

Questionmark OnDemand Data Processing

Addendum

This Data Processing Addendum (“Data Processing Addendum”) applies and is part of the Agreement with respect to any Processing (as defined below) by Questionmark of Customer Personal Data on behalf of Customer in provision of the Services. Customer enters into this Addendum on behalf of itself and, to the extent required under applicable Data Protection Law, in the name and on behalf of its Affiliates that are permitted to use the Services, if and to the extent Questionmark processes Customer Personal Data for which such Affiliates qualify as a Data Controller. Any conflict or inconsistency between this Data Processing Addendum and the other parts of the Agreement shall be resolved in favor of this Data Processing Addendum in respect of the subject matter hereof.

Capitalized terms used in this Data Processing Addendum without definition have the meanings given to those terms in the Questionmark Standard Terms (as defined below). For agreements with Questionmark Corporation, if Customer is located outside of the European Union or United Kingdom it will inform Questionmark in writing if Customer Personal Data is subject to the GDPR or UK GDPR (each as defined below).

1. Definitions

The following definitions apply for this Data Processing Addendum:

“Agreement” means the terms and conditions applicable to Questionmark’s provision of the OnDemand Service to Customer, which in absence of other mutually executed terms referring to this Addendum shall be the Questionmark OnDemand Service Terms and Conditions at www.questionmark.com/go/agree-od-tc (“Questionmark Standard Terms”), supplemented by this Data Processing Addendum.

“Data Protection Law” means the General Data Protection Regulation (EU) 2016/679 (“GDPR”), United Kingdom Data Protection Act 2018 and the GDPR as modified and retained in the law of the United Kingdom (“UK GDPR”), the California Consumer Privacy Act (“CCPA”) and/or the Australian Privacy Principles included in the Australian Privacy Act 1988 (Cth)(“APPs”), in each case as applicable as a matter of law to Customer as Data Controller, covered Business or equivalent and to Questionmark as Data Processor, Service Provider or equivalent. Any provision of this Data Processing Addendum referring specifically to the GDPR applies also to the UK GDPR and the equivalent provision therein, and in each case only applies to Customer Personal Data that is subject to the GDPR or UK GDPR (as applicable);

“Data Processor”, “Data Controller”, “Personal Data”, “Personal Data Breach” and “Processing” shall have the meanings given to such terms in the applicable Data Protection Law. “Data Subject”

has the meaning given to that term in the GDPR, or where applicable means an individual under the APPs that is an Assessment Participant. "Personal Information", "Business", "Service Provider" and "Consumer" have the meanings given to those terms in the CCPA or APPs (as applicable);

"Customer Personal Data" means all Personal Data (for the GDPR/UK GDPR) or Personal Information (for the CCPA or APPs) comprised in Customer Data that Questionmark Processes as Data Processor on behalf of Customer that is subject to Data Protection Law, which may include such data of Customer Affiliates that are subject to Data Protection Law and are permitted to use the Services;

"New Standard Contractual Clauses" means the unchanged Standard Contractual Clauses published by the European Commission under Commission Implementing Decision (EU) 2021/914 (4 June 2021).

"Subprocessor" means other Data Processors engaged by Questionmark to Process Customer Personal Data.

"UK International Data Transfer Addendum" means the UK international data transfer addendum to the New Standard Contractual Clauses, issued by the UK Information Commissioners Office (21 March 2022).

"Third Country" means a country or territory not recognized by the European Union as a safe country with an adequate level of data protection under Article 45 GDPR.

2. **Processing Details.** The subject-matter of the Processing is running an assessment management system and providing the Services described in the Agreement and Order. The duration of the Processing is the Term and until Customer Personal Data has been returned to Customer or deleted in accordance with the Agreement. The nature and purpose of the Processing is to provide Services to Customer. The types of Customer Personal Data provided by Customer to the Services are within the general control and responsibility of Customer and may vary based upon the exact Services ordered. Customer Personal Data includes that specified in Article 4 GDPR and any other Customer Personal Data uploaded to the Services by Customer, as well as system access, usage and authorization data and other data captured from Participants during Assessment processes, including identification, monitoring data, answers to questions, Assessment results and scores and records of technical support. Questionmark uses necessary cookies within the Services for functionality purposes only. The categories of Data Subjects are solely determined by and the responsibility of Customer and typically include employees, students, contractors, candidates and other Participants in Assessments.

3. **Customer Responsibilities.** The Customer agrees that:

- 3.1 Customer's use of the Services may result in Questionmark receiving Customer Personal Data. In respect of Customer Personal Data, Customer is the Data Controller and Questionmark is the Data Processor to the extent the GDPR/UK GDPR is applicable. Customer will inform Questionmark if it acts as a joint controller with another party in respect of Customer Personal Data or if any Customer Affiliates are Data Controllers, and provide contact details for its/their Data Protection Officer, if appointed. Customer's obligations

continue to apply for Customer Personal Data in respect of which a Customer Affiliate is the Data Controller.

- 3.2 Customer is responsible for its compliance with Data Protection Law and all other laws applicable to Customer in its use of the Services, including its use of Customer Personal Data. Customer confirms that it will collect Customer Personal Data only by fair and lawful means and its transmittal of such Customer Personal Data to Questionmark for Processing, use and disclosure under this Agreement shall be without breach of any law, agreement, arrangement or duty or the rights of any third party. Customer must secure all consents that may be necessary according to the applicable Data Protection Law to permit such Processing, use and disclosure. Customer is responsible for providing Data Subjects and Consumers with all information required by Data Protection Laws on collection of Customer Personal Data, including when using the Services to collect Customer Personal Data. Questionmark will comply with Data Protection Laws applicable to it in its provision of the Services.
4. **Confidentiality.** Questionmark will ensure that persons authorized to access Customer Personal Data commit themselves to confidentiality even after their engagement ends.
5. **Questionmark Responsibilities.** When Processing Customer Personal Data, Questionmark will:
- 5.1 Implement the appropriate technical and organizational measures detailed at www.questionmark.com/go/od-measures in such a manner designed to ensure that Processing will meet the requirements of applicable Data Protection Law and ensure the protection of the rights of Data Subjects, in each case providing a level of security that is risk appropriate. Questionmark may update the technical and organizational measures from time to time and will make any updated version available to Customer at the above links and notify Customer if there is a material reduction in measures.
- 5.2 Take all measures required pursuant to Article 32 of the GDPR, taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
- 5.3 Only Process Customer Personal Data upon Customer's instructions (including for operation and maintenance of the Services and as otherwise included in the Agreement) as required by the applicable Data Protection Law, including with respect to transfers of Customer Personal Data that is subject to the GDPR or UK GDPR to a third country outside of the European Economic Area (EEA), Switzerland or United Kingdom (as applicable), unless required to do so by EU law, EEA member state law, Swiss law or UK law (as applicable) to which Questionmark is subject; in such case Questionmark will inform Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest. 'Customer's instructions' include the terms of the Agreement and any configuration of the Customer's instance of the Services made by the Customer. Questionmark will not use Customer Personal Data to send direct marketing correspondence to Participants.

6. Subprocessors. Questionmark may:

6.1 Engage Subprocessors in accordance with this Agreement.

6.2 Continue to use the Subprocessors engaged by it prior to the Order date, subject to compliance with its obligations under Data Protection Law. A list of Questionmark's current organizational Subprocessors is provided at www.questionmark.com/go/od-subprocessors.

6.3 Not engage a new Subprocessor without providing prior written notice and opportunity to object to Customer. Questionmark will satisfy this obligation by updating its list of organizational Subprocessors referred to at Section 6.2 above at least twenty-eight (28) days prior to authorizing a new organizational Subprocessor. Customer provides general written authorization to Questionmark's present and future engagement of individual, natural person contractors who are under obligations of confidentiality, and may obtain notice of such contractors at any time by requesting a list from Questionmark. Any objections to a new Subprocessor must be received within twenty-eight (28) days of notification, otherwise Customer is deemed to accept the new Subprocessor. If Customer reasonably objects to a new Subprocessor and such objection cannot be satisfactorily resolved within a reasonable time, Customer may terminate this Agreement without penalty upon thirty (30) days' written notice to Questionmark. If Customer's objection remains unresolved thirty (30) days after it was raised and no notice of termination has been received, Customer is deemed to accept the new Subprocessor. This Section 6.3 applies only if the GDPR or UK GDPR is applicable to Customer Personal Data.

6.4 Engage a new Subprocessor in emergencies and situations outside of Questionmark's reasonable control, including natural disaster or financial distress of an existing Subprocessor, subject to Questionmark updating the list of Subprocessors referred to in Section 6.3 as soon as is reasonably practicable.

7. Questionmark will respect the conditions referred to in Article 28 GDPR paragraphs 2 and 4 for engaging another processor. Questionmark will ensure Subprocessors are bound by written agreements requiring them to adhere to the same data protection obligations in accordance with Article 28(3) GDPR, as required by Article 28(4) GDPR. Questionmark remains responsible to Customer for Processing of Customer Personal Data by Subprocessors.

8. Data Transfers.

8.1 Questionmark's production data center used to deliver Assessments in the OnDemand Service is located as follows (unless otherwise agreed in writing by the Parties): (A) in the United Kingdom for the UK/EU OnDemand Service provided by Questionmark Computing Limited; (B) in the European Union, for the EU Central OnDemand Service provided by Questionmark Computing Limited (C) in the United States, for the US OnDemand Service provided by Questionmark Corporation; and (D) in Australia, for the Australian OnDemand Service provided by Questionmark Computing Limited.

8.2 Customer agrees that Questionmark may transfer Customer Personal Data to other countries (and Process and provide access to such data in those other countries) for purpose of its provision of the Services in accordance with the requirements of the applicable Data Protection Law. Such other countries shall include the United Kingdom, the member states of the European Union, the United States, Australia and India.

8.3 **Transfers of EEA and Swiss Customer Personal Data.** Questionmark may transfer Customer Personal Data from the EEA and Switzerland subject to compliance with Chapter V of the GDPR and Swiss data protection law, as applicable, including where having in place a valid transfer mechanism recognized by the European Commission or Swiss Federal Data Protection and Information Commissioner and as follows:

8.3.1 Where Questionmark is not located in a Third Country and acts as a data exporter, Questionmark (or a Questionmark Affiliate) will enter into the New Standard Contractual Clauses (Module 3: Processor to Processor) with each Subprocessor as the data importer;

8.3.2 Where Questionmark is located in a Third Country, Questionmark and Customer hereby enter into the New Standard Contractual Clauses, with Customer as the data exporter and Questionmark as the data importer, which shall apply as follows:

(i) Module 2 (Controller to Processor) where Customer is a Data Controller;

(ii) Module 3 (Processor to Processor) where Customer is a Data Processor. Where Customer acts as a Data Processor, Questionmark acknowledges that Customer acts under instructions of its Data Controller.

Questionmark has made available the New Standard Contractual Clauses (Modules 2 and 3) including the UK International Data Transfer Addendum at www.questionmark.com/go/newsccl, which Customer may sign and return to Questionmark at privacy@learnosity.com for countersignature. Customer is responsible for ensuring that these New Standard Contractual Clauses and UK International Data Transfer Addendum are sufficient and appropriate for use as between Customer and Questionmark, including with respect to the details included, and shall address any additional requirements based on specific circumstances with Questionmark. For the avoidance of doubt, only the applicable module(s) shall apply.

8.3.3 The New Standard Contractual Clauses, where applicable, prevail over the other parts of this Data Processing Addendum.

8.3.4 Other Data Controllers or Data Processors whose use of the Services is authorized under the Agreement may also enter into the New Standard Contractual Clauses with Customer as described in Section 8.3.2 above. In such cases, Customer enters into the New Standard Contractual Clauses on behalf of the other Data Controllers or Data Processors.

8.3.5 With respect to transfers made pursuant to the New Standard Contractual Clauses, on request from a Data Subject to Customer, Customer may make a copy of the New Standard Contractual Clauses (Module 2 or Module 3) entered into between Customer and Questionmark available to the Data Subject.

8.3.6 Where this Data Processing Addendum includes specifications for audits and Subprocessor rules, such specifications also apply for the New Standard Contractual Clauses.

8.3.7 If Customer is located in a Third Country and is acting as a data importer under the New Standard Contractual Clauses (Module 2 or Module 3) and Questionmark is acting as a subprocessor, the applicable data exporter will have the following third party beneficiary right:

If Customer has factually disappeared, ceased to exist in law or has become insolvent (in all cases without a successor entity that has assumed the legal obligations of the Customer by contract or by operation of law), the data exporter shall have the right to terminate the affected Services solely to the extent that the data exporter's Personal Data is processed. In such event, the respective data exporter also instructs Questionmark to erase or return the Personal Data.

8.3.8 For the avoidance of doubt, any existing transfers of Customer Personal Data as at 27 September 2021 from the EEA and Switzerland made pursuant to the Standard Contractual Clauses (Processors) (2010/87/EU) ("2010 SCCs") may continue under those arrangements as long as permitted according to Data Protection Law or until sooner modified by the parties, following which the New Standard Contractual Clauses shall apply as described in this Data Processing Agreement.

8.4 Transfers of UK Customer Personal Data. Questionmark may transfer Customer Personal Data from the United Kingdom subject to compliance with UK Data Protection Law. For transfers of Customer Personal Data from the United Kingdom to a Third Country according to Agreements entered into before 21 September 2022, the 2010 SCCs continue to apply as long as permitted according to UK Data Protection Law, entry into which by Questionmark is authorized by Customer on its behalf as Data Controller (where such authorization is required by applicable laws), after which the UK International Data Transfer Addendum shall apply. With respect to transfers of Customer Personal Data from the United Kingdom to a Third Country according to Agreements entered into from 21 September 2022, the UK International Data Transfer Addendum shall apply.

8.5 Where the APPs are applicable, Questionmark will comply with APP 8 in respect of all cross border disclosure of personal information.

9. Data Subject Rights. Customer is responsible for all communication with Data Subjects and Consumers, including in respect of responding to requests as described in this Section 9. Accordingly, Questionmark will:

9.1 taking into account the nature of the Processing and to the extent required by applicable Data Protection Law, assist Customer by appropriate technical and organizational measures, insofar as is possible, for fulfilment of any obligation on Customer to respond to requests for exercising Data Subject or Consumer rights under applicable Data Protection Law in accordance with this Section 9.1.

- 9.1.1 Questionmark will as permitted by applicable law and without undue delay notify Customer if it receives a request, inquiry or complaint from a Data Subject or Consumer in respect of that person's Customer Personal Data. Questionmark shall not respond to such a request except to confirm the request relates to Customer.
- 9.1.2 To the extent Customer is unable to respond to the request through general functionality of the Services, Questionmark will on request make commercially reasonable efforts to assist Customer for this purpose. If assistance requires significant time and/or resources by Questionmark, to be judged by Questionmark acting reasonably, Customer is responsible for the reasonable, pre-agreed costs arising from such assistance.
- 9.1.3 Notwithstanding the foregoing, Customer agrees that any restriction of Processing Customer Personal Data is Customer's exclusive responsibility.
- 9.2 On request provide reasonable assistance to Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of processing and information available to Questionmark. Such assistance is subject to Customer's payment of reasonable pre-agreed charges where the assistance required is not part of Questionmark's standard services then provided to all customers.
10. **Personal Data Breach.** Questionmark will as required by the applicable Data Protection Law notify Customer without unduly delay in accordance with timescales specified by the applicable Data Protection Law after becoming aware of a Personal Data Breach and/or eligible data breach (under the Australian Privacy Act 1988) in respect of Customer Personal Data. The Parties agree that Customer shall provide any notifications that may be required under Data Protection Law to authorities and/or Data Subjects or Consumers resulting from a Personal Data Breach or eligible data breach, within the time specified by the Data Protection Law.
11. **Processing Records.** Questionmark will maintain a record of all categories of Processing activities carried out on Customer Personal Data by Questionmark on behalf of Customer (for clarity excluding Processing by Customer within the Services, which shall be Customer's responsibility) required by Article 30(2) GDPR and make such record available to the supervisory authority on request.
12. **Return/Deletion.** Questionmark will at the choice of Customer, delete or make available all Customer Personal Data stored in the OnDemand Service for return to Customer within thirty (30) Business Days after the end of the Services in a reasonable standard file format, and delete existing copies unless the applicable Data Protection Law or EEA member state law requires or permits storage of the Customer Personal Data.
13. **Audit.** Questionmark will make available to Customer on request all information necessary to demonstrate compliance with Questionmark's obligations in Article 28 GDPR and will allow for and contribute to audits including inspections, conducted by Customer or another auditor mandated by Customer in relation to Questionmark's Processing of Customer Personal Data. The Parties agree that this obligation is fulfilled by Questionmark's making

available, upon request and subject to confidentiality obligations, Questionmark's then current independent third-party certifications and answering reasonable questionnaires from Customer. Additional audit requirements shall be subject to separate written agreement of the Parties. The Parties agree that the provisions of this Section 13 satisfy Customer's rights to conduct audits of Questionmark's Personal Data Processing facilities under the New Standard Contractual Clauses or 2010 SCCs (where applicable).

14. **CCPA.** If the CCPA is applicable to Customer, Questionmark is acting as a "service provider". Questionmark will not retain, use, disclose, or otherwise process Customer Personal Data that is subject to the CCPA in a manner that is inconsistent with the obligations of a service provider under the CCPA. Questionmark will never "sell" Customer Personal Data, as such term is defined in the CCPA.
15. **HIPAA.** This Section 15 applies only if Customer is subject to the requirements of the **United States Health Insurance Portability and Accountability Act 1996**. Customer will not upload to the Services or otherwise provide Questionmark, its Affiliates, Subprocessors or licensors with access to Protected Health Information as defined at 45 C.F.R. § 160.103 ("PHI") unless and until the Parties execute a separate HIPAA business associate agreement providing the satisfactory assurances required by 45 CFR § 164.502(e)(2) ("HIPAA BAA"). Any HIPAA BAA shall be exclusively applicable to PHI used by Customer in a defined area within the OnDemand Service to which Questionmark has access. For the avoidance of doubt, Questionmark only becomes aware of Customer's use of PHI in the Services on execution of a HIPAA BAA.
16. **FERPA.** This Section 16 applies only if Customer is subject to the requirements of the **United States Family Educational Rights and Privacy Act and its implementing regulations (20 U.S.C. § 1232G; 34 Part 99) ("FERPA")**. If Customer is an educational agency or institution under FERPA, Questionmark acknowledges that Customer Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Data"). To the extent Questionmark receives FERPA Data when providing the Services, Questionmark will be functioning as a "school official" with legitimate educational interests as defined in FERPA, and will comply with FERPA. Customer understands Questionmark will have no or limited contact information for Customer's students and students' parents and that Customer is responsible for obtaining any consents to use the Services that may be required under applicable laws.
17. **APPs.** This Section 17 only applies if Customer is subject to the **APPs**. Customer is responsible for ensuring any Customer Personal Data is anonymised or pseudonymised if required by Data Protection Laws. Where a Data Protection Law imposes on Questionmark any of the following obligations in relation to Customer Personal Data, Questionmark may notify Customer and Customer must take such actions as are needed to render Questionmark compliant with that obligation: (a) providing access to that information; (b) associating a statement with that information; or (c) ensuring that information is any one or more of the following: (i) accurate; (ii) up to date; (iii) complete; (iv) relevant; and (v) not misleading. Customer shall not disclose any Australian government related identifiers to Questionmark without Questionmark's prior written authorisation.

18. **Scope.** Questionmark’s website privacy policy (www.questionmark.com/privacy) (“Website Privacy Policy”) describes how Questionmark processes personal data and personal information for sales, account management, business communications and business marketing purposes. Questionmark’s Processing of Customer Personal Data is governed by the privacy commitments in this Data Privacy Addendum, not the Website Privacy Policy.
19. **Agreement Terms.** 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 this Data Processing Addendum, including for clarity any claim by a Customer Affiliate, and the limit of liability set out elsewhere in the Agreement shall constitute the total aggregate limit of liability of Questionmark for all claims by Customer and Customer Affiliates arising out of or related to the Agreement (including this Data Processing Addendum).