

Questionmark OnDemand for Government Software as a Service Terms and Conditions ("Agreement")

Licensors provide assessment management technology that enables trainers, educators and testing professionals to author, schedule, deliver and report on surveys, quizzes, tests and exams. This Agreement shall be applicable to Licensors' provision of its "Questionmark OnDemand for Government" Software as a Service for online assessments and related support to ordering activity or Customer ("Customer") and shall govern all Orders entered into between the parties with respect to such Services.

Licensors expressly limit acceptance to the terms and conditions set forth in this Agreement and the applicable Order. Any terms and conditions contained in a purchase order, request for proposal, order acceptance or similar document from Customer shall not constitute a part of the contract between the parties unless such terms and conditions are specifically incorporated in the applicable Order. Customer's registration for, or use of, the Services shall constitute acceptance on the terms and conditions set forth in this Agreement and any additional or different terms proposed by Customer are hereby rejected.

1. Definitions

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

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

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

Assessment means surveys, quizzes, exams, tests or other systematic ways of collecting data produced using Licensors Technology whether by Licensors on behalf of Customer or by Customer.

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

Author means any Admin User that uses Licensors Technology to author Assessments.

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

Business Day means every day excluding Saturdays, Sundays and any national holidays throughout the United States unless otherwise defined in the Order.

Commencement Date means the date set out in the Order.

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

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

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.

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

Enterprise Support means the support and maintenance of the OnDemand Service as more particularly described in Section 10.3.

Fees means the sums payable by the Customer to Licensor in consideration of the OnDemand Service and Standard Support, including, without limitation, any applicable Set Up Fees, together with sums payable in consideration of Enterprise Support and Consulting Services, if order and such other services as more particularly described in the Order and any applicable SOW.

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

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

OnDemand Service means the Software as a Service provided by Licensor to Customer using Licensor Technology and provided by Licensor to the Customer for the creation, delivery, monitoring and reporting of Assessments.

Order means the written quotation for Services provided by Licensor.

Participant means any User that has access to the system to participate in an Assessment by answering questions or otherwise responding to the Assessment process.

Permitted Use means the use of the OnDemand Service that is agreed on the Order.

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

Renewal Fees means the Fees payable in respect of each Renewal Term.

Renewal Term means the period specified in the Order for which the Agreement shall automatically renew following the end of the Initial Term or a Renewal Term which shall run from the end of the Initial Term or the then current Renewal Term unless this Agreement is terminated in accordance with Article 5.

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

Service Configuration means options and application program interfaces ("APIs") that have been enabled for the OnDemand Service and the limitations on the number/volume of Assessments and Users as more particularly described in the Order.

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

Services means the services provided by Licensor to Customer, including (but not limited to) those relating to access to the OnDemand Service and Standard Support, and, if selected by Customer, Enterprise Support, Consulting Services. The Services selected shall be more particularly described in the Order or in an applicable SOW.

Set Up Fees means the sum set out in the Order and described as a set-up fee.

Severity Level means the severity of a Service Incident as reasonably determined and assigned by Licensor's Service Desk pursuant to Licensor protocols for application of Enterprise Support, taking into account any input from Customer.

SOW means a statement of work entered into between the parties for Licensor to provide Consulting Services to Customer.

Standard Support means the support and maintenance of the OnDemand Service as more particularly described in Section 10.2.

Term means the Initial Term together with any Renewal Term.

Training means the training services provided by Licensor to Customer which shall form part of the Services if purchased by the Customer pursuant to an applicable SOW.

User Account means the profile stored within the OnDemand Service for a User.

Users means Admin Users, Authors and Participants.

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

Working Hours means the hours between 9 am (09:00) to 6 pm (18:00) United States Eastern Standard Time on Business Days unless otherwise defined within the Order.

2. Licensor's Obligations

- 2.1 OnDemand License and Authorization. In consideration of, and subject to, payment of the Fees, Licensor grants to the Customer a non-exclusive, royalty-free, non-transferable, non-sublicensable license and authorization to access and use the OnDemand Service for the Term. This license shall be subject to the Service Configuration detailed on the Order and the terms of this Agreement. All rights not expressly granted to Customer hereunder are reserved by Licensor, its suppliers, and licensors. On or before the Commencement Date, Licensor shall provide the Customer with an individual password, identity code or other security code by which Customer may access the OnDemand Service via the internet.
- 2.2 Consulting Services. Following a request for Consulting Services, Licensor shall produce a proposal and the parties shall agree on a final form for the applicable Order or SOW which, when signed by both Parties, shall be the Order for Consulting Services. Customer shall be solely responsible to confirm that the Order satisfies the Customer's operational needs and requirements. The Consulting Services shall be performed and delivered at the times and places listed in the applicable Order. Licensor shall use commercially reasonable efforts to meet the timelines set in the Order.
- 2.2.1 Configuration. If an Order requires Licensor to develop a customized configuration of the OnDemand Service specifically for Customer, upon the delivery of such customized configuration (each a, "Configuration"), Customer shall have twenty-one (21) days to review such Configuration for any material non-conformance with the terms of the Order. If the Customer reports any such material non-conformance to Licensor in writing within the twenty-one (21) day period, Licensor will remedy such material non-conformance within a commercially reasonable time based on the circumstances, targeted to be within thirty (30) Business Days, to bring it into material compliance with the Order. If the Customer does not report any material non-conformance within the twenty-one (21) day period, the Customer is deemed to accept the Configuration provided Licensor has made reasonable efforts to confirm material conformance with Customer. If Licensor is unable to bring the Configuration into material conformance with the Order after this process has been followed three (3) times, the Customer may terminate the Order with respect to the Configuration and receive a refund for the returned, non-materially conforming Configuration. Unless specified otherwise on the Order, the Configuration will not be covered by any support plan. The Configuration does not include the standard OnDemand Service or any feature thereof.

3. Customer Obligations

- 3.1 Service Configuration. Customer may use the OnDemand Service during the Term solely in conformance with the terms of this Agreement, the Service Configuration, Permitted Use and applicable laws. If Customer requires an increase in the Service Configuration, further charges may be due. If Customer exceeds the limitations of the Service Configuration, Licensor may charge Customer for any excess use calculated with reference to the then current Order pricing. Licensor will use commercially reasonable efforts to advise Customer of any such excess use of which it becomes aware.
- 3.2 Access Control and Usernames. Customer shall not allow any persons to be registered in, to access or use the OnDemand Service in excess of the number of Users authorized in the Service Configuration, measured in any twelve (12) month period from the Commencement Date or its anniversary. In the event that a Participant is removed from or no longer uses the OnDemand Service his or her allocated username may not be reassigned to another individual, unless otherwise expressly agreed in the Order. Notwithstanding the foregoing, Customer shall be permitted to exceed the number of Participants authorized in the Service Configuration by no more than ten percent (10%) at any one time (within the twelve (12) month period measured above) where Participants are removed from the OnDemand Service because (i) their participation in Assessments is no longer required or due to associated errors or mistakes and the Customer adds new Participants or (ii) they cease to be employed or engaged by or attend the Customer or otherwise change roles with the Customer and the Customer adds new Participants. For clarity, Assessments taken by removed Participants shall continue to count against the Service Configuration and other limits in the Order. In the event that an Admin User or Author is removed from or no longer uses the OnDemand Service, his or her allocated username may be reassigned to another individual. 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. Customer shall permit and provide all cooperation and information requested by Licensor in any audit regarding compliance with the Service Configuration.
- 3.3 Password Security. Customer shall keep confidential all usernames, passwords, identification and security codes provided by Licensor and shall notify Licensor promptly in the event that it suspects the loss or unauthorized use or disclosure of any such username, password or code. Except for any activity that occurs more than one (1) Business Day after notifying Licensor of the suspected loss or disclosure or any unauthorized use of a username, password or code, the Customer shall be liable for any activity carried out by a User or under any username, password, identification or security code issued to it and shall take all reasonable efforts to prevent such breach and mitigate any losses.

- 3.4 Restrictions on Use. Customer may not modify or make derivative works based upon the OnDemand Service, Services or any associated documentation or hide or attempt to hide copyright information or identification of Licensor's ownership of the OnDemand Service or Services. Customer is prohibited from reverse engineering or accessing the OnDemand Service or Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics as the OnDemand Service or Services, or (c) copy any ideas, features, functions or graphics of the OnDemand Service or Services. Customer may monitor performance of the OnDemand Service but such information is Confidential Information of Licensor under this Agreement.
- 3.5 License to Customer Data. The Customer grants to Licensor a non-exclusive, royalty-free licence to use the Customer Data in connection with the provision of the Services. Customer authorizes Licensor and its Affiliates to use Assessment results and other Customer Data (including personal data) for analysis purposes as part of the Services and to produce aggregated data for Assessment validation, anti-cheating, security, statistical analysis and product improvement purposes, including creating or updating Benchmarks. Benchmarks and other aggregated data shall not contain any information on any identifiable individual or from which any individual is identifiable and are owned by Licensor. Licensor shall also not disclose to any other Licensor customers Benchmarks or other aggregated data that include (directly or by inference) any information identifying Customer or from which Customer is identifiable.
- 3.6 Use of Assessments. The OnDemand Service may be used to correspond with Participants and to assess a Participant's knowledge, skills and attitudes and allocate a score. Customer is responsible for all correspondence with Participants. Scores should be considered one piece of evidence about a Participant's knowledge, skill and/or attitude. When the OnDemand Service is being used to make decisions about a Participant (such as whether to 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 Participant's score to ensure that the appropriate decision has been made. Customer is solely responsible for its use of the OnDemand Service and Assessments, including entering and maintaining the assessment material, validating the Assessment, checking this material, checking scores and checking reports.
- 3.7 Acceptable Use. Customer shall not use the OnDemand Service to store or transmit anything offensive, harassing, threatening, abusive, obscene, illegal, or defamatory, that breaches the rights of any third party, or contains viruses, worms, Trojan horses or other harmful computer code, spyware, adware, malware, files, scripts, agents or programs. Customer is prohibited from:

- (i) using the OnDemand Service to support criminal activity or illegal purpose;
- (ii) undertaking penetration testing of the OnDemand Service without at least ten (10) days' advance written permission of Licensor obtained through completion of Licensor's standard form, to Licensor's reasonable satisfaction;
- (iii) undertaking large-scale performance testing of the OnDemand Service without advance written permission of Licensor;
- (iv) impersonating another user of the OnDemand Service or a Licensor employee;
- (v) attempting to violate the security of a network, service, or other systems, including but not limited to hacking, cracking into, monitoring, or using systems without authorization, scanning ports, and conducting denial of service attacks;
- (vi) interfering with or disrupting the integrity or performance of the OnDemand Service or the data contained therein;
- (vii) attempting to gain unauthorized access to the OnDemand Service or its related systems or networks;
- (viii) using the OnDemand Service to send unsolicited e-mails, charity requests, petitions for signatures, or chain mail related materials or communications in any form;
- (ix) sending e-mails that violate the U.S. CAN-SPAM Act, such as sending unsolicited email without identifying in the email a clear and easy means to be excluded from receiving additional email from the originator of the email or that do not accurately identify the sender, the sender's return address, and the email address of origin;
- (x) knowingly violating an internet service provider's acceptable use policy and/or terms of service;
- (xi) assisting or permitting any persons in engaging in any of the activities described above.

Licensor may request that the Customer take appropriate actions necessary to stop any such activities. Licensor may check system files, emails and other data for illegal content and materials, or for any other reasons deemed reasonably necessary.

Licensor may take all reasonable necessary actions that it deems appropriate to address violations of this Section 3.7, subject to the requirements and restrictions of US federal laws. Refunds or credits are not issued in connection with actions taken for violation of this Section 3.7.

- 3.8 Export Laws. Licensor complies with the Trade Agreements Act 1979. The OnDemand Service may use encryption technology that may be subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and the export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other U.S. governmental agencies. Customer shall not use the OnDemand Service in, and shall

not transfer or otherwise export or re-export any of the underlying or associated information, software, or technology to, countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), and shall not permit such use by or transfer to a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country or a Designated National. Customer shall comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Customer shall provide any required assistance to Licensor in complying with the export controls including, but not limited to, supplying a statement as to ultimate destination and complying with any import regulations. Licensor warrants that at the Effective Date and as far as it is aware acting in good faith, the Export Control Classification Number (ECCN) for the OnDemand Service licensed by Licensor hereunder in accordance with the Commerce Control List contained in the United States Export Administration Regulations or other relevant export regulations promulgated by a United States federal agency is EAR99. Licensor, its suppliers, and its licensors make no representation that the OnDemand Service is appropriate or available for use in other locations.

- 3.9 **Connections to OnDemand Service.** Customer shall, at its own cost, provide all Internet connections, hardware, software and all other equipment necessary to use the Services. Customer is responsible for ensuring prior to entering into this Agreement and during the Term that it is able to access and use the open internet in all jurisdictions in which it intends to use the Services. The inability of Customer or Participants to access and use the Services due to open internet restrictions shall not constitute a Service Incident, Unscheduled Downtime or failure by Licensor to perform its obligations under this Agreement.
- 3.10 **Application Program Interfaces.** Where the Service Configuration permits access to the OnDemand Service through Questionmark Application Program Interfaces ("APIs"), Customer shall only access the OnDemand Service through the APIs listed in the Order and in accordance with the documentation and instructions provided by Licensor.
- 3.11 **System Requirements.** The Services may only be used via compatible systems and/or compatible browsers. Licensor maintains a list of compatible systems and/or browsers on its web site and reserves the right to update the system specifications at its reasonable discretion.

- 3.12 Cooperation. Customer shall provide Licensor all access to information reasonably requested to enable Licensor to provide the Services. Licensor has no liability for any failure or delay to provide the Services to the extent such failure or delay is caused by Customer's failure to provide such information.
- 3.13 Data Backup. The OnDemand Service includes a function for archiving and exporting Assessments, results and other data. Licensor shall not be responsible or liable for Customer's deletion, correction, destruction, damage, loss or failure to store any such information or Customer Data including, but not limited to, an event where Customer fails to make regular backups. Without limiting Customer's responsibility to backup and Licensor's disclaimer of responsibility or liability as described in the immediately foregoing sentence, Licensor shall make commercially reasonable efforts to make at least daily backups.
- 3.14 Code Upload. If Customer wants to upload any executable software code into the OnDemand Service, the Customer will pass such code to Licensor prior to such upload, so that Licensor can undertake an appropriate security vulnerability review and Customer shall pay Licensor's reasonable, pre-agreed associated service charge for this review. For clarity, such a review is undertaken by Licensor for the purposes of security of the OnDemand Service without warranty to Customer.

4. Fees

- 4.1 Fees. In consideration of the Services, Customer shall pay all Fees in full and cleared funds and in the currency specified in the Order to the account or address designated by Licensor from time to time. Where Customer has purchased Consulting Services, Licensor shall invoice, and Customer shall pay, the relevant Fee for such Consulting Services as set out in the applicable Order. All Fees for pre-paid Services are non-refundable except in the event of termination by Customer for cause under Section 5.2. Notwithstanding the immediately foregoing sentence, if FAR 52.249-2 (Termination for Convenience of the Government (Fixed-Price)) is applicable to an Order with a GSA Schedule Customer, that provision shall govern payment of Fees in the event of termination for convenience.
- 4.2 Payment Terms. All invoices shall be due and payable by Customer within thirty (30) days of receipt of a valid and undisputed invoice, unless otherwise stated in the Order. Any invoices not disputed within forty-five (45) calendar days of receipt shall be deemed accepted.
- 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 the Services, whether now in force or demanded by any governmental entity at any later time, which if applicable Licensor

may collect from Customer for remittance to an applicable governmental entity. Upon request, Licensors shall provide Customer with a valid tax identification number on a U.S. Internal Revenue Service Form W-9. All payments to be made by Customer to Licensors under this Agreement shall be without set-off and without any deduction or withholding for any taxes, duties, imports, fees or charges. Should any taxes be due or demanded outside the United States based on use of the Services by Customer, they will be wholly payable by Customer. Customer shall not be responsible for any taxes based on Licensors' net income. No taxes shall be collected by Licensors when Customer provides to Licensors a valid relevant tax exemption certificate.

- 4.4 On-site Services. On-site visits are not normally required. When on-site visits are requested by Customer, an Order or SOW will document the Consulting Services required and Customer shall pay Consulting Services Fees and Licensors' reasonable out of pocket expenses incurred pursuant to such on-site visit including travel, lodging and subsistence, where applicable consistent with Customer's then current reasonable travel and expenses policy, provided that US federal government travel regulations shall always apply and take priority where Customer is a federal government agency or instrumentality.
- 4.5 Renewal Fees. Licensors may change the Renewal Fees by giving sixty (60) days written notice to Customer prior to the expiration of the Term then in effect and such changes shall become effective upon the commencement of such Renewal Term, provided that Renewal Fees for Customers transacting on the GSA Schedule may only be changed by modification to Licensors' GSA Schedule contract.
- 4.6 Other Services. The following are not included as part of the OnDemand Service but may be purchased as Consulting Services: troubleshooting integration issues and creating integration solutions with third party products, Assessment content development, Assessment content conversion, programming, configuration, assistance with template creation and Assessment style modification.

5. Term and Termination

- 5.1 Term. The Term of Customer's license to the OnDemand Service and access to the accompanying level of support services purchased by Customer shall begin on the Commencement Date and continue for the Initial Term. Thereafter, unless otherwise specified on the applicable Order, this Agreement and such license and accompanying support services shall be automatically renewed for Renewal Terms at the end of each Term unless either party provides written notice of cancellation to the other party at least ninety (90) days prior to expiration of the Term then in effect. Upon commencement of each Renewal Term, Licensors will issue an invoice to Customer for the Renewal Fee for such Renewal Term.

5.2 Termination.

5.2.1 Termination for Cause. In addition to any other remedy that either party has pursuant to this Agreement, either party may terminate this Agreement for cause if: (i) the other party 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 thirty (30) days after written notice of the same; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within ninety (90) days of filing. Notwithstanding the foregoing, Licensor may not terminate for cause any Order placed under the GSA Schedule for any reason without complying with the applicable procedures for termination governing its GSA Schedule contract.

5.3 Effect of Termination.

5.3.1 Upon termination of this Agreement, Licensor will make available to Customer a file of the Customer Data stored within the OnDemand Service within thirty (30) days of the effective date of termination in a reasonable standard file format. If Customer Data is requested in a different media or format, Licensor may charge Customer at its reasonable standard rates then in effect for such services.

5.3.2 Upon termination of this Agreement by Licensor for cause, all undisputed fees or charges payable for the entire Term shall become due and payable by Customer to Licensor, and Licensor's obligations under this Agreement to provide the Services shall end.

5.3.3 Upon termination of this Agreement by Customer for cause without prejudice to any other remedies available to Customer but subject to applicable laws, all prepaid Fees applicable to the unused portion of the Services that were to be provided after the effective date of termination, if any, will become due and payable by Licensor to Customer and Licensor's obligations under this Agreement to provide the Services shall end.

5.3.4 If requested by Customer, Licensor will provide Consulting Services at a reasonable price to assist Customer with termination or transition of the Services as the Parties may reasonably agree in a separate Order.

6. Confidential Information

- 6.1 Any prior non-disclosure agreements in force between the Parties remain valid and binding obligations in respect of disclosures made prior to the Effective Date, notwithstanding execution of this Agreement, unless otherwise provided for in those earlier non-disclosure agreements.
- 6.2 During the Term of this Agreement, each party (the "Disclosing Party") might disclose to the other party or its Affiliates (the "Receiving Party") written and/or oral information that the Disclosing Party considers to be Confidential Information (as defined herein). For the purpose of this Agreement, "Confidential Information" shall include, but not be limited to, Licensor Technology, Documentation, Customer Data, user names, passwords, Licensor's pricing, information of the Disclosing Party specifically marked or referenced as confidential, any information of public bodies or institutions that is defined or to be treated as such under federal or state laws and any and all other information which should reasonably be understood to be confidential or proprietary by the Disclosing Party. The term "Confidential Information" does not include information that (i) becomes generally available in the public domain, except as a result of a breach or violation of this Agreement by the Receiving Party; (ii) is in the possession of the Receiving Party prior to disclosure by the Disclosing Party, provided that the Receiving Party did not receive the information from a third party bound by any confidentiality obligation(s) to the Disclosing Party; and/or (iii) is developed or created by the Receiving Party independent from and without reference to Confidential Information disclosed by the Disclosing Party.
- 6.3 The Receiving Party shall give the Confidential Information of the Disclosing Party confidential treatment during the Term and after termination of this Agreement. The Receiving Party shall use the Confidential Information only in connection with Receiving Party's performance under or in compliance with this Agreement and will not disclose Confidential Information to any third parties without the prior written consent of the Disclosing Party. The Receiving Party may disclose Confidential Information to each of its Representatives on a "*need-to-know*" basis only in connection with such Representatives' performance under, or compliance with, this Agreement; provided that the Receiving Party informs such Representative of the confidentiality obligations contained herein. The Receiving Party shall be liable for any breach or violation of this Agreement by its Representatives. "Representatives," with respect to any party, means its Affiliates and its and their respective directors, officers, employees,

subcontractors, advisors and/or agents (including, without limitation, attorneys and accountants).

- 6.4 Receiving Party may disclose the Disclosing Party's Confidential Information pursuant to statutory or governmental regulations, requirements and/or subpoenas or other legal process; as long as the Receiving Party provides Disclosing Party with prompt written notice, as permitted by applicable law. The Receiving Party will reasonably cooperate with Disclosing Party in its attempts to seek a protective order or otherwise to limit or restrict disclosure of the Disclosing Party's Confidential Information. If the Disclosing Party is unable to obtain a protective order or otherwise limit or restrict disclosure of its Confidential Information, Receiving Party may disclose the Disclosing Party's Confidential Information, but only to the extent required.
- 6.5 Upon termination or expiration of this Agreement, and upon request from the Disclosing Party, the Receiving Party will return or delete all of the Disclosing Party's Confidential Information, including but not limited to copies and derivative works created therefrom, in whatever form, format or media, with no copies retained, except that any of Disclosing Party's Confidential Information stored in archive or back-up that is not reasonably capable of being deleted without undue burden or expense is not required to be deleted, destroyed or returned hereunder by the Receiving Party, subject to such Confidential Information not being used. Upon request, the Receiving Party shall confirm in writing to Disclosing Party its compliance with this paragraph. Any Confidential Information retained by the Receiving Party pursuant to this paragraph shall be held in continued compliance with the terms and conditions of this Agreement.
- 6.6 The Receiving Party's breach of this Section 6 will cause irreparable injury and damage to the Disclosing Party that might not be susceptible to monetary calculation or have an adequate remedy at law. Accordingly, in the event of a breach or anticipated breach of this Section, in addition to any and all other rights and remedies available to the Disclosing Party at law and/or in equity, the Disclosing Party will be entitled to seek, and the Receiving Party hereby waives any objection to the Disclosing Party's receipt of, specific performance and injunctive relief (both temporary and permanent) without the posting of a bond.

7 Security

Licensor shall maintain information and physical security policies and procedures to protect Customer Data consistent with good industry practice. Licensor represents that it is certified by a reputable third party against the ISO 27001 standard or comparable successor standard, and that its production data center used to deliver Assessments is audited, no less than annually, by a reputable third party against the SSAE 18 or ISO 27001 standards or comparable successor standards. Licensor shall

meet information assurance/security requirements in accordance with Customer requirements agreed between Customer and Licensor as set out in the Order and on request provide copies of its certificates and a summary of the then current audit report for its production data center, if available, or such other generally provided documentation or information demonstrating compliance with such standards. Licensor shall use reasonable efforts to respond to Customer questions regarding its security practices. Any reports, summaries thereof or information provided is Licensor Confidential Information. Licensor shall 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 ("Contaminants"). Any feature of the OnDemand Service that monitors the Service Configuration or disables access to the OnDemand Service at the end of the Term is not a Contaminant.

8. Compliance with Laws and Data Protection

- 8.1 Customer Data. Customer is responsible for the accuracy, quality, legality, reliability, appropriateness, intellectual property ownership and right of use of Customer Data, including ensuring that Customer Data is transmitted to and processed in the Services by Customer and provided to Licensor in accordance with applicable laws, including for operation and maintenance of the Services, which Customer instructs Licensor to undertake.
- 8.2 Data Protection. Customer is responsible for ensuring that its use of the OnDemand Service and all information that the OnDemand Service receives and transmits pursuant to such use complies with all applicable local, state, federal and foreign laws, treaties and regulations, including, without limitation, any applicable data protection and human rights laws regarding the transmission and processing of personal information.
- 8.3 Protected Health Information. The Customer warrants and represents that it will not upload to the OnDemand Service or otherwise provide Licensor 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 for the satisfactory assurances required by 45 CFR § 164.502(e)(2) ("HIPAA BAA"). The Parties agree that the HIPAA BAA shall be exclusively applicable to PHI subsequently used by Customer in a defined area within the OnDemand Service to which Licensor has access. Licensor disclaims all responsibility and liability in respect of PHI that Customer may upload to the OnDemand Service prior to execution of a HIPAA BAA, or provided to Licensor otherwise than as agreed between the Parties in a HIPAA BAA.

- 8.4 FCPA Compliance. The Parties shall comply with all applicable U.S. anti-bribery and anti-corruption laws. In accordance with the Foreign Corrupt Practices Act, the Parties shall not, either directly or indirectly, in order to assist in obtaining or retaining business for or with, or directing any business to, any person, make or cause to be made, a payment of money or offer, gift, promise to give or authorize the giving of anything of value to any foreign official or to any foreign political party or official thereof for the purposes of influencing any act or decision of that person in his, her or its official capacity, inducing that person to do or omit to do any act in violation of his, her or its lawful duty, securing any improper advantage or inducing that person to use influence to affect or influence any official act or decision.
- 8.5 FERPA. If Customer is an educational agency or institution under the Family Educational Rights and Privacy Act and its implementing regulations (20 U.S.C. § 1232G; 34 Part 99) ("FERPA"), Licensors acknowledge that for this Agreement, Customer Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Data"). To the extent Licensors receive FERPA Data when providing the Services, Licensors will in respect of such FERPA Data be functioning as a "school official" with legitimate educational interests as defined in FERPA, and will comply with FERPA. Customer understands Licensors may have no or limited contact information for Customer's students and students' parents and that Customer is responsible for obtaining any consent to use the OnDemand Service that may be required under applicable law, including from students' parents.

9. Intellectual Property

- 9.1 Licensors Intellectual Property. Customer acknowledges:
- 9.1.1 That any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, in Licensors Technologies and any relevant Documentation or material provided by Licensors will remain the sole property of Licensors and its licensors.
 - 9.1.2 Licensors shall retain ownership of all proprietary rights to any Deliverables developed pursuant to any Configuration, including certain rights, if any, that Licensors has pursuant to a license from any third party.
 - 9.1.3 Upon full payment of the applicable Fees, Licensors shall grant to Customer a license to use such Configuration in accordance with the Service Configuration.
 - 9.1.4 Licensors is the owner, licensee or sub-licensee of various pre-existing development tools, routines, subroutines and/or other programs, data, and

materials that Licensor may use or implement in the development of any Configuration ("Background Technology").

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

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

10. Warranties

10.1 Mutual Representations. Each Party represents and warrants to the other that (i) the terms of this Agreement do not violate and will not cause a breach of any other agreement or any applicable law, decree or regulation to which it is a party or by which it is bound; (ii) it is, and during the Term of this Agreement shall remain, an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; and (iii) this Agreement is, and shall remain, a valid and binding obligation, enforceable in accordance with its terms, as limited by applicable laws.

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

10.3 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, LICENSOR 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.

Except as expressly provided herein, Licensor, its suppliers, and licensors do not represent or warrant that use of the OnDemand Service will be secure, timely,

uninterrupted, error-free or operate in combination with any other system or data. Licensor shall not be responsible for any damage to, or loss of, Customer Data or any third party data provided by Customer, except to the extent caused by Licensor. The Services might be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Although Licensor will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events consistent with good industry practice and except as otherwise expressly provided in Section 13, Licensor disclaims all responsibility resulting from or related to such events.

- 10.4 Corrective Action. If Customer's use of the OnDemand Service is prevented by injunction for infringement of third party intellectual property rights, or if in Licensor's reasonable determination this is likely, Licensor will: (i) modify the OnDemand Service so that it becomes non-infringing, but of equivalent functionality; (ii) replace the OnDemand Service with a non-infringing service of equivalent functionality; or (iii) if neither of the first two (2) options is commercially reasonable, in Licensor's determination, terminate the Services and refund any prepaid Fees attributable to such infringing OnDemand Service paid by Customer for the period during which Customer's use of the OnDemand Service is prevented as described in this Section 10.4.

11. Limitation of Liability

Except to the extent otherwise contemplated in Section 13, if an Assessment does not perform properly due to the fault of Licensor Technology, Licensor shall allow the affected Participants to retake the Assessment at no additional charge to Customer as Customer's remedy for such non-performance by Licensor.

THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THE BELOW PARAGRAPHS OF THIS SECTION 11 SHALL ONLY APPLY TO GSA SCHEDULE CUSTOMERS TO THE EXTENT PERMITTED BY US FEDERAL LAWS.

IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY EXCEED THE GREATER OF 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 OR ONE HUNDRED THOUSAND (100,000) UNITED STATES DOLLARS AND IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE ABOVE LIMITATIONS OF LIABILITY SHALL NOT APPLY TO THOSE SECTIONS OF THIS AGREEMENT DEALING WITH (A) BREACHES OF CONFIDENTIAL INFORMATION, (B) MISAPPROPRIATION OF INTELLECTUAL PROPERTY AND/OR (C) VIOLATIONS OF LAW. FURTHER, NOTHING IN THIS AGREEMENT SHALL EXCLUDE EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE, FRAUD, OR ANY OTHER LIABILITY WHICH CANNOT BE PROPERLY EXCLUDED BY LAW.

LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO CUSTOMER'S USE OF THE SERVICES WHERE LICENSOR IS PROVIDING A FREE TRIAL. THE LIMITATIONS IN THIS SECTION 11 SHALL NOT APPLY TO CUSTOMER'S OBLIGATION TO PAY THE FEES.

12. Insurance

Subject to Licensor's discretion to reasonably adjust its insurance due to changes in circumstances or insurance law, Licensor shall maintain the following insurance during the Term with insurance companies rated A- or better by A.M. Best or other reputable organizations: (i) Workers Compensation meeting minimum statutory requirements; (ii) Employers Liability insurance with limits of not less than \$1,000,000 each accident; (iii) Commercial General insurance with limits of not less than \$2,000,000 each occurrence, \$4,000,000 general aggregate and \$4,000,000 products – completed operations aggregate; (iv) Automobile Liability insurance covering hired and non-owned autos with combined single limit of not less than \$1,000,000 each accident; (v) Umbrella Liability insurance with limits of not less than \$4,000,000 each occurrence and \$4,000,000 aggregate; and (vi) Technology Errors and Omissions insurance with limits of not less than \$5,000,000 each claim and \$5,000,000 aggregate. The foregoing policies of insurance shall include waiver of subrogation, with the exception of Workers Compensation.

13. Support

13.1 Support Generally. Licensor shall provide Standard Support in connection with provision of the OnDemand Service as described in Section 13.2 below. If Customer elects to purchase Enterprise Support, Licensor shall provide additional support under the Enterprise Support Service Level Agreement as described in Section 13.3 below.

13.2 Standard Support.

13.2.1 Customer shall notify Licensor of the individuals, up to the limit specified in the Order, who will be Customer's designated contacts for requesting support via phone and email ("Designated Contacts").

- 13.2.2 Licensor shall provide support services in English (unless otherwise specified on the Order) to Designated Contacts.
- 13.2.3 Customer may substitute Designated Contacts on a permanent or temporary basis upon written notice to Licensor.
- 13.2.4 Customer is requested to ensure that Customer's Designated Contacts subscribe to Questionmark's OnDemand Service news feed during the Term.
- 13.2.5 Licensor will use reasonable efforts to respond to requests for assistance, up to a maximum of twenty (20) hours per month without accumulation of unused hours from one month to the next, during Working Hours to the extent described below:

Service Name	Description	Provision
OnDemand Service Support	Perform maintenance of the OnDemand Service 24 x 7 to maintain uptime. Maintenance of the OnDemand Service does not consume support hours.	Provided by Licensor and/or its sub-contractors 24 x 7.
1st Line Technical Support	Provide assistance by phone and email to Designated Contacts to resolve technical issues that might result in resetting servers, keeping people informed of server status, and answering questions where the answers could be found in the Licensor manuals or knowledge base items.	Provided by Licensor during Working Hours as standard and 24 x 7 for an additional fee.
2nd Line Technical Support	Provide assistance by phone and email to Designated Contacts to answer questions and provide workarounds where answers could not be found in the manuals or knowledge base items.	Provided by Licensor during Working Hours as standard and 24 x 7 for an additional fee.
3rd Line Technical Support	Resolve software issues with the OnDemand Service in a manner that does not consume support hours.	Provided by Licensor and included as standard.

Chat Technical Support	Provide assistance to Designated Contacts using 24 x 7 browser text chat sessions and VoIP to help resolve issues.	Provided by Licensor for an additional fee.
Participant Support	Provide assistance by phone, email, chat sessions, etc. to the Participant to assist them to use any part of the Service.	Provided by Licensor for an additional fee.
Proctor/Invigilator Support	Provide assistance by phone, email, chat sessions, etc. to proctor/invigilators to assist them with the proctoring/invigilation process including but not limited to the use of the Service.	Provided by Licensor for an additional fee.
Consulting Support	Provide assistance with template creation and modification to change look-and-feel of assessment, assessment content import, content transformations, custom development, support of custom development, consulting services, training services, data format changes, etc.	Defined within an Order and delivered for a fee that depends on the scale of the work required.

13.2.6 Licensor will also provide free access to Designated Contacts to product and technical support information, online knowledge bases, manuals, best practice guides, white papers and news feeds.

13.2.7 Licensor will provide Customer with details of Scheduled Maintenance. Licensor will, where possible, provide notice of Emergency Maintenance. Licensor will use good faith efforts to minimize the duration of and perform any Scheduled Maintenance and Emergency Maintenance during off peak hours and, whenever possible, minimize impact to Customer.

13.3 Enterprise Support Service Level Agreement.

13.3.1 Customer will use commercially reasonable efforts to provide accurate and prompt notification of any Service Incident with the OnDemand Service so that Licensor may promptly take any remedial action. Notwithstanding anything to

the contrary contained in this Agreement, Licensors are not obligated to remedy any Service Incident caused by User error or failure to access the OnDemand Service with a compatible system or web browser.

13.3.2 Licensors will use commercially reasonable efforts to respond to and remedy each Service Incident based on the Severity Level set forth below.

13.3.3 Licensors will respond to the Designated Contact within the Initial Response Time specified in the table below, based on the Service Incident's Severity Level.

Severity 1	An error isolated to the OnDemand Service that renders the service inoperative or causes the service to fail catastrophically, i.e. major system impact or system outage. This issue must be resolved before the Customer can use the OnDemand Service. All Severity 1 Issues have no workaround and Customer and Licensors shall work closely together in order to resolve the error as soon as possible. Severity 1 issues are extremely rare and Licensors escalates these issues to its highest priority.	<u>Initial Response Time</u> (by email or callback) is within four (4) hours during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is four (4) hours during Working Hours.
Severity 2	An error isolated to the OnDemand Service which causes a serious impairment to a critical feature of the OnDemand Service, but where overall functionality is not interrupted. Usually a workaround is available for this type of issue, but not in all cases. Licensors will resolve all Severity 2 issues as soon as possible.	<u>Initial Response Time</u> (by email or callback) is within eight (8) hours during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is four (4) hours during Working Hours during the first three (3) Business Days and then updated as needed thereafter.
Severity 3	An issue that causes the failure of a noncritical aspect of the OnDemand Service and a satisfactory work-around already exists but the presence of this issue will result in User dissatisfaction.	<u>Initial Response Time</u> (by email or callback) is within two (2) Business Days during Working Hours. <u>Maximum Time Between Updates</u> (by email or

Severity 4		callback or implementation in the OnDemand Service) is two (2) bBusiness Days for the first week and as needed thereafter. Solution is provided as part of a future release.
	An issue of minor significance. A slight variance exists between the product documentation and how the application actually performs.	<u>Initial Response Time</u> (by email or callback) is within two (2) Business Days during Working Hours. Customer update is every five (5) Business Days, during the first month, and as needed thereafter. Solution is provided as part of a future release at Licensor's discretion.

13.3.4 Targeted Availability. The Assessment Delivery Service is targeted to be available to Customer twenty-four (24) hours a day, seven (7) days a week, at least 99.5% of the time measured on a monthly basis, excluding Scheduled Maintenance, Emergency Maintenance or due to a Force Majeure Event.

14. Notice

Any notice to Licensor should be contemporaneously copied to john@learnosity.com and jamie.armstrong@learnosity.com. Licensor may notify Customer of general announcements made to all users of the OnDemand Service regarding the operation of the Service, including by email.

15. Miscellaneous

- 15.1 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 Customer to make payment) arising from or attributable to a Force Majeure Event provided that it promptly notifies the other Party in writing and uses all reasonable endeavors to mitigate the effect of the Force Majeure Event. Either Party shall be entitled to terminate this Agreement if a Force Majeure Event endures for sixty (60) days

- 15.2 No Waiver. Failure by either Party to exercise or enforce any right or benefit conferred by this Agreement will not be deemed a waiver of any such right or benefit nor operate to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 15.3 Severability. If any provision, or part provision, of this Agreement is held by a court or 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.
- 15.4 Entire Agreement. This Agreement together with any Order (as defined herein) contains the entire understanding of the parties regarding the subject matter hereof and supersedes any prior discussions or agreements concerning such subject matter, except that if the Order is being placed under a GSA Schedule, the terms in the GSA Schedule Contract take precedence over this Agreement. If Customer has purchased the OnDemand Service from a Licensor reseller and the terms of any agreement or documentation between Customer and such reseller conflict with the terms of this Agreement, (i) Licensor shall be entitled to perform and enforce this Agreement in accordance with its terms, (ii) as between Licensor and Customer, the terms of this Agreement shall govern, and (iii) Customer's sole recourse and remedy for any loss, damage, expense or other liability caused by such conflict shall be against such reseller.
- 15.5 Governing Law and Forum. Unless this Agreement is with a GSA Schedule Customer, this Agreement shall be governed by Connecticut law (Connecticut being a state of the United States of America), without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the state and federal courts in Bridgeport, Connecticut. If this Agreement is with a GSA Schedule Customer, it is governed by applicable US federal laws.
- 15.6 U.S. Government Restricted Rights. If the OnDemand Service is licensed to or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with RESTRICTED RIGHTS. To the extent that a license of the OnDemand Service is considered a license of software, the OnDemand Service and accompanying Documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display or disclosure of the OnDemand Service and accompanying Documentation by the U.S. Government

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