

# License to Use OnDemand Service and Sublicense Use of Assessment Content ("License")

This License shall govern all Orders entered into between the Parties with respect to Customer's provisioning access and use of Assessments by Participants. Questionmark and Customer shall herein be referred to individually as a "Party" and collectively as the "Parties."

## 1. Definitions

1.1 In this License, the following words will have the following meanings:

**Admin Users** means any person that uses Questionmark Technology to manage, monitor and report on Assessments and/or Participants.

**Agreement** means the agreement between Questionmark and Customer formed pursuant to an Order governed by this License.

**Assessment** means surveys, quizzes, exams, tests or other systematic ways of collecting data produced using the Questionmark Technology.

**Assessment Content** means the questions, assessment structure and any other content forming part of the Assessment delivered or capable of being delivered to a Participant. Assessment Content shall expressly not include the software, scripts, documentation and templates that are provided by Questionmark and excludes Customer Data.

**Customer** means the local education authority, school district, school or similar entity or organization that places an Order with Questionmark referring to this License.

**Customer Data** means the data, information and material provided or submitted by the Customer or Participants in the participation in Assessments as well as any output of the Assessments, including Assessment results. Customer Data shall expressly not include Assessment Content or the software, scripts, documentation and templates that are provided by Questionmark.

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

**Fees** means the sums payable by the Customer to Questionmark for this License.

OnDemand Service means the Software-As-A-Service using Questionmark Technology and provided by Questionmark to the Customer for the configuring, delivery, monitoring and reporting of Assessments.

Order means the written quotation for the Services provided by Questionmark, which has been accepted by the Customer, or such other terms agreed and documented by the Parties in writing, including but not limited to on a webpage and/or in a web form agreed to by Customer on Test Publisher's website. Questionmark's invoice shall constitute part of the Order.

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

Questionmark means Questionmark Corporation of 260 Madison Avenue, 8<sup>th</sup> Floor, New York, NY 10016.

Questionmark Technology means all and any part of Questionmark's proprietary services, software, hardware, products, processes, algorithms, user interfaces, know how, techniques, designs and other tangible and intangible material or information which is provided by Questionmark to the Customer (and, at the Customer's request, Participants) as part of the Services. Questionmark Technology does not include Assessment Content.

Record and Review Service means the record and review proctoring service as described at <https://www.questionmark.com/go/od-rrss>.

Service Configuration means options that have been enabled for the OnDemand Service and the limitations on the number and names of Assessments, number of attempts allowed for Assessments, duration of access and the number of Admin Users and Participants that are permitted, which may be more particularly described in the Order and/or are set by the Test Publisher.

Services means the services provided by Questionmark as described in the Order, which include access to the OnDemand Service and may include the optional Record and Review Service.

Test Publisher means the party that authors and owns the Assessment Content and who directly or with the assistance of Questionmark uploads this to and maintains it in the OnDemand Service.

User Account means the user profile stored within the OnDemand Service for an Admin User and/or Participant.

## **2. Grant of License**

- 2.1 All rights not expressly granted to Customer hereunder are reserved by Questionmark, its suppliers, and its licensors.

- 2.2 OnDemand License. In consideration of, and subject to, payment of the Fees, Questionmark hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable license and authorization to access and use the Services for purposes of permitting Participants to take Assessments as detailed on the Order and subject to the terms of this Agreement.
- 2.3 Assessment Content License. In consideration of, and subject to, payment of the Fees, Questionmark hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable license and authorization to grant Participants access and permit use of the Assessment Content in the Services by Participants as detailed on the Order and subject to the terms of this Agreement and any terms and conditions agreed between the Test Publisher and Customer.
- 2.4 Record and Review Service. In the event an Order includes the optional Record and Review Service, Customer agrees that Test Publisher determines the configurations and options for the Record and Review Service, including any Student Personally Identifiable Information (as defined in Schedule 1) requested from Participants and in Assessment session recordings. Customer acknowledges and agrees to the further specifications for the optional Record and Review Service found at <https://www.questionmark.com/go/od-rss>.

### **3. Customer Obligations**

- 3.1 Service Configuration. Customer may use the Services solely in conformance with the terms of this Agreement and the Service Configuration. In the event that Customer exceeds the limitations of the Service Configuration, Questionmark may charge Customer for any excess use.
- 3.2 Usernames and Password Security. Customer shall not allow more than one individual to use a User Account and shall not share any User Account credentials with more than one individual. If a Participant no longer uses the Services his or her allocated username may not be reassigned to another individual. If an Admin User no longer uses the Services the allocated username may be reassigned to another individual. Customer shall keep confidential all passwords or other identification codes and shall notify Questionmark immediately if it suspects the loss or disclosure or any unauthorized use of any such information. Customer shall be liable for any activity carried out under any identification code issued to it as if it were the party using it and shall take all reasonable efforts to prevent such breach and mitigate any losses.
- 3.3 Restrictions on Use. Customer may not (i) modify or make derivative works based upon the Services or any associated Documentation or the Assessment Content except as permitted by law; (ii) hide or attempt to hide copyright information or identification of Questionmark's or Test Publisher's ownership of any materials; or (iii) reverse engineer or access the Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services or the Assessment Content. Customer may not access the Services for competitive purposes, including, but not limited to, monitoring availability, performance,

functionality or benchmarking. Photography, filming, video recording or sound recording of any part of the Services or Assessment Content for commercial, private or public performance purposes is prohibited without advance written permission from Questionmark.

- 3.4 Use of Assessments. Customer acknowledges that the Services may be used to correspond with Participants and to assess a Participant's knowledge, skills and attitudes and allocate a score. Scores should be considered one piece of evidence about a Participant's knowledge, skill and/or attitude. When the Services are being used to make decisions about a Participant (including whether to award a Participant a credential or to hire, promote or fire the Participant), the Test Publisher is solely responsible for the fairness, quality and validation of the Assessment and should review and evaluate the Participant's score to ensure that the appropriate decision has been made. Customer is solely responsible for its use of the Services, including ascertaining the Assessment Content is appropriate for the purpose. Test Publisher is responsible for checking Assessment score and results, and checking reports.
- 3.5 Acceptable Use Policy; Compliance with Law; Privacy. Customer shall not use the Services to store or transmit anything reasonably likely to be offensive, harassing, threatening, abusive, obscene, illegal, or defamatory, breaches the rights of any third party, or contains software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs. Customer shall use the Services in compliance with Questionmark's Acceptable Use Policy (published at <http://www.questionmark.com/go/ondemand-use-policy>) which may be reasonably adjusted from time to time.

Questionmark shall be deemed to be a "processor" and Customer a "controller" as such terms are understood and/or defined in data privacy laws with regard to Customer Data or the information (other than any credit card transaction data) passing through the Services. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right of use of all Customer Data. Customer is solely responsible for ensuring that Customer's use of the Services and that all information that the Services receive and transmit pursuant to such use complies with all applicable local, state, national and foreign laws, treaties and regulations, including, without limitation, any applicable data protection and human rights laws regarding the transmission and processing of personal data. Customer consents to Questionmark sharing Customer Data, including Student Personally Identifiable Information (as defined in Schedule 1) and any Assessment session recordings resulting from use of the optional Record and Review Service, with Test Publisher. To the extent required by applicable law, Customer shall procure all Participants' agreement (including any agreement in writing required on behalf of Participants by parents/legal guardians that may be validly given under applicable law), prior to use of the Services, to transmitting or processing their personal data as necessary for the provision of the Services and the Assessment, including Questionmark sharing Customer Data with the Test Publisher, and troubleshooting and maintenance, which Customer instructs Questionmark to undertake as necessary. The Services provided pursuant to this Agreement may not be used by any individual that is less than thirteen (13) years of age. The Parties will comply with Schedule 1 to this License with respect to the privacy of Participants

regarding any student personally identifiable information that is comprised within Customer Data.

- 3.6 **Connections to OnDemand Service and System Requirements.** Customer shall, at its own cost, provide all Internet connections, hardware, software and all other equipment necessary to use the Services. Customer acknowledges that the Services may only be used via compatible systems and browsers. Questionmark maintains a list of compatible systems and browsers on its web site and reserves the right to update this list from time to time.
- 3.7 **Data Backup and Quality Assurance.** The OnDemand Service includes a function for archiving and exporting results and other data. Questionmark shall not be responsible or liable for Customer's or Test Publisher's deletion, correction, destruction, damage, loss or failure to store any Customer Data including, but not limited to, an event where Customer or Test Publisher fails to make regular backups of Customer Data. Questionmark may collect usage data in connection with Customer's usage of the OnDemand Service to understand how Customer uses the OnDemand Service and its features, including for quality assurance and product improvement purposes.

## **4. Fees**

- 4.1 **Fees.** In consideration of the Services, Customer shall pay all Fees without deduction or set off, in full and cleared funds as designated by Questionmark. All pre-paid Fees are non-refundable otherwise than as expressly provided for in this License.
- 4.2 **Payment Terms.** All invoices shall be due and payable by Customer within 14 days. Late payments will accrue interest at one and one-half percent (1.5%) per month, on any outstanding balance, plus all costs of collection.
- 4.3 **Taxes.** All Fees are exclusive of any applicable sales, use or value added taxes, import duties or other taxes, fees or levies imposed on use of the Services, whether now in force or demanded by any governmental entity at any later time, which Questionmark may collect from Customer for remittance to an applicable governmental entity. All payments to be made by Customer shall be without set-off and without any deduction or withholding for any taxes, duties, imports, fees or charges. Customer shall not be responsible for any taxes based on Questionmark's net income.
- 4.4 **Questionmark's Remedies for Non-Payment.** Questionmark may suspend or terminate this Agreement and Customer's access to the Services when payment has not been received within twenty-one (21) days of the due date. Questionmark has no obligation to retain Customer Data and such Customer Data may be irretrievably deleted if Customer's account remains delinquent for more than sixty (60) days from date of suspension or termination. In the event of disputed Fees, billing or payment, the Parties agree to document the dispute and any settlements in writing.

- 4.5 Payments by Credit card and Automated Clearing House. If the Order references payment by credit card or an Automated Clearing House payment or if the Customer uses a credit card or Automated Clearing House payment to pay, then if the Order contains provision for renewal, Questionmark may deduct renewal or other Fees when due from Customer's credit card or by Automated Clearing House.

## **5. Term and Termination**

- 5.1 Term. The Customer's license to the Services and Customer's access to the Assessments purchased by Customer shall commence on the Order date and continue as documented in the Order, including with respect to the number of Assessment attempts a Participant is permitted and the time period in which Customer may permit Participants to take Assessments.
- 5.2 Termination. This Agreement is non-cancellable without cause and any amounts paid are non-refundable. Questionmark may terminate this Agreement for cause if Customer materially breaches any term or condition of this Agreement, including, but not limited to, the payment of Fees, and fails to cure such breach within twenty-one (21) days after written notice of the same.
- 5.3 Effect of Termination.

Upon termination of this Agreement by Questionmark for cause, all fees or charges payable shall immediately become due and payable by Customer to Questionmark, and Questionmark's obligations under this Agreement to provide the Services shall end. Upon termination, Questionmark will make available to Customer and Test Publisher continued access to the OnDemand Service for a period of up to ninety (90) days solely for Customer or Test Publisher to report or download Customer Data including Assessment results. After this period, Questionmark has no obligation to retain the Customer Data, and may delete such Customer Data. During such post-termination period, Customer will continue to be bound by the restrictions and limitations of this Agreement in respect of its access and use of the OnDemand Service.

## **6. Confidential Information**

Questionmark might disclose to Customer certain written and/or oral Confidential Information (as defined herein). "Confidential Information" shall include, but not be limited to, Questionmark Technology, Documentation, Assessment Content, user names, passwords, Questionmark's pricing and any other information which should reasonably be understood to be confidential or proprietary.

Customer shall give Confidential Information confidential treatment, including after termination of this Agreement. Customer shall use Confidential Information only in connection with this Agreement and will not disclose Confidential Information to any third party.

Customer shall be liable for any breach or violation of this Agreement by Admin Users and Participants, and any other persons using user names or passwords of Customer.

On termination or expiration of this Agreement, Customer will return or delete and destroy all Confidential Information, including but not limited to copies and derivative works created therefrom, in whatever form, format or media, with no copies retained and on request shall confirm in writing to Questionmark its compliance with the terms of this paragraph.

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

## **7. Intellectual Property**

### **7.1 Questionmark Intellectual Property. Customer acknowledges:**

7.1.1 Any and all patents, registered/unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, in Questionmark Technologies, Assessment Content and Documentation will remain the sole property of Questionmark and its licensors.

7.1.2 Customer acknowledges that Test Publisher is the owner of the Assessment Content, and that no rights of ownership and/or intellectual property rights of any kind in Assessment Content are transferred under this Agreement. The license granted hereunder to Customer is expressly limited to the access and use rights conferred in this Agreement. Customer may not access or use the Assessment Content for any other purpose or by any other means, or share this information with any third party. Except as permitted by this Agreement, Customer may not copy, download, transmit, redistribute, publish, modify or commercially exploit the Assessment Content.

### **7.2 Customer Data. Questionmark acknowledges that any and all Customer Data and other information stored as a result of the Participant participating in the Assessment process will remain the sole property of Customer.**

## **8. Warranties**

### **8.1 Questionmark Representations. Questionmark represents and warrants that (i) it will comply with mandatory, generally applicable laws in connection with Questionmark's performance under, and compliance with this Agreement that impose legal obligations upon Questionmark in jurisdictions from which the Services are provided; and (ii) the OnDemand Service will not, as delivered, infringe upon or violate any intellectual property rights of third parties.**



- 8.2 Customer Representations. Customer represents and warrants that (i) it will use the Services, Assessment Content and Customer Data in compliance with all applicable laws; and (ii) its use of the Services will not violate or infringe any intellectual property rights of any other party.
- 8.3 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, QUESTIONMARK HEREBY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, 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.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, QUESTIONMARK SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES OF ANY KIND IN RESPECT OF AND IN ANY WAY RELATED TO ASSESSMENT CONTENT WHICH IS PROVIDED ON AN "AS IS" BASIS. QUESTIONMARK HAS NO LIABILITY OR RESPONSIBILITY TO ANY PARTY RELATED TO ASSESSMENT CONTENT IN ANY WAY, INCLUDING BUT NOT LIMITED TO IN RESPECT OF ITS ACCURACY, COMPLETENESS, RELIABILITY, COMPLIANCE WITH APPLICABLE LAWS AND IN RESPECT OF ANY DECISIONS TAKEN BASED ON OR RELATED TO ASSESSMENT CONTENT AND RESULTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT ASSESSMENT CONTENT IS THE EXCLUSIVE RESPONSIBILITY OF TEST PUBLISHER. TEST PUBLISHER IS RESPONSIBLE FOR MAINTAINING THE ASSESSMENT CONTENT IN THE ONDEMAND SERVICE AND QUESTIONMARK HAS NO LIABILITY TO ANY PARTY RESULTING FROM THE UNAVAILABILITY OF OR ERRORS IN ASSESSMENT CONTENT DUE TO THE ACTS OR OMISSIONS OF TEST PUBLISHER. FURTHERMORE, TEST PUBLISHER DETERMINES THE OPTIONS AND CONFIGURATIONS FOR THE OPTIONAL RECORD AND REVIEW SERVICE, WHERE PURCHASED, AND THEREFORE CUSTOMER AGREES THAT SUCH MATTERS ARE THE EXCLUSIVE RESPONSIBILITY OF CUSTOMER.

Except as expressly provided herein, Questionmark, its suppliers, and its licensors do not represent or warrant that the use of the Services will be secure, timely, uninterrupted or error-free or operate in combination with any other system or data. In no event shall Questionmark be liable or otherwise responsible for any damage to, or loss of, any Customer Data or any third party data provided by Customer, resulting from any cause whatsoever, except to the extent caused by Questionmark's gross negligence or willful misconduct. The Services might be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Questionmark disclaims any and all liability or responsibility resulting from or related to such events.

## 9. Indemnity

Customer shall indemnify, defend and hold Questionmark, Test Publisher and their respective licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) to the extent arising out of or in connection with (i) Customer's use of, or the Customer Data used in



connection with, the Services, (ii) infringement or misappropriation of a patent, copyright, trademark or other similar intellectual property right of a third party that results from the combination of the Services with the Customer Data and any other products, services, or business process(s) used, provided, licensed, or owned by Customer, (iii) Customer's failure or alleged failure to comply with applicable laws; and/or (iv) Customer's breach of this Agreement.

## 10. Limitation of Liability

If an Assessment does not perform properly due to the fault of the Questionmark Technology, Questionmark shall allow the affected Participants to retake the Assessment at no additional charge and this shall be Customer's sole remedy for Questionmark's non-performance.

IN NO EVENT SHALL QUESTIONMARK'S TOTAL AGGREGATE LIABILITY TO CUSTOMER OR ANY OTHER PARTY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM AND IN NO EVENT SHALL QUESTIONMARK AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES EVEN IF QUESTIONMARK OR ITS LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

NOTHING IN THIS AGREEMENT SHALL EXCLUDE QUESTIONMARK'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS GROSS NEGLIGENCE, FRAUD, OR ANY OTHER LIABILITY WHICH CANNOT BE PROPERLY EXCLUDED BY LAW.

QUESTIONMARK SHALL HAVE NO LIABILITY WITH RESPECT TO CUSTOMER'S USE OF THE SERVICES WHERE QUESTIONMARK IS PROVIDING A FREE TRIAL. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN THE EVENT THAT CUSTOMER RE-ORDERS FROM QUESTIONMARK, 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 USE OF THE SERVICES DURING ANY PRIOR PERIOD.

## 11. Support

- 11.1 Questionmark will use reasonable efforts to respond during its standard working hours to email requests for assistance from Admin Users on how to configure Questionmark Technology to allow Participants to take Assessments. Questionmark will not be able to provide any support on the Assessment Content and any questions on such should be directed to the Test Publisher.
- 11.2 Questionmark does not provide support services to Participants in connection with its provision of the Services under this Agreement.

- 11.3 Questionmark will use reasonable efforts to maintain uptime of the OnDemand Service 24x7 and to inform Customer of any significant, planned maintenance or downtime. Time shall not be of the essence in Questionmark's performance of its obligations under this Agreement.

## **12. Miscellaneous**

- 12.1 **Assignment and Waiver.** This Agreement may not be assigned by Customer without the prior written approval of Questionmark. Any purported assignment in violation of this section shall be void. Failure by Questionmark 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.
- 12.2 **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.
- 12.3 **Amendments.** No amendment of this Agreement shall be effective unless it is in writing and signed by the Parties. Questionmark may change the configuration of its network, equipment or any other item material to the provision of the OnDemand Service, as well as the form and nature of the OnDemand Service, at any time without notice to Customer, provided such change does not adversely affect the OnDemand Service.
- 12.4 **Entire Agreement.** Questionmark expressly limits acceptance to the terms and conditions set forth in this License and the applicable Order. Customer's registration for, or use of, the Services shall constitute acceptance on the terms and conditions set forth in this License and any additional or different terms proposed by Customer, whether in a purchase order, request for proposal, order acceptance or similar document, are hereby rejected and shall not form part of the contract between the Parties. This License together with any Order contains the entire understanding between the Parties regarding the subject matter hereof and supersedes any prior discussions or agreements concerning such subject matter.
- 12.5 **Reliance.** Customer acknowledges that Questionmark has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein which form an essential part of the bargain between the Parties.
- 12.6 **Independent Contractor.** 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. Customer shall have no authority to enter into agreements on behalf of Questionmark and shall not have the power or authority to bind or obligate Questionmark in any manner.

- 12.7 Governing Law and Forum. This Agreement shall be governed by Connecticut law (Connecticut being a state in the United States), without regard to the choice or conflicts of law provisions of any jurisdiction. Any disputes, actions, claims or causes of action arising in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the state and federal courts in Bridgeport, Connecticut.

Should Customer be domiciled in a jurisdiction outside the forum above, Customer will be exclusively liable for any issues triggered by the applicability and/or enforcement of the laws of that jurisdiction related in any way to this Agreement. Customer expressly waives any right granted by that jurisdiction that may confer to Customer any rights different than those specifically provided under this Agreement. Customer shall defend and indemnify Questionmark against all claims related to any claims or additional obligations imposed on Questionmark due to the application and/or enforcement of law in that jurisdiction.

# **Schedule 1 – Privacy of Participants regarding any Student Personally Identifiable Information that is comprised within Customer Data**

The Parties agree to the terms and conditions in this Schedule 1 with respect to the privacy of any Student Personal Personally Identifiable Information (as defined below) comprised within Customer Data and for the purposes of complying the applicable laws. The Parties understand and agree that Questionmark and Test Publisher will have access to any Student Personally Identifiable Information comprised in Customer Data. Questionmark understands that Customer and Test Publisher have agreed privacy terms between them that are equivalent to the terms in this Schedule 1.

## **1. Definitions**

"Student Personally Identifiable Information" means any information comprised within Customer Data that is defined as "personally identifiable information" of a Participant according to applicable law, including LA.Rs.17.3914.

## **2. Agreed Terms**

- 2.1 Questionmark agrees to protect Customer Data, including Student Personally Identifiable Information, in a manner that allows only those personnel of Questionmark and any of its subprocessors who are authorized by Questionmark to access the information. Student Personally Identifiable Information will be protected by reasonably appropriate security measures, including but not limited to, the use by Questionmark of user names, secure passwords, encryption, and security questions and in accordance with Questionmark's technical and organizational security measures at <http://www.questionmark.com/go/od-measures>.
- 2.2 Questionmark will enter into written agreements with any sub-processors that may process Student Personally Identifiable Information that include obligations to maintain confidentiality, privacy and security of Student Personally Identifiable Information. To ensure that the only individuals and entities that can access Student Personally Identifiable Information are those that have been specifically authorized, Questionmark shall implement industry-recognized forms of authentication to identify the specific individual who is accessing the information. Questionmark will reasonably determine the appropriate level of security that will provide the necessary level of protection for the Student Personally Identifiable Information it maintains. Questionmark shall not allow any individual or entity unauthenticated access to Student Personally Identifiable Information at any time.

- 2.3 Questionmark will maintain security policies and procedures to protect Student Personally Identifiable Information consistent with good industry practice. Questionmark and its production data centers used to deliver Assessments are certified by a reputable third party against the ISO 27001 standard or comparable successor standards. Questionmark will use commercially reasonable efforts not to include in the OnDemand Service any computer viruses, malware, disabling devices or contaminants the purpose of which is to damage Customer's computer systems.
- 2.4 Student Personally Identifiable Information will be stored, processed, and maintained in a secure location and solely on designated servers. All servers, storage, backups, and network paths utilized by Questionmark for the OnDemand Service shall be contained within the United States, although Student Personally Identifiable Information may be accessed from and/or transferred to other locations. Questionmark agrees that any and all data obtained from the Customer and Participants shall be used expressly and solely for the purposes enumerated in this Agreement. Student Personally Identifiable Information shall not be distributed, used, shared, sold, transferred or processed for commercial advertising, marketing, or any other commercial purpose.
- 2.5 Questionmark shall implement appropriate measures to ensure the confidentiality and security of Student Personally Identifiable Information to protect against any unanticipated access or disclosure of information and designed to prevent any other action that could result in the release of such information. Questionmark is permitted to disclose Student Personally Identifiable Information including Assessment session recordings resulting from use of the optional Record and Review Service to its employees, authorized subcontractors, agents, consultants, auditors and to Test Publisher on a need to know basis only, provided that all such parties have written confidentiality obligations to Questionmark or the Customer. The confidentiality obligations shall survive termination of this Agreement for so long as the information remains confidential, and will inure to the benefit of the Customer.
- 2.6 Questionmark shall establish and implement a clear data breach response plan outlining organizational policies and procedures for addressing a potential breach, including notification and remediation procedures. Questionmark's response plan shall require prompt response for minimizing the risk of any further data loss and any negative consequences of the breach, including potential harm to affected individuals. A data breach is any instance in which there is an unauthorized release or access of Student Personally Identifiable Information or other information not suitable for public release. This definition applies regardless of whether Questionmark stores and manages the data directly or through a subcontractor.
- 2.7 Questionmark agrees to comply with the notification requirements of applicable laws in the event of unauthorized release of Student Personally Identifiable Information or other event requiring notification. In the event of an event requiring notification under applicable law, Questionmark shall notify the Customer immediately. Customer shall be responsible for notifying impacted Participants.

- 2.8 In accordance with applicable state and federal law, Questionmark agrees that auditors from any state, federal, or other agency, as well as auditors so designated by the Customer, shall have the option to audit those activities of Questionmark directly related to its service herein. Records directly pertaining to the service shall be made available to auditors and the Customer when requested in writing, provided that ten (10) days' notice is given. The Parties agree that the audit obligation in this paragraph 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.
- 2.9 Questionmark shall have a policy for the protection and storage of audit logs for the OnDemand Service. The policy shall require the storing of audit logs and records on a server separate from the system that generates the audit trail. Questionmark shall restrict access to audit logs to prevent tampering or altering of audit data. Retention of audit trails shall be based on a schedule determined after consultation with operational, technical, risk management, and legal staff.
- 2.10 Upon termination or expiration of this Agreement, Questionmark agrees to remain bound by the privacy provisions set forth in this Schedule 1 until such time as all Student Personally Identifiable Information is erased, destroyed, and rendered unreadable, in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities. Questionmark will erase, destroy and render unreadable Student Personally Identifiable Information in the OnDemand Service in accordance with any instructions received from Customer. Absent such instructions, Questionmark may erase, destroy and render unreadable Student Personally Identifiable Information in the OnDemand Service after a period of six (6) months following termination of the Agreement. Student Personally Identifiable Information in the optional Record and Review Service is erased after a default period of six (6) months following its creation. Customer may request earlier erasure by contacting Questionmark. Questionmark shall certify in writing that these actions have been completed upon written request of the Customer.

The subprocessors that Questionmark may use in provision of the Services are included within the list found at <http://www.questionmark.com/go/od-subprocessors>.