

Questionmark provides assessment management technology that enables trainers, educators and testing professionals to author, schedule, deliver and report on exams, tests, quizzes and surveys. These terms and conditions (“Agreement”) shall be applicable to Questionmark’s provision of its “OnDemand” service for assessments and related support (the “Service”) to Customer (“Customer”) and shall govern all Order forms entered into between the Parties with respect to such Services. Questionmark and Customer shall herein be referred to individually as a “Party” and collectively as the “Parties.”

Questionmark expressly limits acceptance to the terms and conditions set forth in this Agreement and the applicable Order form. 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 of sale between the Parties. Customer’s registration for, or use of, the Service 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 Questionmark 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, Questionmark or Customer.

Assessment means the exam, test, quiz, survey or other systematic ways of collecting data produced using the Questionmark Technology whether by Questionmark on behalf of a Customer or by the Customer.

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

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

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 Questionmark to Customer as set forth on an applicable, mutually agreed upon SOW.

Customer means the Party purchasing the Services provided by Questionmark.

Customer Data means the data, information and material provided or submitted by the Customer or Users in the creation, participation or reporting of the Assessment and any output of the Assessments. Customer Data shall expressly not include 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.

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 14.3.

Fees means the sums payable by the Customer to Questionmark in consideration of the OnDemand Service and Standard Support together with sums payable in consideration of Enterprise Support and Consulting Services, if purchased, 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, extreme adverse weather conditions, natural disaster, war, threat of or preparation for war, armed conflict, terrorist attack, civil war, civil commotion or riots, nuclear, chemical or biological contamination, acts of any Government agency after the Effective Date, fire, flood, earthquake, explosion or accidental damage, any labor dispute, including (but not limited to) strikes, industrial action or lockouts, denial of service attacks, non-performance by suppliers or subcontractors (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 which shall start on the Commencement Date.

OnDemand Service means the software-as-a-service using Questionmark Technology and provided by Questionmark to the Customer for the creation, delivery, monitoring and reporting of Assessments.

Order means the written quotation for Services provided by Questionmark, which has been accepted by the Customer, as such Order may be amended from time to time by mutual agreement of the Parties.

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 permitted use of the OnDemand Service to create, deliver and report on Assessments and as may be further defined on the Order.

Questionmark means Questionmark Corporation, a Connecticut corporation, Connecticut being a state of the United States of America, with a principal office at 35 Nutmeg Drive, Suite 330, Trumbull, Connecticut 06611, USA.

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.

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 Section 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 of Assessments and Users that are permitted, which shall be 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 Questionmark to remedy such incident.

Services means the services provided by Questionmark 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 and/or Consulting Services. The Services selected shall be more particularly described in the Order or in an applicable SOW.

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

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

Standard Support means the support and maintenance of the OnDemand Service as more particularly described in Section 14.2.

Term means the Initial Term together with any Renewal Term.

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

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. The unavailability of the service due to Customer actions, Customer requests, or some specific functions that are not material to the Assessment Delivery Service will not constitute unavailability.

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. Questionmark's Obligations

2.1 OnDemand License and Authorization. In consideration of, and subject to, payment of the Fees, Questionmark hereby grants to the Customer a non-exclusive, royalty-free, non-transferable (except in the event of an assignment pursuant to Section 16.1), non-sublicensable license and authorization to access and use the OnDemand Service for the Term of this Agreement. 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 Questionmark, its suppliers, and its licensors. On or before the Commencement Date for the OnDemand Service, Questionmark 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, Questionmark shall produce an SOW which shall be reviewed by Customer and the Parties shall agree on a final form for the SOW which, when signed by both Parties, shall be the Order for such Consulting Services. Customer shall be solely responsible to confirm that the SOW satisfies the operational needs and requirements of Customer's business and to identify any necessary modifications to the SOW required. The Consulting Services shall be performed and delivered at the times and places listed in the applicable SOW. Questionmark shall use commercially reasonable efforts to meet the timelines set in the applicable SOW, but time shall not be of the essence unless otherwise expressly agreed in writing between the Parties in the SOW.

2.2.1 Configuration. In the event an applicable SOW requires Questionmark 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 SOW. In the event that Customer does not report any such material non-conformance to Questionmark within the twenty-one (21) day period, Customer will have been deemed to have accepted such Configuration. In the event the Configuration is not in material conformance with the terms of the SOW and Customer notifies Questionmark in writing, Questionmark will remedy such material non-conformance within a commercially reasonable time based on the circumstances of the material non-conformance, targeted to be within thirty (30) Business Days, so as to bring it into material compliance with the SOW. If Questionmark is unable to bring the Configuration into material conformance with the SOW after this process has been followed three (3) times, Customer may terminate the SOW and receive a full refund for the returned, non-materially conforming Customization. Unless specified otherwise on the SOW, the Configuration will not be covered by any support plan. For clarity, the term “Configuration” does not include the standard OnDemand Service or any feature thereof generally provided by Questionmark to Customer, and only includes a particular customized configuration of the OnDemand Service provided to Customer pursuant to a SOW.

2.3 Divested Entities. If during the term of this Agreement Customer divests an entity which has been using the OnDemand Service as permitted hereunder (a “Divested Entity”), the Divested Entity shall be allowed to continue to use the OnDemand Service to the extent of its pre-divested use for a period not to exceed more than six (6) months after the date of divestiture as long as Customer provides reasonable advance written notice to Questionmark and such Divested Entity agrees in writing to abide by the terms of this Agreement (including payment of Fees by Divested Entity if such post-divestment use has not been paid for by Customer). Notwithstanding the foregoing but without limiting any rights or remedies of Questionmark in respect of Divested Entity, Customer shall remain responsible to Questionmark for use of the OnDemand Service by Divested Entity. If any Divested Entity desires to use the OnDemand Service beyond such six (6) month period, then such Divested Entity must enter into a separate license agreement with Questionmark.

2.4 Questionmark Reseller Terms. Notwithstanding the definition of “Order” set forth in Section 1, if Customer has purchased the OnDemand Service from a Questionmark reseller, the definition of “Order” shall refer to the Order between Questionmark and such reseller. Questionmark shall be obligated to provide the Services only in conformity with such Order, including with regard to the Term and the Service Configuration, regardless of whether the order or other documentation between Customer and such reseller provides different terms. Customer’s sole recourse and remedy for any loss, damage, expense or other liability caused by such discrepancy shall be against such reseller.

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 and the Service Configuration. Customer understands that Questionmark has priced the OnDemand Service based on the number of Users in the Service Configuration, and if Customer requires more Users than licensed, further charges may be due. In the event that Customer exceeds the limitations of the Service Configuration, Questionmark may charge Customer for any excess use on a pro rata basis. Questionmark will use commercially reasonable efforts to advise Customer of any such excess use of which it becomes aware.

3.2 Access Control and Usernames. Any access control system which identifies or authenticates Users may not provide access to the OnDemand Service if it contains more User records than the number of Users authorized in the Service Configuration. 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. 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. In the event that an Admin User or Author is removed from or no longer uses the OnDemand Service the 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.

- 3.3 Password Security.** Customer shall keep confidential all usernames, passwords, identification codes and security codes provided by Questionmark and shall notify Questionmark promptly in the event that it suspects the loss or disclosure or any unauthorized use of any such username, password or code. Customer acknowledges that except for any activity that occurs more than one (1) Business Day after notifying Questionmark of the suspected loss or disclosure or any unauthorized use of a username, password or code, it shall be liable for any activity carried out under any username, password, identification code or security 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.
- 3.4 Restrictions on Use.** The OnDemand Service may only be used in conformance with the Permitted Use. Customer may not modify or make derivative works based upon the OnDemand Service or any associated documentation except as permitted by law; or hide or attempt to hide copyright information or identification of Questionmark's ownership of the OnDemand Service. Customer is prohibited from reverse engineering or accessing the OnDemand Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the OnDemand Service, or (c) copy any ideas, features, functions or graphics of the OnDemand Service. Customer may monitor performance of the OnDemand Service but such information is Confidential Information of Questionmark under this Agreement.
- 3.5 Use of Assessments.** Customer acknowledges that 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 solely 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, including entering and maintaining the assessment material, validating the Assessment, checking this material, checking scores and checking reports.
- 3.6 Acceptable Use.** Customer shall not use the OnDemand Service in such a way as to store or transmit anything that is 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, 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 advance written permission of Questionmark obtained through completion of Questionmark's standard form, to Questionmark's reasonable satisfaction;
- (iii) undertaking large-scale performance testing of the OnDemand Service without advance written permission of Questionmark;
- (iv) impersonating another user of the OnDemand Service or a Questionmark employee;
- (v) hiding or removing Questionmark's copyright statements;
- (vi) attempting, whether successful or not, to violate the security of a network, service, or other system, including but not limited to hacking, cracking into, monitoring, or using systems without authorization, scanning ports, and conducting denial of service attacks;

- (vii) interfering with or disrupting the integrity or performance of the OnDemand Service or the data contained therein;
- (viii) attempting to gain unauthorized access to the OnDemand Service or its related systems or networks;
- (ix) using the OnDemand Service to send unsolicited e-mails or communications in any form, including without limitation, posting messages similar in content to more than five (5) online forums or newsgroups or that violate the rules of the applicable forum or newsgroup;
- (x) sending solicitations, such as charity requests, petitions for signatures, or any chain mail related materials;
- (xi) 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
- (xii) knowingly violating an internet service provider's acceptable use policy and/or terms of service;
- (xiii) assisting or permitting any persons in engaging in any of the activities described above.

If Customer becomes aware of any such activities, Customer will take all actions necessary to stop such activities immediately, including, if necessary, terminating a User's access to the OnDemand Service. Questionmark may check system files, email and other data for illegal content and materials, or for any other reasons deemed reasonably necessary.

To the extent Questionmark is aware of any violation of this Section 3.6, Questionmark will use commercially reasonable efforts to notify Customer. Questionmark may take all necessary action that it deems appropriate to address violations of this Section 3.6, including, without limitation suspension or termination of the Services. Repeated or persistent violations may result in termination of Customer's access to the OnDemand Service following reasonable notice by Questionmark to Customer. Refunds or credits are not issued in connection with actions taken for violation of this Section 3.6.

3.7 Export Laws. 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 Council Regulation (EC) No. 428/2009 (as amended), 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, and the export control regulations of Switzerland and the European Union. As applicable, Customer shall not use the OnDemand Service in, and shall not transfer or otherwise export or re-export any of the underlying information, software, or technology to, countries as to which the United States, Switzerland and/or the European Union 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"). By using the OnDemand Service, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer shall comply strictly with all applicable U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Customer shall provide any reasonably required assistance to Questionmark in complying with the export controls including, but not limited to, supplying a statement as to ultimate destination and complying with any import regulations. Questionmark 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 Questionmark 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.

3.8 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.

3.9 Application Program Interfaces. Where the Service Configuration detailed within an Order 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 Questionmark in relation to that access.

- 3.10 System Requirements.** Customer acknowledges that the Services may only be used via compatible systems and/or compatible browsers. Questionmark maintains a list of compatible systems and/or browsers on its web site and reserves the right to update the system specifications at any time and for any reason at its reasonable discretion.
- 3.11 Cooperation.** Customer shall provide Questionmark all access to information reasonably requested to enable Questionmark to complete the Services in accordance with the Order. Questionmark will not be liable for any failure or delay to provide the Services where such failure or delay is caused by or arises from Customer's failure to provide such reasonable necessary information.
- 3.12 Customer Contact Information.** Customer shall provide Questionmark with complete and accurate billing and contact information. This information includes Customer's legal organization name, street address, and the name, e-mail address and telephone number of an authorized billing contact and administrator. Customer shall use reasonable efforts to update this information promptly in the event of any change.
- 3.13 Data Backup.** The OnDemand Service includes a function for archiving and exporting Assessments, results and other data. Questionmark shall not be responsible or liable for Customer's deletion, correction, destruction, damage, loss or failure to store any Customer Data including, but not limited to, an event where Customer fails to make regular backups of Customer Data. Without limiting Customer's obligation to backup Customer Data and Questionmark's disclaimer of responsibility or liability as described in the immediately foregoing sentence, Questionmark shall make commercially reasonable efforts to make at least daily backups of Customer Data.

4. Fees

- 4.1 Fees.** In consideration of the OnDemand Service, Customer shall pay all Fees in full and cleared funds and in the currency specified within the Order to the account or address designated by Questionmark from time to time. Where Customer has purchased Consulting Services, Questionmark shall invoice, and Customer shall pay, the relevant Fee for such Consulting Services as set out in the applicable Order or SOW. All Fees for pre-paid Services are non-refundable except in the event of termination by Customer for cause under Section 5.2.
- 4.2 Payment Terms.** All invoices shall be due and payable by Customer within 30 days of receipt of a valid and undisputed invoice, unless otherwise stated in the Order. Any invoices not disputed within forty-five (45) 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 Questionmark may collect from Customer for remittance to an applicable governmental entity. Upon request, Questionmark 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 Questionmark 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 upon use of the Services by Customer, they will be wholly payable by Customer. Customer shall not be responsible for any taxes based on Questionmark's net income. No taxes shall be collected by Questionmark when Customer provides to Questionmark 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 SOW will document the Consulting Services required and Customer shall pay Consulting Services Fees and

Questionmark's 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.

- 4.5 Renewal Fees.** Questionmark may change the levels of any Renewal Fees by giving 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.
- 4.6 Fees for Data Storage.** Use of the OnDemand Service allows unlimited storage for items, definitions, textual data, assessment definitions and results data but not for graphics, audio, video, and other multimedia files ("Media Files"). The maximum storage provided without additional charge to Customer for Media Files is specified on the applicable Order. If the amount of storage required for Media Files exceeds this limit, Customer will be invoiced in arrears for the reasonable additional storage fees as specified on the applicable Order but only if excess use continues for more than thirty (30) days after Questionmark provides notice of such excess use to Customer.
- 4.7 Credit cards.** If the Order references payment by credit card or if the Customer uses a credit card to pay, Questionmark may deduct Renewal Fees or other Fees when due from Customer's credit card.
- 4.8 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.
- 4.9 Questionmark's Remedies for Non-Payment.** Questionmark reserves the right to suspend or terminate this Agreement and Customer's access to the Services when payment has not been received within sixty (60) days of the due date, provided that Questionmark has given Customer notice of non-payment and such proposed suspension or termination. Questionmark reserves the right to impose a reasonable reconnection fee in the event Customer's account is suspended or terminated. 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 ninety (90) days from date of suspension or termination.
- 4.10 Questionmark Reseller Terms.** If Customer has purchased the OnDemand Service from a Questionmark reseller, the terms of this Section 4 that contemplate payment directly from Customer to Questionmark are superseded by Customer's payment arrangement with such reseller and payment to Questionmark shall be made by such reseller. Notwithstanding the prior sentence, in the event that such reseller fails to make timely payment of fees to Questionmark, Questionmark shall be entitled to all remedies available herein with regard to the termination of this Agreement and/or termination or suspension of the OnDemand Service as if such payment had been due directly from Customer and, in the event that Customer has made payment to such reseller, Customer's sole recourse and remedy shall be against such reseller.

5. Term and Termination

- 5.1 Term.** The Term of Customer's license to the OnDemand Service and Customer's access to the accompanying level of support services purchased by Customer shall commence on the Commencement Date and shall 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 additional one (1) year terms at the end of each Term unless either Party provides written notice of cancellation to the other Party at least thirty (30) days' prior to the expiration of the Term then in effect. Upon the commencement of each Renewal Term, Questionmark 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 will have the right to 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.

5.2.2 Termination for Convenience. Customer may terminate this Agreement for convenience upon thirty (30) days' written notice to Questionmark, provided that in the event of such termination for convenience, Customer shall remain liable for all Fees paid and due for the entire then current Term, without refund or reduction.

5.3 Effect of Termination.

5.3.1 Upon termination of this Agreement, Questionmark 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 standard file format. If Customer requests its Customer Data in a different media or format, Questionmark may charge Customer for its time and materials at its reasonable standard rates then in effect for such services.

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

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

5.4 Free Trials. Questionmark may terminate a free account at any time in its sole discretion. Notifications provided by the Service to indicate the remaining number of days in the free trial shall constitute notice of termination.

6. Confidential Information

6.1 Any prior non-disclosure agreements in force between the Parties shall remain valid and binding obligations in respect of disclosures made prior to the Effective Date by Questionmark and Customer, 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 (the "Receiving Party") certain 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, the Questionmark Technology, Documentation, Customer Data, usernames, passwords, Questionmark'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 it will not disclose Confidential Information to any third parties without the prior written consent of the Disclosing Party. Questionmark may use Customer Data to understand how Customer uses the OnDemand Service and its features for quality assurance and product improvement purposes. Notwithstanding the foregoing, 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. 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 shall be permitted to disclose the Disclosing Party's Confidential Information pursuant to statutory or governmental regulations or requirements and/or subpoenas or other legal process; provided that Receiving Party provides the Disclosing Party with prompt written notice, as permitted by applicable law; and provided that Receiving Party reasonably cooperates with the Disclosing Party in its attempts to seek a protective order or otherwise to limit or restrict disclosure of the Disclosing Party's Confidential Information. In the event that the Disclosing Party is unable to obtain a protective order or to otherwise limit or restrict disclosure of its Confidential Information, Receiving Party shall be permitted to 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, Receiving Party will return or delete and destroy 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 Receiving Party, subject to such Confidential Information not being used. Upon request, Receiving Party shall confirm in writing to Disclosing Party its compliance with the terms of this paragraph. Any Confidential Information retained by 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 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 an 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

Questionmark shall maintain information and physical security policies and procedures to protect the Customer Data consistent with good industry practice. Questionmark represents and warrants 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 16 or ISO 27001 standards or comparable successor standards. On written request, Questionmark shall provide to Customer 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. Questionmark shall use reasonable efforts to respond to Customer questions regarding Questionmark's security practices. Any reports, summaries thereof or information provided pursuant to this Section 7 is Confidential Information of Questionmark. Questionmark 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"), the parties agreeing that 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 solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right of use of all Customer Data, including without limitation ensuring that Customer Data is transmitted to and processed in the Services by Customer and provided to Questionmark in accordance with applicable laws, including for operation and maintenance of the Services, which Customer instructs Questionmark to undertake as necessary.
- 8.2 Data Protection.** 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 passing through the OnDemand Service. Customer shall be responsible for ensuring that Customer's use of the OnDemand Service and that all information that the OnDemand Service receives and transmits 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. The Parties shall comply where applicable with their respective obligations as detailed in Schedule 1.
- 8.3 EU-US and Swiss-US Privacy Shield.** Questionmark shall maintain appropriate arrangements to certify itself under the EU-US and Swiss-US Privacy Shield frameworks, documented at <https://www.privacyshield.gov> ("Privacy Shield"), for as long as the Privacy Shield remains supported by the US government, European Union and Switzerland respectively.
- 8.4 Protected Health Information.** Customer warrants and represents that it will not upload to the OnDemand Service or otherwise provide Questionmark with access to Protected Health Information as defined at 45 C.F.R. § 160.103 ("Protected Health Information") unless and until the Parties agree and execute a separate HIPAA business associate agreement that provides for the satisfactory assurances required by 45 CFR § 164.502(e)(2) ("HIPAA BAA"). The Parties acknowledge and agree that the terms of the HIPAA BAA shall be exclusively applicable in respect of any Protected Health Information subsequently used by Customer in a defined area within the OnDemand Service to which Questionmark has access. Questionmark disclaims all responsibility and liability in respect of Protected Health Information that Customer may upload to the OnDemand Service prior to execution of a HIPAA BAA, or provided to Questionmark by Customer otherwise than as agreed between the Parties in a HIPAA BAA.
- 8.5 FCPA Compliance.** The Parties shall comply with all applicable U.S. anti-bribery and anti-corruption laws. In accordance with the provisions of 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 or its official capacity, inducing that person to do or omit any act in violation

of his or its lawful duty, securing any improper advantage or inducing that person to use his or its influence to affect or influence any official act or decision by such person.

8.6 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”), Questionmark acknowledges that for the purposes of this Agreement, Customer Data may include personal identifiable information from education records that are subject to FERPA (“FERPA Data”). To the extent Questionmark receives FERPA Data when providing the Services, Questionmark will 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 Questionmark may have no or limited contact information for Customer’s students and students’ parents and that Customer shall be responsible for obtaining any consent to use of the OnDemand Service that may be required under applicable law, including where required from students’ parents.

9. Intellectual Property

9.1 Questionmark 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 Questionmark Technologies and any relevant Documentation or material provided by Questionmark will remain the sole property of Questionmark and its licensors.

9.1.2 Without limitation to the foregoing, neither party will be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of the other party without the prior written consent of that other party. The display of Customer’s name, trademarks, trade names or other proprietary marks or symbols within the OnDemand Service by or on behalf of Customer shall not violate this Section 9.1.2. Notwithstanding the foregoing, Customer consents to Questionmark including Customer’s name on its routine client list for matters of reference.

9.1.3 Questionmark shall retain ownership of all proprietary rights to any Configuration developed pursuant to Consulting Services, including certain rights, if any, that Questionmark has pursuant to a license from any third party.

9.1.4 Upon full payment of the applicable Fees, Questionmark shall grant to Customer a license to use such Configuration in accordance with the Service Configuration.

9.1.5 Questionmark is the owner, licensee or sub-licensee of various pre-existing development tools, routines, subroutines and/or other programs, data, and materials that Questionmark may use or implement in the development of any Configuration (“Background Technology”).

9.1.6 Questionmark and/or its licensors retains all right, title and interest in and to the Background Technology, and Questionmark 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. Questionmark acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, which are contained in the Customer Data and other data and information transmitted or stored by Customer using the OnDemand Service 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 the terms of any other agreement or any applicable law, decree or regulation to which it is a party or by which it is subject or bound; (ii) that it is, and at all times 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) that this Agreement is, and shall remain, a valid and binding obligation, enforceable in accordance with its terms, as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally.
- 10.2 Questionmark Representations.** Questionmark represents and warrants that (i) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof and the terms of this Agreement; (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, national and foreign laws, treaties and regulations including such data privacy laws in connection with Questionmark's performance under, and compliance with this Agreement of jurisdictions from which Questionmark provides the OnDemand Service ; and (iv) as delivered, the OnDemand Service, Documentation and the Questionmark Technology will not infringe upon or violate any intellectual property rights of third parties.
- 10.3 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.

Except as expressly provided herein, Questionmark, its suppliers, and its licensors do not represent or warrant that the use of the OnDemand Service 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. The OnDemand Service might be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Although Questionmark 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 14, Questionmark disclaims any and all liability or responsibility resulting from or related to such events.

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

11. Indemnity

- 11.1 Customer's Indemnification.** Customer shall indemnify, defend and hold Questionmark, its licensors and each such party's parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents (the "Questionmark Indemnified Parties"), harmless from and against any and all third party claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) (collectively, "Losses") to the extent arising out of or in connection with (i) Customer's use of, or the Customer Data used in connection with, the OnDemand

Service, other than to the extent due to reasons for which Questionmark is providing indemnification in Section 11.2, and (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, and that would not have occurred but for such combination.

11.2 Questionmark's Indemnification. Questionmark shall indemnify, defend and hold Customer and Customer's parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents ("Customer's Indemnified Parties") harmless from and against all third party Losses to the extent arising out of or in connection with (i) Questionmark's infringement or misappropriation of a patent, copyright, trademark or other similar intellectual property right of a third party other than to the extent resulting from the circumstances described in Section 11.1(ii); (ii) personal injury (including death) and damage to tangible property caused by Questionmark's negligence or willful misconduct.

11.3 Indemnification Procedure. The indemnifying Party's ("Indemnifying Party") indemnification and hold harmless obligation to the indemnified Party ("Indemnified Party") is expressly conditioned on the following: (i) Indemnifying Party shall be notified in writing promptly of any such claim or demand, provided that the failure to provide prompt notice shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that such delay adversely impacts the Indemnifying Party, (ii) Indemnifying Party shall have sole control of the defense of any action or such claim or demand and of all negotiations for its settlement or compromise; and that (iii) Indemnified Party shall cooperate with Indemnifying Party in a reasonable way and at Indemnifying Party's expense to facilitate the settlement or defense of such claim or demand. The Indemnified Party may, at its expense and option, use counsel of their choosing to observe the defense of any such claim. Indemnifying Party may not settle or otherwise dispose of a claim that includes a finding or admission of culpability of, requires payment or performance on the part of, or otherwise materially adversely affects or admits fault or liability on the part of, the Indemnified Party without Indemnified Party's prior written consent, which consent shall not be unreasonably withheld.

12. Limitation of Liability

Except to the extent otherwise contemplated in Section 14, in the event that 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 to Customer and this shall be Customer's remedy for such non-performance by Questionmark.

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 FIFTY THOUSAND (50,000) 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, 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 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 (SECTION 6), (B) INDEMNIFICATION FOR THIRD PARTY CLAIMS (SECTION 11), (C) MISAPPROPRIATION OF INTELLECTUAL PROPERTY, (D) VIOLATIONS OF UNITED STATES LAWS, AND/OR (E) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY A PARTY TO THIS AGREEMENT. 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.

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 ORDERS SERVICES FOR A RENEWAL TERM, 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 ALL ITS USE OF THE SERVICES DURING THE INITIAL TERM AND ANY PRIOR RENEWAL TERMS.

13. Insurance

Subject to Questionmark's discretion to reasonably adjust its insurance arrangements due to changes in circumstances or insurance law, Questionmark shall maintain at minimum the following insurance policies during the Term with insurance companies rated A- or better from A.M. Best or other reputable organization: (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; (vi) Technology Errors and Omissions insurance with limits of not less than \$5,000,000 each claim and \$5,000,000 aggregate. Each of the foregoing policies of insurance shall include waiver of subrogation, with the exception of Workers Compensation.

14. Support

14.1 Support Generally. Questionmark shall provide Standard Support in connection with Questionmark's provision of the OnDemand Service as more particularly described in Section 14.2 below. If Customer elects to further purchase Enterprise Support, Questionmark shall provide additional support under the Enterprise Support Service Level Agreement in connection with Questionmark's provision of the OnDemand Service as more particularly described in Section 14.3 below.

14.2 Standard Support.

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

14.2.2 Questionmark shall provide support services in English (unless otherwise specified on the applicable Order) to Designated Contacts.

14.2.3 Customer may substitute the Designated Contacts on a permanent or temporary basis upon written notice to Questionmark.

14.2.4 Customer shall ensure that Customer's Designated Contacts subscribe to Questionmark's OnDemand Services news feed during the Term.

14.2.5 Questionmark 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
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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 Questionmark 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 answer questions where the answers could be found in the Questionmark manuals or knowledge base items.	Provided by Questionmark 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 Questionmark during Working Hours as standard and 24 x 7 for an additional fee.
3rd Line Technical Support	Resolve software issues with the OnDemand Services in a manner that does not consume support hours.	Provided by Questionmark and included as standard.
Chat Technical Support	Provide assistance to Designated Contacts using 24 x 7 browser text chat sessions and VoIP to help to resolve issues.	Provided by Questionmark 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.	This is NOT a service currently provided by Questionmark, and is the responsibility of Customer.
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 Service.	This service is available from Questionmark 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.

14.2.6 Questionmark 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. In addition, Customer will have the opportunity to send its employees to Questionmark's Annual User Conference at the prevailing rate for customers of the OnDemand Service.

14.2.7 Questionmark will provide Customer with details of its Scheduled Maintenance schedule. Questionmark will, where possible, provide notice for Emergency Maintenance. Questionmark 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.

14.2.8 Basic Remedies. For any day (measured from 0.00 to 23.59 United States Eastern time) in which there is a continuous period of Unscheduled Downtime lasting 2 hours or longer during Working Hours of that day, Questionmark will provide Customer a credit (“Credit Day”) as the sole remedy for such Unscheduled Downtime. The remedy for one Credit Day will be to extend the Term by one day.

14.3 Enterprise Support Service Level Agreement.

14.3.1 Customer will use commercially reasonable efforts to provide accurate and immediate notification of any Service Incident with the OnDemand Service to Questionmark so that Questionmark may promptly take any remedial action. Notwithstanding anything to the contrary contained in this Agreement, Questionmark is not obligated to remedy any Service Incident caused by User error or by Customer’s or any User’s failure to access the OnDemand Service with a compatible system or web browser.

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

14.3.3 Questionmark will respond to the Designated Contact within the Initial Response Time specified in the table below, based on the Service Incident’s Severity Level.

<p>Severity 1</p>	<p>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 Questionmark shall work closely together in order to resolve the error as soon as possible. Severity 1 issues are extremely rare and Questionmark escalates these issues to its highest priority.</p>	<p><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.</p>
<p>Severity 2</p>	<p>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 such is not always the case. Questionmark will resolve all Severity 2 issues as soon as possible.</p>	<p><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.</p>
<p>Severity 3</p>	<p>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.</p>	<p><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 callback or implementation in the</p>

		OnDemand Service) is two (2) Business Days for the first week and as needed thereafter. Solution is provided as part of a future release.
Severity 4	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 Questionmark's discretion.

14.3.4 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 99.9% of the time measured on a monthly basis, excluding Scheduled Maintenance, Emergency Maintenance or due to a Force Majeure Event.

14.3.5 Enterprise Remedies. This section replaces Basic Remedies (Section 14.2.8) for Customers who have purchased Enterprise Support.

For any day (measured from 0.00 to 23.59 United States Eastern time) in which there is a continuous period of Unscheduled Downtime lasting 1 hour or longer, Questionmark will provide Customer a credit ("Credit Day") as the sole remedy for such Unscheduled Downtime. The remedy for one Credit Day will be to extend the Term by one day.

Questionmark will apply the Credit Day automatically if the Unscheduled Downtime occurs during Working Hours. However if the Unscheduled Downtime occurs outside Working Hours, Questionmark will apply the Credit Day only if requested in writing by Customer within a month of the occurrence of the Unscheduled Downtime.

15. Notice

The Parties may give notice to each other by first class mail or pre-paid post to the addresses provided on page one of this Agreement or as specified by a Party from time to time. Such notices shall be deemed to have been given upon 2 Business Days after mailing or posting. Any notice to Questionmark must also be contemporaneously copied to legalnotices@questionmark.com. Questionmark shall have the right to notify Customer in the event of a general notice to all users of the OnDemand Service of important announcements regarding the operation of the Service, including by email correspondence.

16. Miscellaneous

16.1 Assignment. This Agreement may not be assigned by either Party without the prior written approval of the other Party, but may be assigned without consent of either Party, to (i) a parent, Affiliate or subsidiary entity of either Party, (ii) an acquirer of substantially all of the assets of either Party, or (iii) a successor of either Party by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Questionmark directly or indirectly owning or

controlling 25% or more of Customer shall entitle Questionmark to terminate this Agreement for cause immediately upon written notice.

- 16.2 Dispute Resolution.** In the event of a dispute or other controversy between Questionmark and Customer arising out of this Agreement (“Dispute”), the disputing Party agrees to give notice of the nature of such Dispute with reasonable detail to the other Party in writing (“Dispute Notice”). Following receipt of a Dispute Notice, neither Questionmark nor Customer shall suspend performance or terminate this Agreement until the dispute resolution procedures of this Section 16.2 have been followed. The Parties shall attempt to resolve any Disputes promptly, initially by discussions between their respective representatives with day to day responsibility for administration of the Agreement, and with escalation to senior management in the event such Dispute remains unresolved after thirty (30) days of receipt of a Dispute Notice. The Parties shall each make themselves reasonably available for purposes of attempting to resolve the Dispute. The Parties shall document the resolution of any Dispute in writing. If the Dispute remains unresolved after a period of sixty (60) days following receipt of a Dispute Notice, either Party may pursue other remedies. Notwithstanding the foregoing, either Questionmark or Customer may take any action to safeguard Confidential Information or business operations without resorting to the dispute resolution procedures of this Section 16.2 and such actions shall not constitute a breach of this Agreement.
- 16.3 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 of the nature and extent of the Force Majeure Event and it uses all reasonable endeavors to mitigate the effect of the Force Majeure Event. Either Party shall be entitled to terminate this Agreement in the event that a Force Majeure Event endures for sixty (60) days.
- 16.4 No Waiver.** Failure by either Party to exercise or enforce any right or benefit conferred by this Agreement will not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 16.5 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.
- 16.6 Amendments.** No amendment of this Agreement shall be effective unless it is in writing and signed by the Parties.
- 16.7 Entire Agreement.** This Agreement together with any Order (as defined herein) contains the entire understanding between the Parties regarding the subject matter hereof and supersedes any prior discussions or agreements concerning such subject matter. If Customer has purchased the OnDemand Service from a Questionmark reseller and the terms of any agreement or documentation between Customer and such reseller conflict with the terms of this Agreement, (i) Questionmark shall be entitled to perform and enforce this Agreement in accordance with its terms, (ii) as between Questionmark 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.
- 16.8 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, and that the same form an essential part of the bargain between the Parties.
- 16.9 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 between the Parties. Customer shall have no authority to enter into agreements of any kind on behalf of Questionmark and shall not have the power or authority to bind or obligate Questionmark in any manner to any third party.

16.10 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, 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 located in Bridgeport, Connecticut.

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

16.11 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.

Schedule 1 – Data Protection

This Schedule 1 shall apply from May 25, 2018 in respect of any processing by Questionmark of personal data that is subject to the GDPR (as defined below) on behalf of Customer and provided that Customer provides Questionmark with written notice prior to making any such personal data available to Questionmark for processing. In such an event, the Parties shall comply with this Schedule 1. Questionmark may make changes to this Schedule 1 at any time when required in accordance with updates to Data Protection Law and practice based upon the advice of its professional advisors. Questionmark will make any modified version of this Schedule 1 available to Customer on its website, which modified version becoming applicable on its date of posting providing such modifications do not involve additional obligations on Customer. Any conflict or inconsistency between this Schedule 1 and the other parts of this Agreement shall be resolved in favor of this Schedule 1 in respect of the subject matter hereof.

1. Definitions

The following definitions shall apply for this Schedule:

“Data Protection Law” means the General Data Protection Regulation (EU) 2016/679 (“GDPR”);

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

“Customer Personal Data” means all personal data comprised in Customer Data that Questionmark processes on behalf of Customer that is subject to Data Protection Law, which may include such data of Customer Affiliates that are subject to Data Protection Law and are permitted to use the Services;

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

2. The subject-matter of the processing is running an assessment management system processing Customer Personal Data within the scope of Data Protection Law. The duration of the processing is the Term and until Customer Personal Data has been returned to Customer or deleted in accordance with the terms of this Agreement. The nature and purpose of the processing is to provide Services to Customer. The types of personal data are within the sole control and responsibility of Customer and include those specified in Article 4 GDPR and any other Customer Personal Data uploaded to the Services by Customer and answers and scores of Assessments. The categories of data subjects are solely determined by and the responsibility of Customer and typically include employees, students, contractors, candidates and other Participants in Assessments. The obligations and rights of Customer and Questionmark are set out in this Agreement.

3. The Customer agrees that:

3.1 In respect of Customer Personal Data, Customer is the data controller and Questionmark is the data processor. Customer shall inform Questionmark if it acts as a joint controller with another party in respect of Customer Personal Data or if any Customer Affiliates are data controllers, and provide contact details for its Data Protection Officer if appointed. Customer’s obligations continue to apply for Customer Personal Data in respect of which a Customer Affiliate is the data controller.

3.2 Customer shall be solely responsible for its compliance with Data Protection Law and all other laws applicable to Customer in using the Services including its use of Customer Personal Data. The Customer confirms that it is permitted to transmit to Questionmark for processing under this Agreement all Customer Personal Data without breach of any law, agreement, arrangement or duty or the rights of any third party.

3.3 Customer has taken account of the technical and organisational measures employed by Questionmark and detailed at www.questionmark.com/go/us-od-measures and determined these to be compliant with Data

Protection Law in respect of the processing of all types of personal data within Customer Personal Data, including relating to children, vulnerable persons and special categories of personal data, if applicable. Questionmark may update the technical and organizational measures from time to time and will make any updated version available to Customer at www.questionmark.com/go/us-od-measures and notify Customer only if there is a material reduction in measures. Customer shall not submit to Questionmark for processing or cause Questionmark to process Customer Personal Data except where Customer has assessed that such processing by Questionmark in accordance with such technical and organisational measures is compliant with Data Protection Law.

4. Questionmark shall take all measures required pursuant to Article 32 of the GDPR, taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
5. Questionmark will ensure that persons authorized to access Customer Personal Data have committed themselves to confidentiality even after their engagement ends.
6. When processing Customer Personal Data, Questionmark shall:
 - 6.1 Implement the appropriate technical and organizational measures referred to in clause 3.3 in such a manner designed to ensure that processing will meet the requirements of Data Protection Law and ensure the protection of the rights of data subjects.
 - 6.2 Only process Customer Personal Data upon Customer's instructions (including for operation and maintenance of the Services and as otherwise present in this Agreement), including regarding transfers of Customer Personal Data to a third country, unless required to do so by EU or EU member state law (including UK law) to which Questionmark is subject; in such case Questionmark shall inform Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. 'Customer's instructions' include the terms of this Agreement and any configuration of the Customer's instance of the Services made by the Customer.
7. Questionmark may:
 - 7.1 Engage Subprocessors in accordance with this Agreement.
 - 7.2 Continue to use the Subprocessors engaged by it prior to 25 May 2018, subject to compliance with its obligations under Data Protection Law. A list of Questionmark's current organizational Subprocessors is provided to Customer at www.questionmark.com/go/us-od-subprocessors.
 - 7.3 Not engage a new Subprocessor without Customer's prior general written authorization. Questionmark shall satisfy this obligation by updating its list of organizational Subprocessors at least 28 days prior to authorizing a new organizational Subprocessor to provide Customer with a means to obtain notice and opportunity to object. Customer provides general written authorization to Questionmark's present and future engagement of individual, natural person contractors who are under obligations of confidentiality, and may obtain notice of such contractors at any time by requesting a list from Questionmark. Any objections to a new Subprocessor must be received within 28 days of notification, otherwise Customer is deemed to accept the new Subprocessor. If Customer reasonably objects to a new Subprocessor and such objection cannot be satisfactorily resolved within a reasonable time, Customer may terminate this Agreement without penalty upon 30 days' written notice to Questionmark. If Customer's objection remains unresolved 30 days after it was raised and no notice of termination has been received, Customer is deemed to accept the new Subprocessor.
 - 7.4 Notwithstanding clause 7.3, Customer agrees that Questionmark may engage a new Subprocessor in emergencies and situations outside of Questionmark's reasonable control, including natural disaster or

financial distress of an existing Subprocessor, subject to Questionmark updating the lists of Subprocessors referred to in clause 7.3 as soon as is reasonably practicable.

8. Questionmark shall respect the conditions referred to in Article 28 GDPR paragraphs 2 and 4 for engaging another processor. Questionmark shall ensure all Subprocessors are bound by written agreements requiring them to adhere to the same data protection obligations in accordance with Article 28(3) GDPR, as required by Article 28(4) GDPR. Questionmark shall as between the Parties remain fully liable to Customer for any processing of Customer Personal Data by a Subprocessor.
9. Questionmark's production data center used to deliver Assessments is located in the United States. Customer agrees that Questionmark may transfer Customer Personal Data to other countries (and process and provide access to such data in those other countries) for purpose of its provision of the Services, subject to Questionmark complying with its obligations in this Schedule 1, including clause 7, and providing that appropriate technical and organizational measures are implemented.
10. Questionmark shall:
 - 10.1 Taking into account the nature of the processing, assist Customer by appropriate technical and organizational measures, insofar as is possible, for fulfilment of Customer's obligation to respond to requests for exercising data subject rights laid down in Chapter III GDPR in accordance with this clause 10.1.
 - 10.1.1 Questionmark shall as permitted by applicable law and without undue delay notify Customer if it receives a request from a data subject in respect of that person's Customer Personal Data. Questionmark shall not respond to a data subject request except to confirm the request relates to Customer.
 - 10.1.2 To the extent Customer is unable to respond to the data subject request through general functionality of the Services, Questionmark shall upon request make commercially reasonable efforts to assist Customer for this purpose. In the event of assistance requiring significant time and/or resources by Questionmark, to be judged by Questionmark acting reasonably, Customer shall be responsible for costs arising from such assistance charged on a time and materials basis.
 - 10.1.3 Notwithstanding the foregoing, Customer agrees that any restriction of processing Customer Personal Data shall be the exclusive responsibility of Customer.
 - 10.2 Upon request provide reasonable assistance to Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of processing and information available to Questionmark. Such assistance shall be subject to Customer's payment of reasonable charges on a time and materials basis where the assistance required is not part of Questionmark's standard services then provided to all customers.
11. Questionmark shall notify Customer without unduly delay after becoming aware of a personal data breach in respect of Customer Personal Data.
12. Questionmark shall maintain a record of all categories of processing activities carried out on Customer Personal Data by Questionmark on behalf of Customer (for clarity excluding processing by Customer within the Services, which shall be Customer's responsibility) required by Article 30(2) GDPR and make such record available to the supervisory authority on request.
13. Questionmark shall at the choice of Customer, delete or make available all Customer Personal Data stored in the OnDemand Service for return to Customer within thirty (30) Business Days after the end of the Services in a standard file format, and delete existing copies unless EU law or EU member state law requires storage of the Customer Personal Data.

14. Questionmark shall make available to Customer on request all information necessary to demonstrate compliance with Questionmark's obligations in Article 28 GDPR and shall allow for and contribute to audits including inspections, conducted by Customer or another auditor mandated by Customer in relation to Questionmark's processing of Customer Personal Data. The Parties agree that this obligation shall be fulfilled by Questionmark's making available, upon request and subject to confidentiality obligations, Questionmark's then current independent third-party certifications and answering reasonable questionnaires from Customer. Additional audit requirements shall be subject to separate written agreement of the Parties.