

Training, Consulting and Services Terms and Conditions

1. Definitions

In this Agreement ("Agreement"), the following words will have the following meanings:

Ancillary Software means software that is not part of the Deliverable but which is installed separately to run alongside the Deliverable and which has its own licence agreement presented on install.

Authors means any Admin User that uses Questionmark Technology to manage, monitor and report on assessments and/or Participants.

Commencement Date means the date 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 or information which is marked a confidential or which may reasonably be regarded as the confidential information of the disclosing Party;

Customer Data means the data, information and material provided or submitted by the Customer or Users to Questionmark in the course of receiving the Services. Customer Data shall expressly exclude the software, scripts, documentation and templates provided by Questionmark;

Customer means the party purchasing the Services provided by Questionmark;

Deliverable means the product of the Services as defined in the SOW and the Order;

Fees means the sums payable by the Customer to Questionmark in consideration of the Services, as more particularly described in the Order;

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, extreme adverse weather conditions, natural disaster, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, terrorist attack, civil war, civil commotion or riots, nuclear, chemical or biological contamination or sonic boom, compliance with any law, regulation or directive, fire, explosion or accidental damage, failure of plant machinery, machinery, computers or vehicles, any labour dispute, including (but not limited to) strikes, industrial action or lockouts, non-performance by suppliers or subcontractors and interruption or failure of utility or transport service;

Order means the written quotation for Services which has been approved by the Customer;

Participant means any User that has access to the system to participate in surveys, quizzes, exams, tests or other systematic ways of collecting data or otherwise participates in the assessment process which is provided or accessed by any software which forms part of the Services;

Questionmark means Questionmark Computing Limited whose registered office is at 3rd Floor 1 Ashley Road, Altrincham, Cheshire WA14 2DT, United Kingdom (company number 02278553);

Services means the services provided by Questionmark to the Customer, which may include training and/or consultancy and any managed Assessment services, as more particularly described in the Order;

Term means the period specified in the Order which shall start on the Commencement Date and shall continue until such time as the Services have been provided or this Agreement is terminated in accordance with clause 9.

Users means Admin Users, Authors and Participants.

2. Questionmark's Obligations

- 2.1 Following a request for Services, Questionmark shall produce a statement of work ("SOW") which shall be reviewed by the Customer and the parties shall agree a final form for the SOW which, when accepted by Customer shall be the Order for such Services.
- 2.2 The Services shall be performed and delivered at the times and places listed in the SOW. Questionmark shall use reasonable commercial endeavours to meet all timescales stated in the SOW but time shall not be of the essence unless otherwise expressly agreed in writing between the parties.
- 2.3 Questionmark shall supply the Services to the Customer during the Term using reasonable care and skill and in accordance with the terms of this Agreement.
- 2.4 Any changes to the Services shall be agreed between the parties and may be subject to additional Fees as agreed between the parties in writing.
- 2.5 Without releasing it from any of its duties or obligations, Questionmark may, at any time, without notice, use companies in its group or subcontractors to perform some or all of its duties and obligations under this Agreement.
- 2.6 If Questionmark attends Customer premises, Questionmark shall procure that its staff comply with the Customer's reasonable site rules as notified to it from time to time.
- 2.7 Questionmark accepts no liability for any delay or failure to provide the Services owing to:
 - 2.7.1 the Customer's failure to follow correctly Questionmark's reasonable instructions;

- 2.7.2 malfunctioning of the Customer's hardware, software or any hardware of software under its reasonable control;
- 2.8 Where an Order provides for any Services that are managed Assessment services, Questionmark shall provide those managed Assessment services as described in the Order and the standard product description referenced in the Order, in accordance with the terms and conditions of this Agreement.

3. Customer Obligations

- 3.1 The Customer shall provide reasonable assistance and access to its staff, site and equipment and such other resources as are necessary for Questionmark to provide the Services. Where the Services are not to be carried out on the Customer's premises, the Customer undertakes to ensure that it provides a safe environment and all appropriate space and resources reasonable requires or as set out in the SOW. The Customer acknowledges and agrees that it is the Customer's responsibility to confirm that the SOW satisfies the operational needs and requirements of the Customer's business and to identify any modifications to the SOW required to conform to the operational needs and/or requirements of the Customer's business.
- 3.2 The Customer shall, at its own cost, provide all such internet connections, hardware, software and all other equipment necessary to receive the Services and shall have sole responsibility for the maintenance and upkeep of such items unless otherwise agreed between the parties.
- 3.3 The Customer shall keep confidential all usernames, passwords, identification codes and security codes provided by Questionmark and shall notify Questionmark promptly in the event that it suspects the loss or unauthorised use or disclosure of any such username, password or code. The Customer acknowledges that except for any activity that occurs more than one (1) business day after notifying Questionmark of the suspected loss or disclosure or any unauthorized use of a username, password or code, it shall be liable for any activity carried out by a User or under any password, identification code or security codes issued to it as it were the party using it and shall take all reasonable efforts to prevent such breach and mitigate any losses.
- 3.4 Customer acknowledges that in the performance of the Services, Questionmark may require the disclosure by Customer of certain information, or access to certain of Customer's computer systems or databases. Customer agrees to provide Questionmark all information or access reasonably requested to enable Questionmark to complete the Services in accordance in accordance with the Order. Questionmark will have no liability for any failure or delay to provide the Services where such failure or delay is caused by or arises from the Customer's failure to provide necessary information or access.
- 3.5 The Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership and right of use of all Customer Data, including without limitation ensuring that Customer Data is transmitted

to and processed in the Services by Customer and provided to Questionmark in accordance with applicable laws, including for operation and maintenance of the Services, which Customer instructs Questionmark to undertake as necessary. Customer shall indemnify and hold harmless Questionmark against any third-party claims, losses or damages arising from or in connection with Questionmark's processing of the Customer Data pursuant to the provision of the Services and in accordance with the terms of the Agreement.

- 3.6 The Customer acknowledges that this agreement does not grant any right to access Questionmark's Services, including OnDemand, and does not grant any licence to any of Questionmark's software and such right of access is granted in a separate written agreement.
- 3.7 The Customer acknowledges that the Services may include provision of, training or consultancy in relation to certain software. Any use of Questionmark's services is subject to the Customer's acknowledgement of the following:
 - 3.7.1 The software may be used to correspond with Participants to assess a Participant's knowledge, skills and attitudes and allocate a score. The Customer is solely responsible for all correspondence with Participants. Scores should be considered to be one piece of evidence about the Participant's knowledge, skill and /or attitude. When the software is being used to make decisions about a Participant (such as whether to certify, license, hire, promote or fire the Participant), Customer is solely responsible for the fairness, quality and validation of the Assessment and should review and evaluate the score to ensure that the appropriate decision has been made;
 - 3.7.2 Customer is solely responsible for use of the software, including entering and maintaining the assessment material, checking this material, checking scores and checking reports;
 - 3.7.3 Should Customer use the software to deliver high stakes assessments or other kinds of assessments which are used to make important decisions about people, Customer acknowledges that it has a responsibility to thoroughly review and evaluate the materials, scores and reports produced by the software to ensure that the appropriate decisions are being made; and
 - 3.7.4 Customer shall indemnify and hold Questionmark and/or it's licensor harmless from any and all third party claims, liabilities, damages, costs and/or expenses and suits arising out of the use of the Services, software or use of the scores or outcomes to make decisions relating to Participants, including, but not limited to any and all such claims, liabilities, damages, losses, costs and expenses and suits arising from, related to or caused by any employment decisions, whether favourable or adverse in nature or effect, made by Customer based upon Customer's use of the Services, software or the scores produced from Customer's use of the software or any Deliverable, including, but not limited to employment termination or discharge, discipline, certification, licensing, compensation or promotion and advances.

4. Deliverables

- 4.1 In the event the SOW requires Questionmark to develop any Deliverable (including software), the Customer agrees that upon the delivery of such Deliverable, it shall have 14 days to review the Deliverable for any material non-conformance with the terms of the SOW. Where the Services involve training, the relevant Deliverable shall be the training plan. Questionmark shall not be required to carry out training until the training plan has been accepted.
- 4.2 In the event that the Customer does not report any material non-conformance with the SOW to Questionmark within the 14 day period, the Customer will have been deemed to have accepted such Deliverable and the Customer waives and releases Questionmark from and against any claim, liability, damage, demand, cost and/or expense, or suit arising from or related to such Deliverable developed by Questionmark on behalf of the Customer and where the Deliverable is a training plan, Questionmark shall not be required to carry out the same.
- 4.3 In the event the Deliverable is not in material conformance with the terms of the SOW, Questionmark will remedy such material non-conformance so as to bring it into material compliance with the SOW. This shall be the Customers entire remedy for non-conformance with the SOW.
- 4.4 Unless specified otherwise on the SOW, the deliverables will not be covered by any support plan.

5. Licence and Authorisation

- 5.1 In consideration of, and subject to, payment of the Fees, Questionmark hereby grants to the Customer a non-exclusive, royalty-free, non-transferable, non-sublicensable licence to any Deliverables for use in the Customer's own business or organisation and subject to the User Policy published at <https://www.questionmark.com/ondemand-use-policy> from time to time during the Term. The scope of the licence and authorisation is determined by this agreement and the Order. All rights not expressly granted to Customer hereunder are reserved by Questionmark, its suppliers and licensors.
- 5.2 The Customer hereby grants to Questionmark the non-exclusive, royalty-free licence to use the Customer Data in connection with the provision of the Services, including, but not limited to fault finding and maintenance, which the Customer instructs Questionmark to undertake as necessary.
- 5.3 Nothing in this Agreement shall restrict the rights granted to Customer by a licence for Ancillary Software applicable to any Deliverable, or part of a Deliverable, however, if Customer exercises any modification rights granted by such a licence, this may void any warranty provided by Questionmark and Customer's right to receive support and/or maintenance.

6. Fees

- 6.1 In consideration of the Services, the Customer shall pay the Fee, without deduction or set off, in full and cleared funds and in the currency specified within the Order to the account nominated by Questionmark from time to time, in accordance with the terms of the Order and this clause 6.
- 6.2 All invoices shall be due and payable by the Customer within 14 days of receipt of a valid invoice unless otherwise agreed in writing.
- 6.3 All Fees are non-refundable except in the event of termination by the Customer under clauses 9.1.1 or 9.1.2.
- 6.4 Questionmark may charge interest on any sum which remains unpaid after the due date for payment referred to in clause 6.2, such interest to be calculated from the due date for payment until payment (whether before or after judgment) at the monthly rate of 1.5% above the base rate from time to time of the Bank of England.
- 6.5 All Fees are exclusive of value added tax and any other sales taxes, import duties or other taxes, fees or levies imposed on the Fees (as opposed to taxes on Questionmark's business generally) which, if applicable, will be payable by the Customer at the then-prevailing rate.
- 6.6 Where on-site visits have been requested by the Customer the Customer shall pay Questionmark's reasonable out of pocket expenses incurred pursuant to such on-site visit including travel, lodging and subsistence together with an additional fee which shall be agreed between the parties.
- 6.7 In the event that the Customer requests additional services not comprising the Services, these shall be charged on an as-quoted basis and shall be subject to the terms of this agreement and any other terms agreed in writing between the parties.

7. Warranties

- 7.1 Customer warrants that it will not make a request of Questionmark to produce a Deliverable that infringes any copyright or database right or that Customer knows would infringe any Patent, trade secret, or other intellectual property rights and shall fully indemnify Questionmark in the event of a breach of this warranty.
- 7.2 Questionmark warrants that:
 - 7.2.1 at the time of delivery, the Deliverables will not knowingly infringe any UK Patent, or infringe any third party copyright, trade secret, or other intellectual property rights. This warranty will not apply to any infringement that would not be such except for Customer's contributed design, software or other elements or where the Customer is in breach of clause 7.1 above. Customer's exclusive remedy for the breach of the above warranty will be the re-performance of the Services within a commercially reasonable time.

- 7.2.2 it has and will for the duration of this Agreement have all licences, consents and authorisations or rights under any relevant law, legislation, regulations or administrative orders that are generally required and applicable to Questionmark in its provision of services;
 - 7.2.3 it will provide the Services and will carry out its obligations in this Agreement in accordance with all laws, licences and regulations of jurisdictions from which Questionmark provides the Services that are generally applicable to Questionmark in its provision thereof; and
 - 7.2.4 it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms.
- 7.3 The Customer warrants that:
- 7.3.1 it is, or is acting on behalf of, a business or lawfully constituted institution and shall continue to do so for the duration of the Term and that it has the full right, power and authority to enter into and perform this Agreement in accordance with its terms;
 - 7.3.2 it acknowledges that the Services are provided on an “as is” basis and that they are acceptable for the needs and requirements of the Customer;
 - 7.3.3 it has and will continue to have such licences and/or other authorisations or rights as may be necessary under any relevant law, legislation, regulation or administrative order, to receive the Services in accordance with this Agreement; and
 - 7.3.4 entry and performance of this Agreement and use of the Services by the Customer does not, and will not, violate or infringe the intellectual property or other rights of any other persons.
- 7.4 Questionmark may provide Ancillary Software as part of providing its services and such provision is made as a convenience and such supply shall not be part of the Services or the Deliverables. The Customer acknowledges that Ancillary Software is subject to its own licence terms and warranties.

8. Liability and Indemnity

- 8.1 Subject to clause 8.4, Questionmark excludes liability for loss of profit, loss of anticipated savings, loss of reputation, interest, penalties, legal or other professional costs and expenses in each case whether direct or indirect, and for all indirect or consequential loss or damage suffered or incurred by the Customer arising out of or in connection with Questionmark’s breach or negligent performance or non-performance of this Agreement.

- 8.2 Subject to clause 8.4, the maximum aggregate liability of Questionmark to the Customer under or in connection with this Agreement (whether in contract or tort, including negligence, misrepresentation or otherwise) shall be a sum no greater than the higher of 105% of the Fees actually paid in accordance with clause 6 in the year in which the liability is incurred or twenty-five thousand UK pounds sterling (£25,000), the Customer acknowledging that where Questionmark is providing a free trial, the cap shall be zero.
- 8.3 The Customer shall indemnify Questionmark for all direct costs, expenses, damages and losses suffered or incurred by Questionmark, and indemnify and hold harmless Questionmark from any claim from a third party in each case, arising out of or in connection with the Customer's breach or negligent performance or non-performance of this Agreement to the full extent of such liability
- 8.4 Nothing in this Agreement shall exclude either party's liability for:
- 8.4.1 death or personal injury caused by its negligence;
 - 8.4.2 fraud or fraudulent misrepresentation; or
 - 8.4.3 any other liability which cannot be properly excluded by law.
- 8.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED (BY STATUTE OR OTHERWISE) ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW, 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.
- 8.6 Notwithstanding any other provision of this Agreement, in the event Customer re-orders Services, Customer expressly waives and forever releases Questionmark from any and all claims, demands, damages, lawsuits, liabilities, losses, judgments, and/or costs related to or in any way connected with its prior receipt of Services.

9. Termination

- 9.1 Either party may terminate this agreement, without prejudice to any of its rights and remedies, at any time during the Term on giving written notice to the other:
- 9.1.1 in the event of a material breach by the other Party which is incapable of remedy;
 - 9.1.2 in the event of a material breach by the other Party which is capable of remedy but which the other Party fails to remedy within 30 days of having been notified of such breach;
 - 9.1.3 if the other Party has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other Party becomes subject

to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 (or similar applicable law of another jurisdiction) to be unable to pay its debts, or undergoes or is subject to any analogous acts or proceedings under any foreign law and such petitions or proceedings are not dismissed within 90 days of filing; or

9.1.4 if an event of Force Majeure continues for more than 60 days.

9.2 Questionmark may terminate the agreement at any time on giving the Customer not less than 30 days' prior written notice.

10. Effect of Termination

10.1 Following termination for whatever reason:

10.1.1 all outstanding invoices and all Fees which have not yet been invoiced shall become immediately due and payable;

10.1.2 Questionmark shall within 30 days make available to the Customer a file (in a standard file format) of the Customer Data and thereafter Questionmark may delete such Customer Data. If Customer requests its Customer Data in a different media or format, Questionmark may charge Customer for its time and materials at its reasonable standard rates then in effect for such services.

11. Force Majeure

Neither party shall be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (save for obligations on the Customer to make payment) arising from or attributable to an Force Majeure Event provided that it promptly notifies the other Party in writing of the nature and extent of the event of Force Majeure and it uses all reasonable endeavours to mitigate the effect of the event of Force Majeure.

12. Intellectual Property

12.1 The Customer acknowledges:

12.1.1 that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, in Questionmark Technologies and any relevant documentation or material provided by Questionmark will remain the sole property of Questionmark and its licensors; and

- 12.1.2 without limitation to the foregoing, that the Customer will not be entitled to use the name, trade marks, trade names or other proprietary identifying marks or symbols of Questionmark without Questionmark's prior written consent.
- 12.2 Questionmark shall retain ownership of all proprietary rights to any deliverables developed, including certain rights, if any, that Questionmark has pursuant to a licence from another party.
- 12.3 Subject to clause 5.3, upon full payment of the applicable Fees, Questionmark shall grant to the Customer a licence to use such deliverables in accordance with the clause 5.
- 12.4 Subject to clause 5.3, the Customer is not authorised to sell or license any Deliverables being produced as part of Services except as expressly set out in the Order.
- 12.5 Questionmark acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are contained in the Customer Data, Assessment content (including those managed by Questionmark as part of any managed Assessment services that may be part of the Services) and other data and information transmitted or stored using the OnDemand Service will remain the sole property of the Customer and its licensors.

13. Confidentiality

- 13.1 Each party shall keep the other's Confidential Information secure and hold it in confidence and, unless required by law, shall not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 13.2 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 13.3 Questionmark acknowledges that the Customer's Data is the Confidential Information of the Customer.
- 13.4 Any prior non-disclosure agreements in force between the parties shall remain valid and binding obligations in respect of disclosures made prior the Commencement Date by Questionmark and Customer, notwithstanding execution of this Agreement, unless otherwise provided for in those earlier non-disclosure agreements.
- 13.5 This clause 13 shall survive termination of this Agreement, however arising.

14. Security and Data Protection

- 14.1 Questionmark shall maintain information and physical security policies and procedures to protect the Customer Data consistent with good industry practice.
- 14.2 Questionmark represents that it is certified by a reputable third party against the ISO 27001 standard or a comparable successor standard, and that its production data centre used to deliver assessments is also audited against the SSAE 18 or ISO 27001 standards or comparable successor standards. On written request, Questionmark shall provide to Customer copies of its certificates and other reasonably requested documentation about its security.
- 14.3 Questionmark shall use reasonable efforts to respond to Customer questions regarding Questionmark's security practices. Any reports, summaries thereof or information provided pursuant to this clause 14 is Confidential Information of Questionmark.
- 14.4 Questionmark shall use commercially reasonable efforts not to include in the Services any computer viruses, malware, disabling devices or contaminants the purpose of which is to damage Customer's computer systems ("Contaminants"), the parties agreeing that any feature of the software that monitors the service configuration or disables access to the software at the end of the Term is not a Contaminant.
- 14.5 The parties shall comply with their respective obligations as detailed in Schedule 1.

15. Assignment

The Customer may not assign this Agreement without the prior written consent of Questionmark, such consent not to be unreasonably withheld.

16. No Waiver

Failure by either Party to exercise or enforce any right or benefit conferred by this Agreement will not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

17. Anti-bribery

- 17.1 Each party shall:
 - 17.1.1 in the performance of their obligations under this Agreement comply with all anti-corruption and anti-bribery laws respectively applicable to each of them of the jurisdictions in which they conduct their business;
 - 17.1.2 have and shall maintain in place throughout the term of the Agreement its own policies and procedures to ensure compliance with the requirements set out in the sub-clause above, and will enforce them where appropriate; and

17.1.3 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.

18. Notices

Any notice required or authorised to be given under this Agreement may be delivered by hand, by prepaid registered post to the address notified by the parties from time to time and will be deemed to have been served immediately if by hand or forty-eight (48) hours after such posting if by post. Any notice to Questionmark must also be contemporaneously copied to legalnotices@learnosity.com. Questionmark shall have the right to notify Customer in the event of a general notice to all users of the Services of important announcements regarding the operation of the Services, including by email correspondence.

19. Severability

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

20. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties.

21. Entire Agreement

This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement. Nothing in this Clause will operate to limit or exclude liability for fraud. Any terms and conditions contained in a purchase order, request for proposal, order acceptance or similar document from the Customer shall not constitute a part of the contract of sale between the parties unless such terms and conditions are specifically incorporated in the applicable SOW or Order.

22. Rights of Third Parties

This Agreement is not intended to convey upon any person who is not a party to this Agreement any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

23. Independent Contractor

- 23.1 The relationship of the parties is that of independent contractor, and nothing herein shall be construed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties.
- 23.2 Neither party shall have the authority to enter into agreements of any kind on behalf of the other party nor shall have the power or authority to bind or obligate Questionmark in any manner to any third party.

24. Governing Law

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.

Schedule 1 – Data Protection

This Schedule 1 (“Schedule”) applies and is part of the Agreement with respect to any Processing (as defined below) by Questionmark of Customer Personal Data (as defined below) on behalf of Customer in provision of the Services. Any conflict or inconsistency between this Schedule and the other parts of the Agreement shall be resolved in favor of this Schedule in respect of the subject matter hereof.

Questionmark may make changes to this Schedule at any time when required in accordance with updates to Data Protection Law (as defined below) and practice based upon the advice of its professional advisors. Questionmark will make any modified version of this Schedule available to Customer on its website, which modified version becoming applicable on its date of posting providing such modifications do not involve additional obligations on Customer.

1. Definitions

The following definitions shall apply for this Schedule:

“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 Schedule 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 a 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.

“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 providing Services involving the processing of Customer Personal Data 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 are within the general control and responsibility of Customer and may vary based on the exact Services ordered. Customer Personal Data includes that specified in Article 4 GDPR and any other Customer Personal Data provided to Questionmark by Customer and answers and scores of Assessments. 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. Where the Services are managed Assessment services, Questionmark will Process Personal Data as necessary to provide those Services, including for purposes of authoring, scheduling, delivering and reporting on Assessments on behalf of and under direct instruction from the Customer.
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, including for the avoidance of doubt where the Services include managed Assessment services. Customer shall 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 using 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 have committed themselves to confidentiality even after their engagement ends.
5. Questionmark Responsibilities. When processing Customer Personal Data, Questionmark shall:
 - 5.1 Implement appropriate technical and organizational measures in such a manner designed to ensure that processing will meet the requirements of 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 represents that it is certified by a reputable third party against the ISO 27001 standard or a comparable successor standard and upon written request shall provide Customer with copies of its certificates and other reasonably requested documentation about its security.
 - 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 present in this Agreement) as required by the applicable Data Protection Law including regarding 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 shall 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 this Agreement and an implicit direction that any Customer Personal Data sent to Questionmark is intended to be processed for investigation, troubleshooting or review purposes. 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. Questionmark's current organizational Subprocessors that may process Customer Personal Data are included within the list found 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 shall satisfy this obligation by updating its list of organizational Subprocessors referred to at Section 6.2 above at least 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 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 30 days' written notice to Questionmark. If Customer's objection remains unresolved 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 lists of Subprocessors referred to in clause 6.3 as soon as is reasonably practicable.
7. Questionmark shall respect the conditions referred to in Article 28 GDPR paragraphs 2 and 4 for engaging another processor. Questionmark shall 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 any Processing of Customer Personal Data by Subprocessors.

8. Data Transfers.

8.1 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 purposes of 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.

8.2 Transfers of EEA and Swiss Customer Personal Data.

8.2.1 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. 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.

8.2.2 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.

8.2.3 For the avoidance of doubt, any existing transfers of Customer Personal Data 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.

8.3 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, the 2010 SCCs continue to apply 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). This Data Processing Addendum shall be modified in due course to reflect updated requirements of UK Data Protection Law.

8.4 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 laid down 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 undue 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 shall 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 shall delete all Customer Personal Data after the end of the Services relating to Processing, 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 shall make available to Customer on request all information necessary to demonstrate compliance with Questionmark's obligations in Article 28 GDPR and shall 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 shall be 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. O
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 16 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"). 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 17 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 18 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 Schedule, not the Website Privacy Policy.