failure to access the OnDemand Service with a compatible system or web browser.

5. Support Service Level Agreement.

5.1 Licensor will use commercially reasonable efforts to respond to the Designated Contact within the Initial Response Time specified below, based on the Service Incident's Severity Level as reasonably determined by Licensor.

Red Alert	A complete outage of the entire OnDemand Service. Customer is unable to access the OnDemand Service due to such complete outage. Licensor dedicates all available resources to resolve a Red Alert at the highest level of priority. Red Alert applies during Working Hours (or as part of 24 x 7 support, if purchased for an additional fee).	Initial Response Time (by email or call back) is targeted within thirty (30) minutes of Red Alert being invoked by Licensor, during Working Hours. Maximum Time Between Updates (by email, call back or implementation in the OnDemand Service) is targeted one (1) Working Hour. Licensor targets informing Customer that the OnDemand Service is restored within fifteen (15) minutes of restoration during Working Hours.

Severity 1	An error isolated to the OnDemand Service that renders the service inoperative or causes the service to fail catastrophically, i.e. major system impact or system outage. Must be resolved before Customer can use the OnDemand Service. All Severity 1 Issues have no workaround. Customer and Licensor will work closely together to resolve the error as soon as possible. Severity 1 issues are extremely rare; Licensor escalates these issues to high priority.	Initial Response Time (by email or call back) is within four (4) Working Hours. Maximum Time Between Updates (by email, call back or implementation in the OnDemand Service) is four (4) Working Hours.
Severity 2	An error isolated to the OnDemand Service which causes a serious impairment to a critical feature of the OnDemand Service, but where overall functionality is not interrupted. Usually a workaround is available, but not in all cases. Licensor resolves Severity 2 issues as soon as possible.	Initial Response Time (by email or call back) is within eight (8) Working Hours. Maximum Time Between Updates (by email, call back or implementation in the OnDemand Service) is four (4) Working Hours during the first three (3) Business Days and then updated as needed thereafter.
Severity 3	An issue that causes failure of a noncritical aspect of the OnDemand Service. A satisfactory work-around exists but the issue will result in User dissatisfaction.	Initial Response Time (by email or call back) is within two (2) Business Days during Working Hours. Maximum Time Between Updates (by email, call back or implementation in the OnDemand Service) is two (2) Business Days for the first week; as needed thereafter. Solution provided as part of a future release.
Severity 4	A minor issue. A slight variance exists between the Documentation and actual performance.	Initial Response Time (by email or call back) is within two (2) Business Days during Working Hours. Customer update is every five (5) Business Days, during the first month; as needed thereafter. Solution provided as part of a future release at Licensor's discretion.

5.2 Targeted Availability. The Assessment Delivery Service is targeted to be available to Customer twenty-four (24) hours a day, seven (7) days a week, at least 99.9% of the time measured on a monthly basis, excluding Scheduled Maintenance, Emergency Maintenance or due to a Force Majeure Event.

6. Exclusions. Licensor has no responsibility for a failure in the Services to the extent owing to: (i) Customer's failure to correctly follow Licensor's instructions; (ii) malfunctioning of

Customer's hardware or software or failure of its software to interoperate with other software (including firmware) or operating systems and applications necessary for the Services; (iii) loss or corruption of any password, security code or other identification code unless caused by Licensor; (iv) loss of or corruption of data in transit to or from Licensor's storage facility, where such loss/corruption is not within the control of Licensor; (v) Customer being frozen out of access to the Services owing to a denial of service attack.