

Questionmark Software Support Plan Agreement

Terms and Conditions

Definitions.

"Applicable Invoice" shall mean a valid invoice to Customer from Questionmark or from an authorized Questionmark reseller referencing these Terms and Conditions.

"Assessment" shall mean a systematic method of obtaining data, evidence or results, including but not limited to tests, examinations, questionnaires, and surveys.

"Commencement Date" shall mean the date set out on the Applicable Invoice.

"Consulting Services" means any consulting and/or training services provided by Questionmark to Customer as set forth in an Order.

"Customer" shall mean the individual or entity that is specified on the Applicable Invoice as having purchased a license to use the software.

"Designated Contacts" are the individuals that have been identified, attended a formal training course and are permitted to contact Questionmark for support.

"Normal Business Hours" may be specified on the Applicable Invoice but otherwise shall mean 9:30 a.m. to 5.30 p.m. UK Time on non-holiday weekdays.

"Order" means the written quotation or SOW provided by Questionmark for a specific Server Configuration for Perception Server Software and/or Software Support and/or Consulting Services that has been accepted by Customer.

"Participant" shall mean any person that participates in an Assessment by answering questions or otherwise responding to the Assessment process.

"Perception Server" shall be the Questionmark Perception Server software and its documentation for which support is being provided.

"Questionmark" shall mean Questionmark Computing Limited of 3rd Floor, 1 Ashley Road, Altrincham, Cheshire, WA14 2DT, United Kingdom.

"Software Support Agreement" shall mean the combination of these Terms and Conditions and an Applicable Invoice.

"SOW" means a statement of work which defines the services to be provided, deliverables, fees, invoicing and payment terms.

"Term of Support" means the term of Software Support as stated in an Order or Applicable Invoice.

Initial Term. Unless otherwise specified on an Applicable Invoice, the initial Term of Support shall commence on the Commencement Date and shall continue for one (1) year, after which it shall renew for additional one (1) year terms unless terminated by either party at the end of the initial or an additional annual term on having provided written notice to the other party not less than ninety (90) days prior to the end of the current initial or additional term.

Charges and Billing. Charges for support services shall be in accordance with the quotation for such services. Billing shall be annually in advance. All amounts are in the amount set out in the quotation to be paid to Questionmark. Payments not received by Questionmark within thirty (30) days of the date of invoice shall be subject to a late charge of One and a Half percent (1.5%) per month (payable both before and after judgement). Questionmark shall be under no obligation to provide any services or products if Customer is in default of Customer's payment obligations. Customer may only enter into the Software Support Agreement without extra charge at the time of purchase. After Customer's initial purchase, or if the Software Support Agreement shall lapse, a buy-in fee of thirty-seven and a half percent (37.5%) of the then current list price of Perception Server will be charged for the first year provided Customer is licensed for the current version. Future versions may be licensed for an upgrade charge that is determined by Questionmark, in its sole discretion, at the time of the release.

Changes in Terms, Conditions, and Fees. Questionmark may change software support fees and/or terms and conditions on ninety (90) days notice to Customer but no such change shall be effective prior to the end of the initial one-year term. Customer may, by not less than thirty (30) days written notice to Questionmark, terminate this Software Support Agreement on the effective date of any such change. If such notice of termination is not received by Questionmark within fifteen (15) days of the date of the notice sent by Questionmark, the change shall be deemed accepted by Customer and Customer waives and relinquishes any and all claims against Questionmark arising from or related to Questionmark's change in the fees and/or terms and conditions governing the provision of Software Support to Customer.

Taxes and Duties. There shall be added to the Software Support Agreement fees amounts equal to any tariff, duties, value added tax ("VAT"), and/or sales or use tax or any tax in lieu thereof imposed by any government or governmental agency with respect to the services rendered by Questionmark under the Software Support Agreement.

Customer Responsibilities. Customer agrees to communicate with Questionmark in English unless otherwise agreed. Customer agrees to provide Questionmark with log and data files, as requested, and with access to; and sufficient support, and test time, on Customer's computer system to duplicate the problem, certify that the problem is with the Questionmark's software, and to certify that the problem has been fixed.

Customer agrees to advise Questionmark of the contact details for its Designated Contacts and such Designated Contacts shall subscribe themselves to Questionmark's support systems for alerts. Questionmark will have no responsibility to provide support to non-Designated Contacts. Designated Contacts may be changed from time to time but not more frequently than every 3 months, at no charge. However, the number of Designated Contacts shall not exceed the number specified on the Order.

Customer agrees to promptly install new releases, hot fixes and service packs of covered software and agrees that failure to promptly install these releases shall release Questionmark from its support obligations under the Software Support Agreement until such time as these releases are installed.

Customer will be responsible for maintaining a platform, hardware, database management system ("DBMS"), operating system, security systems, intrusion detection, virus detection, and network compatible with the installed version of the Perception Server Software, including newly released versions. Questionmark is not responsible for maintaining or supporting the Perception Server Software unless it is hosted by a supported platform.

Customer must inform Questionmark in writing of any modifications made to the software. Questionmark shall have no obligation under the Software Support Agreement to maintain such modified portions of the software or to maintain portions of the software affected by the modified portions of the software. Corrections for difficulties or defects traceable to customer errors or system changes will be billed at standard Questionmark time and material rates.

Basic Software Support Services provided. Particular software covered under the Software Support Agreement will be as indicated on the Applicable Invoice. During the Term of Support, Questionmark will correct or replace software and/or provide services necessary to remedy or avoid any programming error, to the extent such programming error is caused by Questionmark, and which significantly affects use of the software. Such correction, replacement, or services will be accomplished after Customer has identified and notified Questionmark of any such error in accordance with Questionmark's reporting procedures.

During the Term of Support, Customer's contacts that are subscribed to Questionmark's communities will receive:

- a. New releases of covered software (not charged as options) as they are released by Questionmark;
- b. Technical or operational assistance in English for up to three (3) Designated Contacts via email and phone up to a maximum of twenty (20) person-hours per month without accumulation of hours from one month to the next during Normal Business Hours; and
- c. Free access to the Questionmark's online knowledge bases, manuals, Best Practice Guides and White Papers.
- d. Free Access to Questionmark's RSS news feeds for product and technical support information.
- e. Opportunity to send employees to Questionmark's User Conference at the prevailing rate for customers with a software support agreement.

Enterprise Software Support Services provided: If Customer purchases Enterprise Level Support the following services, in addition to the Basic Software Support Services, will be made available during Normal Business Hours:

- 1) Dedicated Technical Support Representative. Questionmark will use commercial reasonable efforts to allocate a Dedicated Technical Support Representative for Customer to work with on an ongoing basis. Notwithstanding the foregoing, Questionmark reserves the right to delegate to, or allocate, another Questionmark

representative to assist Customer in the event that the Dedicated Technical Support Representative is unavailable for any reason.

- 2) Retain System Profiles. Customer will provide details of their system configuration and product usage to Questionmark and Questionmark will retain this information, and Customer hereby grants Questionmark permission to retain this information for the Dedicated Technical Support Representative, and other Questionmark representatives, if appropriate, to have easy access to assist with problem diagnosis and resolution. Customer may provide Questionmark with this information in any manner or form, including but not limited to, phone, email or web based forms.
- 3) Service Level Agreements (SLAs). Customer agrees to commit the required resources during its normal business hours to assist Questionmark with reproducing and resolving any error(s) and/or issue(s), obtaining and installing patches, and/or using a workaround to reduce the severity of the error. Questionmark agrees to use commercially reasonable efforts to work with the Customer to resolve the issue in accordance with the specifications of the SLA. Customer and Questionmark acknowledge and agree that reasonable and timely efforts must be made by all parties involved for a timely resolution. If Customer fails to communicate with Questionmark, without notice, for a period of three (3) business days, then Questionmark may, upon notice, close the support incident due to Customer's inactivity. A support incident may be reopened upon Customer's request within thirty (30) consecutive days of closure, however, once a Service Request is closed for more than thirty (30) consecutive days, the issue will be considered permanently closed, and it cannot be reopened. If further work is necessary, a new service request will be opened, and all pertinent information, data and materials may need to be resubmitted before work can continue and all previous support benchmarks are reset. Questionmark will set Severity levels at its sole discretion and will use commercially reasonable endeavours to respond to service requests according to the following priorities and response times:
 - a) "Severity 1 issue" means an error isolated to the Questionmark Product that renders the product inoperative or causes the product to fail catastrophically, i.e. major system impact or system outage. This issue must be resolved before the Customer can utilize the Questionmark Product. All Severity 1 issues have no workaround and Customer and Questionmark shall work closely together in order to resolve the error as soon as possible.
 - i. Initial Response Time (by email or callback) is within four (4) hours during Normal Business Hours.
 - ii. Maximum Time Between Updates (by email or callback or implementation in System) is four (4) hours during Normal Business Hours.
 - b) "Severity 2 issue" means an issue which causes a serious impairment to a critical feature of the Questionmark Perception application, but where overall functionality is not interrupted. Usually a workaround is available for this type of issue, but such is not always the case. Questionmark will resolve all Severity 2 issues as soon as possible.
 - i. Initial Response Time (by email or callback) is within eight (8) hours during Normal Business Hours.

- ii. Maximum Time Between Updates (by email or callback or implementation in System) is four (4) Hours during Normal Business Hours during the first three (3) business days and then updated as needed thereafter.
- c) "Severity 3 issue" means an issue that causes the failure of a non-critical aspect of the Questionmark Perception application and a satisfactory work-around already exists but the presence of this issue will result in user dissatisfaction. This is the default priority.
 - i. Initial Response Time (by email or callback) is within two (2) business days during Normal Business Hours.
 - ii. Maximum Time Between Updates (by email or callback or implementation in System) is two (2) business days for the first week and as needed thereafter.
- d) "Severity 4 issue" means an issue of minor significance. A slight variance exists between the product documentation and how the application actually performs.
 - i. Initial Response Time (by email or callback) is within two (2) business days during Normal Business Hours.
 - ii. Update is every five (5) business days, during the first month, and as needed thereafter.
 - iii. Solution is provided as part of a future release at Questionmark's discretion.
- 4) Visibility of Questionmark Processes. Questionmark will provide regular updates of outstanding issues and share the visibility of the escalation process to Customer within the guidelines set by the communicated priority.
- 5) Ability to schedule Technical Service Engineer's time to be available during critical server upgrades. Questionmark allows Dedicated Technical Support Representatives to be scheduled during Normal Business Hours at mutually convenient times to be available to Customer during high-risk periods (such as server upgrades).
- 6) Dedicated Technical Support Representatives available for technical consulting. Dedicated Technical Support Representatives may be scheduled for chargeable consulting activities subject to quotation, agreement and a Statement of Work being accepted.

Available Consulting Services: The following services are not covered by this Software Support Agreement, but may be available from Questionmark for a fee; these, include but are not necessarily limited to:

- a. Assistance with configuration of templates and workflows.
- b. Assistance with non-Questionmark ("3rd Party") products is not covered by this agreement. When troubleshooting issues with the interactions and integrations between Questionmark products and 3rd Party products, Questionmark will participate in conference calls with the Customer and the 3rd Party, when coordinated by Customer.
- c. Strategic, business process, and change management consulting.
- d. Product training (whether web based or face-to-face).
- e. Assessment content development.
- f. Application and software development (programming).
- g. Systems architecture.
- h. Traveling and/or on-site visits.

- i. QMWISe configuration and/or other API configuration.

Following a request for Consulting Services, Questionmark may produce a quotation or an SOW which shall be reviewed by Customer and once agreed in writing by Customer and Questionmark shall be the Order for such Consulting Services. Customer shall be solely responsible to confirm that the SOW satisfies the operational needs and requirements of its business and to identify any modifications to the SOW that it requires. The Consulting Services shall be performed and delivered at the places set out in the applicable SOW. Questionmark shall use commercially reasonable efforts to meet any timelines set in the applicable SOW, but time shall not be of the essence for performance and delivery unless otherwise expressly agreed in writing between the parties.

In the event that an applicable SOW requires Questionmark to develop software, upon the delivery of such newly developed software (each a "Deliverable"), Customer shall have ten (10) business days to review such Deliverable for any material non-conformance with the terms of the SOW. In the event that Customer does not report any such material non-conformance to Questionmark within the ten (10) day period, Customer will have been deemed to have accepted such Deliverable. In the event the Deliverable is not in material conformance with the terms of the SOW, Customer must notify Questionmark within the ten (10) day period and Questionmark will remedy such material non-conformance so as to bring it into material compliance with the SOW within a reasonable period. Unless specified otherwise on the SOW, the Deliverables will not be covered by any support plan.

Questionmark shall retain ownership of all title and rights to any Deliverables developed pursuant to Consulting Services, including certain rights, if any, that Questionmark has pursuant to a license from any third party. Additional license terms relating to the Deliverables will be set out in the Order.

Communications Responsibility and Costs. Customer will be responsible for all costs of any modem and/or network connections at Customer's site and the associated line-use charges. Any network access by Questionmark may be subject to Customer's approval and such access will be solely for the purpose of diagnosing problems and supporting Customer's use of the software.

Travel and Hotel Expenses. On-site visits are not normally required and not provided for under the Software Support Agreement. However, on-site consulting visits can be arranged for a fee. When Customer requests an on-site visit Customer will reimburse Questionmark for any out-of-pocket expenses incurred at Customer's request, including travel to and from Customer's site, lodging, car rental, and meals.

Proprietary Rights. All proprietary rights in or to the software provided to Customer by Questionmark and all changes, additions, and/or enhancements to such software, shall remain the sole property of Questionmark.

Data Protection. The parties shall comply with their respective obligations as detailed in Schedule 1.

Termination. In the event of termination of the Software Support Agreement, all maintenance fees or charges payable for the entire term of the Software Support Agreement shall without notice or demand by Questionmark immediately become due and payable, and Questionmark's obligations under the Software Support Agreement shall immediately end. In the event of termination other than by default, then Questionmark will issue an invoice to Customer for the full value of the Services performed prior to termination. Such invoice will be immediately due and payable.

Questionmark may terminate this Software Support Agreement in the event of default by Customer. Default by the Customer includes, but is not limited to, Customer's failure to pay the maintenance fee within fifteen (15) days after notice that the same is thirty (30) days or more delinquent. Once terminated the Software Support Agreement can be re-instated by purchasing the upgrade for the latest version (if applicable) and paying the then applicable fee for the Software Support Agreement.

Customer's Responsibility to Participants. Customer acknowledges that the software may be used to assess a participant's knowledge, skills and attitudes and allocate a score. The score should be considered one piece of evidence about a participant's knowledge, skill and/or attitude. When the software is being used to make decisions about a participant, Customer should review and evaluate the score to ensure that the appropriate decision has been made. Customer acknowledges and agrees that Customer is solely responsible for use of the software, including entering and maintaining the assessment material, checking this material, checking scores, checking reports, and using the software fairly. 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 Customer 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. Customer shall indemnify and hold Questionmark and/or its licensors harmless from any and all claims, liabilities, damages, costs and/or expenses and suits arising out of the use of the software or use of the scores to determine decisions relating to participants, including but not limited to any and all claims, liabilities, damages, costs and/or 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 software or scores produced from Customer's use of the software, including but not limited to employment termination or discharge, or discipline; employee compensation; and/or employment promotions or advances.

CONFIDENTIAL INFORMATION. The parties acknowledge and agree that during performance of the Services contemplated pursuant to the Software Support Agreement, the parties may disclose Confidential Information (as defined herein) to the other party. As a result, the parties agree to keep the Confidential Information strictly confidential and to only disclose the Confidential Information to their respective employees, affiliates, sub-contractors and agents on a "need to know" basis in connection with performance under the Software Support Agreement. For the purpose of the Software Support Agreement, Confidential Information shall include, but not be limited to the Perception Server Software and the specifications and requirements of such, information of the disclosing party specifically marked or referenced as confidential, and any and all other information which relates to source codes or the internal methods of operation of the disclosing party, including but not limited to application program interfaces. Confidential Information shall also include visual information observed by the receiving party, while on the

disclosing party's premises or while accessing the network of the disclosing party, regardless of whether the disclosing party has specifically marked or referenced such Confidential Information as confidential.

LIMITED WARRANTY. Questionmark warrants that support engineers will make commercially reasonable efforts to solve any problem issues; however, Customer acknowledges and agrees that there can be no guarantee that support engineers will be able to solve each and every problem or issue. 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.

NO OTHER REPRESENTATIONS OR WARRANTIES. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATIONS IN ENTERING INTO THIS AGREEMENT OTHER THAN AS EXPRESSLY STATED IN THE QUOTATION. ALL IMPLIED WARRANTIES AND CONDITIONS NOT EXPRESSLY CONTAINED HEREIN ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE USE OF REASONABLE SKILL AND CARE IN THE PROVISION OF SERVICES. THE FOREGOING DOES NOT EXCLUDE OR LIMIT QUESTIONMARK'S LIABILITY FOR FRAUDULENT MISREPRESENTATION.

CUSTOMER'S REMEDIES. EXCEPT AS EXPRESSLY STATED HEREIN, QUESTIONMARK'S AND ITS SUPPLIERS' ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO THE AMOUNT OF THE SOFTWARE SUPPORT OR CONSULTANCY SERVICES FEES PAID WITH RESPECT TO THE JUST-PRIOR THREE (3) MONTH PERIOD OR £2,500, WHICHEVER IS GREATER PLUS ANY PREPAID SOFTWARE SUPPORT FEES.

LIMITATION OF LIABILITY. NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS ANY LIABILITY OF QUESTIONMARK FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THAT OF PERSONS FOR WHOM IT IS VICARIOUSLY LIABLE OR FOR FRAUDULENT MISREPRESENTATION. IN NO EVENT SHALL QUESTIONMARK OR ITS SUPPLIERS BE LIABLE FOR (a) ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER OR (b) DAMAGES FOR LOSS OF BUSINESS PROFITS OR ANTICIPATED SAVINGS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, IN EACH CASE WHETHER DIRECT OR OTHERWISE, AND WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE SOFTWARE SUPPORT SERVICES OR CONSULTING SERVICES, EVEN IF QUESTIONMARK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Purchase from a Questionmark Reseller. If Customer has purchased the Software Support from a Questionmark reseller:

- a) Questionmark shall be obligated to provide Software Support only in conformity with its agreement with that reseller, including with regard to the duration of support, regardless of whether the order or other documentation between Customer and such reseller provides different terms. Customer's sole recourse and remedy for any loss, damage, expense or other liability caused by such discrepancy shall be against such reseller.
- b) the terms of this Agreement that contemplate payment directly from Customer to Questionmark are superseded by Customer's payment arrangement with such reseller and payment to Questionmark shall be made by such reseller. Notwithstanding the prior

sentence, in the event that such reseller fails to make timely payment of fees to Questionmark, Questionmark shall be entitled to all remedies available herein with regard to the termination or suspension of this Software Support Agreement as if such payment had been due directly from Customer and, in the event that Customer have made payment to such reseller, Customer's sole recourse and remedy shall be against such reseller.

- c) if the terms of any agreement or documentation between Customer and such reseller conflict with the terms of this Software Support Agreement, (i) Questionmark shall be entitled to perform and enforce this Software Support Agreement in accordance with its terms, (ii) as between Questionmark and Customer, the terms of this Software Support Agreement shall govern, and (iii) Customer's sole recourse and remedy for any loss, damage, expense or other liability caused by such conflict shall be against such reseller.

Assignment. Customer may assign the Software Support Agreement only in conjunction with a permitted assignment of the related license(s).

Severability. If any term of this Software Support Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Software Support Agreement will remain in full force and effect.

General. The Software Support Agreement shall be binding when accepted by Questionmark, and be governed by and construed in accordance with the laws of England and Wales and Customer irrevocably agrees to the exclusive jurisdiction of the Courts of England. Should Customer be domiciled in a country outside England, Questionmark shall have no liability to Customer resulting from the applicability and/or enforcement of the laws of that country related in any way to this agreement. Customer hereby expressly 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 shall defend and indemnify Questionmark against any and all claims related to any claims or additional obligations imposed on Questionmark due to the application and/or enforcement of law in other jurisdictions. Customer acknowledges that the software and technical services supplied by Questionmark under the Software Support Agreement are subject to the Export Control Regulations of the United States and European Union. Customer agrees to provide any required assistance to Questionmark in complying with the export controls including, but not limited to, supplying a statement as to ultimate destination and complying with any import regulations. The terms and conditions stated herein supersede all prior agreements between the parties relating to the subject matter of the Software Support Agreement. The Software Support Agreement may be changed or modified only in writing signed by a Questionmark director.

Schedule 1 – Data Protection

This Schedule 1 (“Schedule”) applies only in respect of personal data that is subject to the General Data Protection Regulation (EU) 2016/679 (“GDPR”) and other Data Protection Law set out below. Otherwise, this Schedule is not applicable and does not form part of the Agreement.

Questionmark may make changes to this Schedule at any time when required in accordance with updates to Data Protection Law 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. Any conflict or inconsistency between this Schedule and the other parts of this Agreement shall be resolved in favour of this Schedule in respect of the subject matter hereof.

1. Definitions

The following definitions shall apply for this Schedule:

“Data Protection Law” means:

- (i) Prior to 25 May 2018, the Data Protection Act 1998 and Directive 95/46/EC; and
- (ii) On and after 25 May 2018, the GDPR and any future United Kingdom law or regulation relating to the processing of personal data and privacy.

“Data processor”, “data controller”, “data subject”, “personal data” and “processing” shall have the meanings given to such terms in Data Protection Law.

“Customer Personal Data” means all personal data that Questionmark processes on behalf of Customer in providing Services 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.

“Services” means Software Support and/or Consulting Services provided by Questionmark to Customer pursuant to this Agreement.

“Subprocessor” means other processors engaged by Questionmark to process Customer Personal Data.

2. The subject-matter of the processing is providing Services involving the processing of Customer Personal Data. The duration of the processing is the Term of Support. The nature and purpose of the processing is to provide Services to Customer. The types of personal data are within the sole control and responsibility of Customer and include those 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. Any obligation that refers specifically to the GDPR shall become applicable on 25 May 2018.

3. The Customer agrees that:

- 3.1 In respect of Customer Personal Data, Customer is the data controller and Questionmark is the data processor. 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 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 shall be solely 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 is permitted to transmit to Questionmark for processing under this Agreement all Customer Personal Data without breach of any law, agreement, arrangement or duty or the rights of any third party.
4. Questionmark shall 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. Questionmark will ensure that persons authorized to access Customer Personal Data have committed themselves to confidentiality even after their engagement ends.

6. When processing Customer Personal Data, Questionmark shall:

- 6.1 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. 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.
- 6.2 Only process Customer Personal Data upon Customer's instructions (including for operation and maintenance of the Services and as otherwise present in this Agreement), including regarding transfers of Customer Personal Data to a third country, unless required to do so by EU or EU member state law (including UK law) 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.

7. Questionmark may:

- 7.1 Engage Subprocessors in accordance with this Agreement.
- 7.2 Continue to use the Subprocessors engaged by it prior to 25 May 2018, 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.
- 7.3 Not engage a new Subprocessor without Customer's prior general written authorization. Questionmark shall satisfy this obligation by updating its list of organizational Subprocessors at least 28 days prior to authorizing a new organizational Subprocessor to provide Customer with a means to obtain notice and opportunity to object. 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 clause 7.3 shall apply from 25 May 2018.
- 7.4 Notwithstanding clause 7.3, Customer agrees that Questionmark may 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 7.3 as soon as is reasonably practicable.
8. Questionmark shall respect the conditions referred to in Article 28 GDPR paragraphs 2 and 4 for engaging another processor. Questionmark shall ensure all 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 shall as between the Parties remain fully liable to Customer for any processing of Customer Personal Data by a Subprocessor.
9. Customer agrees that Questionmark may transfer Customer Personal Data to other countries (and process such data in those countries) as reasonably necessary to provide the Services. Questionmark shall only transfer Customer Personal Data from the European Economic Area ("EEA"), Switzerland and the United Kingdom to countries not subject to an adequacy decision of the European Commission if having in place a valid transfer mechanism recognized by the European Commission (including data processing agreements incorporating the EU Standard Contractual Clauses (Processors)). Questionmark's US Affiliate is self-certified to the EU-U.S. and Swiss-U.S. Privacy Shield frameworks ("Privacy Shields") and Questionmark will ensure that such entity maintains its self-certification and compliance with the Privacy Shields, or other appropriate mechanism whilst processing Customer Personal Data.

10. Questionmark shall, taking into account the nature of the processing, assist Customer by appropriate technical and organizational measures, insofar as is possible, for fulfilment of Customer's obligation to respond to requests for exercising data subject rights laid down in Chapter III GDPR in accordance with this clause 10. The parties agree that the nature of the processing by Questionmark is such that provision of such assistance is inapplicable unless expressly agreed otherwise in a separate agreement.
11. Upon request Questionmark shall 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 shall be subject to Customer's payment of reasonable charges on a time and materials basis where the assistance required is not part of Questionmark's standard services then provided to all customers.
12. Questionmark shall notify Customer without undue delay after becoming aware of a personal data breach in respect of Customer Personal Data.
13. Questionmark shall maintain a record of all categories of processing activities carried out on Customer Personal Data by Questionmark on behalf of Customer required by Article 30(2) GDPR and make such record available to the supervisory authority on request.
14. Questionmark shall delete all Customer Personal Data after the end of the Services relating to processing, and delete existing copies unless EU law or EU member state law requires storage of the Customer Personal Data.
15. 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.