
QUESTIONMARK PERCEPTION SERVER SOFTWARE, CONSULTING SERVICES, AND SOFTWARE SUPPORT TERMS AND CONDITIONS

DO NOT PROCEED WITH INSTALLING THE SOFTWARE WITHOUT READING THE FOLLOWING TERMS AND CONDITIONS GOVERNING USE OF THE SOFTWARE AND ANY PAPER DOCUMENTATION OR "ON-LINE" OR ELECTRONIC DOCUMENTATION (COLLECTIVELY THE "PERCEPTION SERVER SOFTWARE") CONTAINED HEREIN. INSTALLING THE SOFTWARE AND CLICKING ON THE "YES" BUTTON CONSTITUTES ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, OR DO NOT HAVE THE AUTHORITY TO ACCEPT THESE TERMS AND CONDITIONS DO NOT INSTALL OR USE THIS SOFTWARE, HOWEVER, YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND. THIS IS A USE LICENSE ONLY OFFERED BY QUESTIONMARK. PERCEPTION SERVER SOFTWARE MAY NOT BE COPIED EXCEPT AS SPECIFICALLY PROVIDED BELOW.

These Questionmark Perception Server Software, Consulting Services, and Software Support Terms and Conditions (the "Agreement") are a legally binding contract between you "Customer" (either as an individual or the organization you are representing) and Questionmark. Within this Agreement "Questionmark" refers to Questionmark Corporation, a Connecticut corporation, only when Perception Server Software is installed within the United States, Canada, Mexico, Central and South America, and Questionmark Computing Limited, an English company, when installed outside these territories.

1. THIS AGREEMENT

- 1.1 Copyright. Perception Server Software, is licensed, not sold, and is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Perception Server Software is supplied by Questionmark and it shall remain the property of Questionmark and/or the property of its licensors.
- 1.2 Use. Perception Server Software is provided for Customer's use only under the terms of this Agreement. By installing, copying, or otherwise using the Perception Server Software, Customer agrees to be bound by the terms of this Agreement.
- 1.3 Configuration. Customer agrees to ensure that its use of the Perception Server Software will not, at any one time, exceed the configuration that has been specified within the Agreement. Customer agrees to take all reasonable measures to prevent unauthorized use of its licensed copy of the Perception Server Software.
- 1.4 Definitions. The following definitions shall apply, unless otherwise redefined by a Questionmark invoice, or a valid invoice from an authorized Questionmark reseller referencing Customer ("Applicable Invoice"). Customer's payment of an Applicable Invoice will be taken as its acceptance of the definitions detailed within that invoice.
 - (a) "Access Control System" means which any system which identifies or authenticates Participants to take Assessments via Perception Server Software whether or not the Participant identity is recorded within Perception Server Repositories.
 - (b) "Admin User" means any person that uses Perception Server Software to create, manage, monitor and report on Assessments and other users such as Participants.
 - (c) "Ancillary Software" means software that is not part of the Perception Server Software but which is installed before or after the Perception Server Software to run alongside the Perception Server Software and which has its own license agreement presented on install.
 - (d) "Assessment" means a systematic method of obtaining data, evidence or results, including but not limited to tests, examinations, questionnaires, and surveys.

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- (e) "Authorized Number" means the number of the installs of the Perception Server Software or number of Participants, as the case may be, set forth in the Server Configuration.
 - (f) "Commencement Date" means the date on which Customer installed the Perception Server Software.
 - (g) "Commercial Use" means any use of the Perception Server Software where Customer might receive any consideration (directly or indirectly) for Assessments, or for Hosting Services, or for services relating to training, examinations, tests or surveys, for delivering Assessment feedback, or for determining or providing Assessment results.
 - (h) "Consulting Services" means any consulting and/or training services provided by Questionmark to Customer as set forth in an Order.
 - (i) "Country of Installation" means the country where the Perception Server Software is installed unless otherwise specified within the Server Configuration.
 - (j) "Designated Contacts" are the individuals that have been identified, attended a formal training course and are permitted to contact Questionmark for support.
 - (k) "Distribution" means the Perception Server Software, Third Party Software and Ancillary Software.
 - (l) "Hosting Services" means to supply computer facilities, services and/or resources for a charge to a third party.
 - (m) "License Fee" means the license fee for the Perception Server Software, as set out on the Applicable Invoice; if Customer is evaluating the Perception Server Software prior to payment, the License Fee is waived for the evaluation Term of License.
 - (n) "Order" means the written quotation or SOW provided by Questionmark for a specific Server Configuration for Perception Server Software and/or Software Support and/or Consulting Services that has been accepted by Customer.
 - (o) "Participant" means any person that participates in an Assessment by answering questions or otherwise responding to the Assessment process.
 - (p) "Qualified Academic Users" include public or private schools, colleges and universities organized for the purpose of teaching students that are accredited by government or local government agencies and do not restrict acceptance on the basis of previous or current employer and are not closely affiliated with a company or group of companies or government organization or trade association that provides more than 75% of students to the institution. Therefore organizations known as Universities but set up by companies or government agencies to further the education of their employees do not qualify for the Academic Edition of the Perception Server Software.
 - (q) "Repository" means a database and resources and other files used to store data about Assessments, people, access control, and other related materials.
 - (r) "Server Configuration" means the configuration for Perception Server Software as defined in an Order or an Applicable Invoice. If Customer installs this software for trial purposes, the Server Configuration allows 50 (fifty) Authorized Number of Participants for a Term of License of 14 days from the Commencement Date. Unless otherwise expressly stated on an Applicable Invoice, Authorized Number of Installs Permitted is set to 1 (one), Processors per Server is set to 4 (four) and Programmatic Integration Permitted is not permitted.

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- (s) "Software Support" means optional support for Perception Server Software, as further described in Clause 4.
 - (t) "SOW" means a statement of work which defines the services to be provided, deliverables, fees, invoicing and payment terms.
 - (u) "Term of License" means the term of the license (evaluation or purchase, as the case may be) of the Perception Server Software stated in an Order or Applicable Invoice.
 - (v) "Term of Support" means the term of Software Support as stated in an Order or Applicable Invoice.
 - (w) "Third Party Software" means software components that are not written by Questionmark, which are either third party libraries which Questionmark has purchased or licensed for use with the Perception Server Software or open source software components which Questionmark has reviewed and included within the Perception Server Software. Third Party Software excludes Ancillary Software.
 - (x) "User Account" means the user profile stored within the Repository for an Admin User and/or Participant.
 - (y) "Version" means version 5 of the Perception Server Software.

2. GRANT OF LICENSE

2.1 Grant of License. Questionmark hereby grants Customer a non-exclusive, non-transferable, non-sublicenseable license to use, for evaluation purposes only, for the evaluation Term of License, starting on the Commencement Date, the Version and Server Configuration of the Perception Server Software specified above subject to the limitations in this Agreement. In consideration of, and subject to, prompt payment of the License Fee (together with VAT and sales taxes as applicable), Questionmark grants Customer a non-exclusive, non-transferable, non-sublicenseable license to use for the purchase Term of License, starting on the Commencement Date, the Version and Server Configuration of the Perception Server Software specified within the Applicable Invoice or Order and subject to the limitations in this Agreement. In the event that Customer exceeds the limitations of the Server Configuration, Questionmark may charge Customer for any excess use at its then-current list prices. Customer acknowledges that software operation may automatically terminate at the end of the Term of License, although the databases will remain unaffected. Customer may make a reasonable number of back up copies of the Perception Server Software, which are necessary, for the purposes of its lawful use pursuant to this Agreement.

2.2 Rights. This Agreement grants Customer the following rights for the Perception Server Software:

- (a) Customer may install and use, for the Term of License, the Authorized Number of installs and Server Configuration specified ("Production Copy/Copies") on a single server, or when multiple or clustered copies have been purchased, several servers ("Authorized Server(s)") at a single location within the Country of Installation or, where the Country of Installation is a member of the European Union, any other member state. The Authorized Server(s) may operate the Production Copy/Copies of the Perception Server Software to deliver and administer online Assessments. The Authorized Server may belong to Customer or to an internet hosting service that is using the Perception Server Software solely to serve Customer and for no other purpose. The Authorized Server(s) may be physical or virtual, but if using virtual server technology, each virtual server counts as a server for licensing purposes.
- (b) The number of processors on each Authorized Server may not exceed the licensed processors per server specified within the Server Configuration. A processor with up to four (4) multiple cores and/or multiple threads is considered to be a single processor.

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- (c) In addition Customer is permitted to install one additional copy of the Questionmark Presentation Layer for Assessments "QPLA" (a component of Perception Server Software) for each of its Authorized Number of Installs on a separate server.
 - (d) In addition Customer may use one additional copy of the Perception Server Software (the "Trial-Out Copy"): (i) to review Assessment content and (ii) for other developmental use, but not for Assessments.

2.3 User Accounts. Where the Server Configuration limits the number or type of any User Accounts, Customer agrees to keep its use within those limits. Customer agrees not to allow more than one individual to use a User Account and shall not share any User Account credentials with more than one individual, except that if an Admin User no longer uses the Perception Server Software, the allocated username may be reassigned to another individual.

2.4 Number of Participants. Customer is licensed to store within the Perception Server Software's Repositories, at any moment in time, data for no more than the Authorized Number of Participants specified in the Server Configuration. However if Customer uses an Access Control System, Customer may NOT provide access to the Perception's Server Software if the Access Control System contains the records of more Participants than the Authorized Number of Participants.

Notwithstanding this limitation Participant data held within the Repositories can be manually changed at any time (by deleting data using the Perception Server Software user interface and replacing it with other data). However should Customer use a registration or other external system not provided by Questionmark to automatically delete Participants and replace them with other Participants, Customer must ensure that the total number of distinct Participants held in the Repositories, including any deleted within the previous twelve months, does not exceed the Authorized Number of Participants.

It is possible for Participants to access open assessments, such as surveys, without requiring authentication and such unauthenticated access is permitted providing that no Access Control System is used for such open assessments.

2.5 APIs. The Perception Server Software provides certain Application Program Interfaces ("APIs") to facilitate its use with learning, student, portal, and course management systems. When using these APIs Customer must ensure that the maximum number of Participants using the Perception Server Software is limited to the Authorized Number of Participants Using API specified in the Server Configuration.

2.6 Commercial Use. Notwithstanding the above, unless specifically stated within the Agreement, Customer is not licensed to use the Perception Server Software for Commercial Use. However, small-scale Commercial Use, defined as Assessments generating revenues of less than US\$1,000 or its equivalent in other currencies per calendar year, is permitted without an additional agreement or payment.

2.7 Programmatic Integration Permitted. Customer may use the Questionmark provided user interfaces to receive/import or provide/export data. Customer is not permitted to use Perception Server Software where Customer programmatically or by database interfaces receives/imports or provides/exports data about Participants, Admin Users, schedules or results or if Customer returns individual results to a calling program unless the Server Configuration specifies that "Programmatic Integration Permitted" is permitted.

Customer may not directly read from the database, write to the database, use a program or use web services to receive/provide such data unless Programmatic Integration Permitted is permitted. Customer may not access any API except as specifically authorised by Questionmark.

3. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

- 3.1 Academic Edition Software. If the Perception Server Software is identified as "Academic Edition" Customer must be a "Qualified Academic User" to use Perception Server Software. If Customer is not a Qualified Academic User, it has no rights under this Agreement to use an Academic Edition.
- 3.2 Intellectual Property Rights. All title and intellectual property rights, including copyrights, in and to Perception Server Software (including, but not limited to, any images, photographs, animations, video, audio, music, text, and "applets" incorporated therein), Ancillary Software, Third-Party Software and the accompanying printed materials, and any copies of such software and materials are owned by Questionmark and/or its licensors. Perception Server Software is protected by laws governing intellectual property rights and international treaty provisions. Except as expressly permitted herein, Customer may not copy the Perception Server Software, Ancillary Software, Third-Party Software or printed materials accompanying such software. Perception Server Software displays certain copyright notices and licensee information of Perception Server Software and Customer agrees not to alter, remove, conceal or otherwise interfere with such notices.
- 3.3 Delay or omission. No delay or omission by Customer or Questionmark in exercising any right or remedy in whole or part shall be construed as a waiver of it, or operate so as to limit or preclude any further or other exercise of it.
- 3.4 Intended beneficiary. Questionmark and its licensors are the intended beneficiaries of this Agreement and each of them shall have the right to enforce it on their own behalf and in their name. Otherwise, no third party shall have any right to enforce this Agreement. The consent of no party other than the parties to this Agreement shall be required to any variation of this Agreement.
- 3.5 License files and keys. Questionmark will supply Customer with a license file and/or license key or code to enable and facilitate Customer's use of the Perception Server Software. Customer agrees to keep this file strictly confidential and for Customer's sole and exclusive use. Customer is responsible and liable for all acts, omissions and breaches that occur under any password or login credential relating to Customer, whether or not carried out by Customer or on Customer's behalf or otherwise.
- 3.6 Limitation on reverse Engineering, Decompilation, and Disassembly. Customer may not reverse engineer, decompile, translate, create a derivative work, or disassemble Perception Server Software, except and only to the extent that a prohibition imposed by applicable law or legal authority precludes this limitation or its enforcement.
- 3.7 Rental. Customer may not rent, lease, lend or otherwise provide rights to Perception Server Software for value, unless Commercial Use has been authorized by this Agreement, in which case Customer can do only the acts defined as Commercial Use.
- 3.8 Software Transfer. Subject to Questionmark's approval Customer may permanently transfer all of its rights under this license provided Customer retains no copies of the Perception Server Software Ancillary Software, Third-Party Software or any accompanying documentation and materials, Customer transfers all of such software and materials (including all component parts, the media and printed materials, any upgrades and this license), and the recipient agrees to the terms of this Agreement. If the Perception Server Software is an upgrade, any transfer must include all Customer's prior versions of Perception Server Software.
- 3.9 Software Updates. Questionmark may use any information Customer provides to provide product support, software enhancements, and for other business purposes, including, but not limited to, development. Questionmark may, at its sole discretion, provide Customer with updated software to add features and resolve problems, any such updates shall be considered part of Perception Server Software and subject to the terms and conditions of this Agreement.

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- 3.10 Suitability for purpose. The Perception Server Software, Ancillary Software, and Third-Party Software is provided "as is" and Customer hereby agrees to bear the entire risk that Perception Server Software will not be suitable for Customer's purpose and all other risks associated with the use and performance of Perception Server Software. NEITHER QUESTIONMARK NOR ITS LICENSORS SHALL BE RESPONSIBLE OR LIABLE FOR ANY DATA LOSS OR EQUIPMENT DAMAGE OR MALFUNCTION, BUSINESS INTERRUPTIONS, INCORRECT COMMUNICATIONS, LOST TIME, USE, SALES OR PROFITS OR OTHER LOSSES OR DAMAGES THAT MAY BE SUSTAINED AS A RESULT OF OR IN CONNECTION WITH SUCH RISKS. It is Customer's responsibility to back up all important data and program files, to ensure that Perception Server Software is compatible with Customer's equipment configuration, and to test Customer's desired application to ensure that Perception Server Software properly supports it.
- 3.11 System software. Customer is responsible for licensing all operating system software, database engine and other system software required by Perception Server Software.
- 3.12 Termination. Without prejudice to any other rights, Questionmark may terminate Customer's license if Customer fails to comply with the terms and conditions of this Agreement or fails to pay Questionmark's invoice for the License Fee when due. In such event, Customer must destroy all Customer's copies of Perception Server Software, Ancillary Software, Third-Party Software and all of its component parts.
- 3.13 Third Party Software. Where Perception Server Software includes Third Party Software Questionmark grants Customer a non-exclusive, non-transferable, non-sublicenseable right and license to use the Third Party Software only in connection with Customer's license of Perception Server Software and for no other purpose(s). In the event that that Customer wishes to use the Third Party Software for any purpose(s) other than in connection with the license of Perception Server Software, Customer will be solely responsible for obtaining a license directly with the owner of the Third Party Software. Customer acknowledges and agrees that Third Party Software may contain disclosures, notices and/or disclaimers, including without limitation copyright notices, and Customer agrees not to comply with and not remove, modify or otherwise alter any such disclosures, notices and/or disclaimers, nor to modify or alter Third Party Software without the permission of the owner of it or as may be permitted by law.
- 3.14 Upgrades. If Perception Server Software is labelled as an upgrade, Customer must be properly licensed to use a product identified by Questionmark as being eligible for the upgrade in order to use Perception Server Software. Customer may use the resulting upgraded copy of Perception Server Software only in accordance with the terms of this Agreement. Licensing limits related to the Security Database in previous versions now apply to the Repository limits within this Version.
- 3.15 United States Government Restricted Rights. Perception Server Software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The manufacturer is Questionmark Computing Limited/London, United Kingdom.
- 3.16 Wording on purchase orders. Any provision(s) contained within any purchase order or similar document that Customer might provide in ordering the Perception Server Software or Support shall have no force or effect, including without limitation modifying, amending or supplementing the terms of this Agreement.
- 3.17 Customer's responsibility to Participants. Customer acknowledges that Perception Server Software may be used to assess a Participant's knowledge, skills and attitudes and allocate a score. The score should be considered one piece of evidence about a Participant's knowledge, skill and/or attitude. When Perception Server Software is being used to make decisions about a Participant, Customer should review and evaluate the score to ensure that the appropriate decision has been made. Customer is solely responsible for use of Perception Server Software, including entering and maintaining the Assessment material, checking this material, checking scores, checking reports, and using Perception

Server Software fairly and in a non-discriminatory manner. Should Customer use Perception Server Software to deliver high stakes Assessments, or other kinds of Assessments which are used to make important decisions about people, Customer acknowledges that it has a responsibility to thoroughly review and evaluate the materials, scores, and reports produced by Perception Server Software, to ensure that the appropriate decisions are being made. Customer shall indemnify and hold Questionmark and/or its licensors harmless from any and all claims, liabilities, damages, costs and/or expenses and suits arising out of the use of Perception Server Software or use of the scores to determine decisions relating to Participants, including but not limited to any and all claims, liabilities, damages, costs and/or expenses, and suits arising from, related to, or caused by any employment decisions, whether favorable or adverse in nature or effect, made by Customer based upon its use of the software or scores produced from its use of the software, including but not limited to employment termination or discharge, or discipline; employee compensation; and/or employment promotions or advances.

Customer also accepts that it is its responsibility to comply with any applicable data protection and human rights laws in the processing of personal data, and that Customer shall indemnify and hold Questionmark and/or its licensors harmless from any and all claims arising out of the use of Perception Server Software to hold or process personal data.

4. SUPPORT

4.1 Software Support. This Clause 4 shall only apply if Customer purchases and is invoiced for Software Support in which case the terms of Software Support shall be as set out in this Agreement except as amended in any Applicable Invoice. "Commencement Date" for Support shall mean the date set out on the Invoice.

"Normal Business Hours" may be specified on the Invoice. If it is not specified, then if the Agreement is with Questionmark Corporation, then "Normal Business Hours" shall mean 9:00 a.m. to 5:00 p.m. Central Standard Time on non-holiday weekdays and otherwise 9.30am to 5.30pm UK time on non-holiday weekdays.

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

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

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

Questionmark's change in the fees and/or terms and conditions governing the provision of Software Support to it.

- 4.5 Taxes and Duties. There shall be added to the Software Support fees amounts equal to any tariff, duties, value added tax ("VAT"), and/or sales or use tax or any tax in lieu thereof imposed by any government or governmental agency with respect to the services rendered by Questionmark for Software Support.
- 4.6 Customer's Responsibilities. Customer agrees to communicate with Questionmark in English unless otherwise agreed. Customer agrees to provide Questionmark with log and data files, as requested, and with access to; and sufficient support, and test time, on Customer's computer system to duplicate the problem, certify that the problem is with the Questionmark's software, and to certify that the problem has been fixed.
- 4.7 Contact Details for Designated Contacts. Customer agrees to advise Questionmark of the contact details for its Designated Contacts and such Designated Contacts shall subscribe themselves to Questionmark's support systems for alerts. Questionmark will have no responsibility to provide support to non-Designated Contacts. Designated Contacts may be changed from time to time but not more frequently than every 3 months, at no charge. However, the number of Designated Contacts shall not exceed the number specified on the Order.
- 4.8 Install new releases. Customer agrees to promptly install new releases, hot fixes and service packs of software covered by the Software Support and agree that failure to promptly install these releases shall release Questionmark from its support obligations under this Agreement until such time as the new release is installed.
- 4.9 Compatible platform. Customer will be responsible for maintaining a platform, hardware, database management system ("DBMS"), operating system, security systems, intrusion detection, virus detection, and network compatible with the installed version of Perception Server Software, including newly released versions. Questionmark is not responsible for maintaining or supporting the Perception Server Software unless it is hosted by a supported platform.
- 4.10 Modifications. Customer must inform Questionmark in writing of any modifications made by it to the software. Questionmark shall have no obligation under this Agreement to maintain such modified portions of the software or to maintain portions of the software affected by the modified portions of the software. Corrections for difficulties or defects traceable to customer errors or system changes will be billed at standard Questionmark time and material rates.
- 4.11 Basic Software Support Services provided. Particular software covered under Software Support and the Term of Support will be as indicated on the Applicable Invoice. During the Term of Support, Questionmark will correct or replace software and/or provide services necessary to remedy or avoid any programming error, to the extent such programming error is caused by Questionmark, and which significantly affects use of the software. Such correction, replacement, or services will be accomplished after Customer has identified and notified Questionmark of any such error in accordance with Questionmark's reporting procedures. During the Term of Support, Customer contacts that are subscribed to Questionmark's communities will receive:
- (a) New releases of covered software (not charged as options) as they are released by Questionmark;
 - (b) Technical or operational assistance in English for up to three (3) Designated Contacts via email and phone up to a maximum of twenty (20) person-hours per month without accumulation of hours from one month to the next during Normal Business Hours; and
 - (c) Free access to the Questionmark's online knowledge bases, manuals, Best Practice Guides and White Papers.
 - (d) Free Access to Questionmark's RSS news feeds for product and technical support information.

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- (e) Opportunity to send employees to Questionmark's User Conference at the prevailing rate for customers with Software Support.

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

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

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

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

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

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

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- 4.15 Travel and Hotel Expenses. On-site visits are not normally required and not provided for under Software Support. However, on-site consulting visits can be arranged for a fee. When Customer requests an on-site visit Customer will reimburse Questionmark for any out-of-pocket expenses incurred at Customer's request, including travel to and from its site, lodging, car rental, and meals.
 - 4.16 Proprietary Rights. All proprietary rights in or to the software provided to Customer by Questionmark and all changes, additions, and/or enhancements to such software, shall remain the sole property of Questionmark.
 - 4.17 Termination of Software Support. In the event of termination of Software Support, all maintenance fees or charges payable for the entire term of the Software Support shall without notice or demand by Questionmark immediately become due and payable, and Questionmark's obligations for Software Support shall immediately end. In the event of termination other than by default, then Questionmark will issue an invoice to Customer for the full value of the Services performed prior to termination. Such invoice will be immediately due and payable.

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

5. CONSULTING SERVICES

- 5.1 Consulting Services. Following a request for Consulting Services, Questionmark may produce a quotation or an SOW which shall be reviewed by Customer and once agreed in writing by Customer and Questionmark shall be the Order for such Consulting Services. Customer shall be solely responsible to confirm that the SOW satisfies the operational needs and requirements of its business and to identify any modifications to the SOW that it requires. The Consulting Services shall be performed and delivered at the places set out in the applicable SOW. Questionmark shall use commercially reasonable efforts to meet any timelines set in the applicable SOW, but time shall not be of the essence for performance and delivery unless otherwise expressly agreed in writing between the parties.
- 5.2 Deliverables. In the event that an applicable SOW requires Questionmark to develop software, upon the delivery of such newly developed software (each a "Deliverable"), Customer shall have ten (10) business days to review such Deliverable for any material non-conformance with the terms of the SOW. In the event that Customer does not report any such material non-conformance to Questionmark within the ten (10) day period, Customer will have been deemed to have accepted such Deliverable. In the event the Deliverable is not in material conformance with the terms of the SOW, Customer must notify Questionmark within the ten (10) day period and Questionmark will remedy such material non-conformance so as to bring it into material compliance with the SOW within a reasonable period. Unless specified otherwise on the SOW, the Deliverables will not be covered by any support plan.
- 5.3 Ownership. Questionmark shall retain ownership of all title and rights to any Deliverables developed pursuant to Consulting Services, including certain rights, if any, that Questionmark has pursuant to a license from any third party. Additional license terms relating to the Deliverables will be set out in the Order.

6. LOCAL LAWS AND EXPORT CONTROL

- 6.1 Export control. Perception Server Software and Software Support may be subject to the export control regulations of the European Union and Switzerland and United States export controls administered by the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other United States governmental agencies. Customer acknowledges and agrees that it will comply with all such export controls and that the Perception Server Software shall not be used in, and none of the underlying information, software, or technology shall be transferred or otherwise exported or re-exported to, countries as to which the European Union, Switzerland and/or the

United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the United States Department of Treasury's List of Specially Designated Nationals or the United States 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. By using Perception Server Software, 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 agrees to comply strictly with all European Union, Switzerland and United States export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Customer agrees to provide any required assistance to Questionmark in complying with the export controls including, but not limited to, supplying a statement as to ultimate destination and complying with any import regulations.

This program may use encryption technology that is subject to licensing requirements under the European Union Council Regulation (EC) No. 1334/2000 and the United States Export Administration Regulations, 15 C.F.R. Parts 730-774.

Questionmark, its suppliers, and its licensors make no representation that Perception Server Software is appropriate or available for use in other locations. If Customer uses Perception Server Software from outside the European Union, Switzerland and/or the United States, Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the content contrary to European Union (including European Union Member States), Switzerland or United States law is prohibited. None of the content, nor any information acquired through the use of Perception Server Software, is or will be used for nuclear activities, chemical or biological weapons or missile projects, unless specifically authorized by the appropriate European body or the United States government for such purposes.

7. LIMITED WARRANTY

- 7.1 Limited warranty. Questionmark warrants that it has the right to grant the rights as set forth in this Agreement. Questionmark also warrants that, as far as it is aware, the Perception Server Software and any Deliverables do not infringe any patent or infringe any copyright or trade secret right of any third party.

When a license fee or consultancy fee (as applicable) has been paid Questionmark warrants that Perception Server Software or Deliverables (as applicable) will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of delivery (such limitation on duration subject to applicable law). Where Software Support has been purchased, Questionmark warrants that support engineers will make commercially reasonable efforts to solve any problem issues; however, Customer acknowledges and agrees that there can be no guarantee that support engineers will be able to solve each and every problem or issue.

The foregoing warranty in this Clause 7.1 (the "Questionmark Limited Warranty") also applies to components within Ancillary Software identified during the install process as "Questionmark Warranted Code" even if not part of Perception Server Software. This warranty only applies to Perception Server Software, Deliverables and Questionmark Warranted Code as distributed by Questionmark (including updates provided by Questionmark from time to time).

- 7.2 Customer remedies. Questionmark and its licensors' entire liability, and Customer's exclusive remedy, for any breach or violation of Questionmark's Limited Warranty set forth above shall be, at Questionmark's option, either (a) return of the relevant consultancy fees, the Software Support fees paid with respect to the just prior three (3) month period and any pre-paid Support fees or license fees paid, if any, on a five (5) year use amortization basis from the date of delivery, or (b) repair or replacement of software that does not meet Questionmark's Limited Warranty above and that is returned to Questionmark with a copy of Customer's receipt. The Limited Warranty is void if failure of Perception Server Software or Deliverable has resulted from modification to Perception Server Software,

Deliverable, the Questionmark Warranted Code or the Distribution (even where such modification is expressly permitted by an applicable open source license), accident, abuse, or misapplication. Any replacement copy of Perception Server Software or Deliverable will be warranted by Questionmark for the remainder of the original warranty period or thirty (30) days, whichever is longer. Neither these remedies nor any product support services offered by Questionmark are available without proof that the Perception Server Software was purchased from an authorized source.

- 7.3 Indemnification: Questionmark will defend, indemnify and hold Customer harmless from any money judgment, including any reasonable costs and attorneys' fees, with respect to a third-party claim that Perception Server Software or Deliverable, as provided by Questionmark, infringes a US patent or copyright owned by a third party ("Third Party IP Claim"). This indemnity is subject to Questionmark receiving prompt notice and being granted full control of the defense or settlement.

In the event of any Third Party IP Claim or permanent injunction that restrict or limit Customer's use of Perception Server Software or Deliverable, Questionmark shall: (i) modify Perception Server Software or Deliverable so that it becomes non-infringing but of substantially equivalent functionality; or (ii) replace Perception Server Software or Deliverable with non-infringing software of substantially equivalent functionality; or (iii) if neither of the first two alternatives are commercially reasonable, in the sole judgment of Questionmark, require Customer to return Perception Server Software or Deliverable and refund all applicable license fees or relevant consultancy fees paid on a five year use amortization schedule from the Commencement Date.

The indemnification set forth above, and the limited remedies set forth in this paragraph, will not apply to the extent that any Third Party IP Claim or permanent injunction arises out of, or results from, (i) any use of Perception Server Software or Deliverable, whether in whole or in part, by Customer or any third party or third parties on Customer's behalf, in a manner that violates, or is not authorized by, any documentation supplied or provided by Questionmark in connection with Perception Server Software or Deliverable; and/or (ii) any elements, components, software and/or content supplied or provided by Customer, or by any third party or third parties on Customer's behalf, for incorporation in, or for use in connection with, Perception Server Software or Deliverable; and/or any modification by Customer or any third party of the Perception Server Software or Deliverable. The indemnification set forth above and the limited remedies set forth in this paragraph are the sole and exclusive remedies available to Customer for any Third Party IP Claim or any permanent injunction and Customer hereby expressly waives and forever releases Questionmark from any and all other claims, demands, damages, lawsuits, liabilities, losses, judgments, fines, penalties and/or costs and/or expenses of any kind or nature, arising out of, resulting from or connected with, whether directly or indirectly, any Third Party IP Claim or permanent injunction.

- 7.4 NO OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES AND CONDITIONS ARE HEREBY EXCLUDED, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, WITH REGARD TO PERCEPTION SERVER SOFTWARE, ANCILLARY SOFTWARE, THIRD PARTY SOFTWARE, CONSULTING SERVICES AND SOFTWARE SUPPORT SERVICES.
- 7.5 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 7.6 BELOW, IN NO EVENT SHALL QUESTIONMARK OR ITS SUPPLIERS BE LIABLE FOR (a) ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, FOR ANY PECUNIARY LOSS, OR FOR (b) DAMAGES FOR LOSS OF BUSINESS PROFITS OR ANTICIPATED SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, IN EACH CASE WHETHER DIRECT OR OTHERWISE, ARISING OUT OF THIS AGREEMENT, INCLUDING THE USE, PROVISION OF, OR FAILURE TO PROVIDE PERCEPTION SERVER SOFTWARE, ANCILLARY SOFTWARE, THIRD PARTY SOFTWARE, CONSULTING SERVICES OR SOFTWARE SUPPORT SERVICES, EVEN IF QUESTIONMARK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO SECTION 7.6 BELOW QUESTIONMARK'S ENTIRE LIABILITY UNDER

ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR PERCEPTION SERVER SOFTWARE, SOFTWARE SUPPORT OR DELIVERABLE (AS THE CASE MAY BE) OR US \$500.00 OR ITS EQUIVALENT IN ANOTHER CURRENCY. IF CUSTOMER HAS ENTERED INTO A QUESTIONMARK SERVICES AGREEMENT FOR ANY OTHER SERVICES, QUESTIONMARK'S ENTIRE LIABILITY REGARDING SERVICES SHALL BE GOVERNED BY THE TERMS OF THAT AGREEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ANY QUESTIONMARK LICENSOR BE LIABLE TO CUSTOMER FOR ANY CLAIM UNDER THIS AGREEMENT, INCLUDING THE USE, PROVISION OF, OR FAILURE TO PROVIDE PERCEPTION SERVER SOFTWARE, ANCILLARY SOFTWARE, THIRD PARTY SOFTWARE, CONSULTING SERVICES OR SOFTWARE SUPPORT SERVICES, INCLUDING WITHOUT LIMITATION ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF CUSTOMER'S USE OR INABILITY TO USE THE PERCEPTION SERVER SOFTWARE OR COMPONENT EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES .

- 7.6 NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR RESTRICT QUESTIONMARK'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THAT OF ITS EMPLOYEES OR AGENTS FOR WHICH IT IS RESPONSIBLE, OR FOR FRAUDULENT MISREPRESENTATION.
8. PURCHASE FROM A QUESTIONMARK RESELLER
- 8.1 Questionmark Reseller Terms. Notwithstanding the definition of "Order" set forth in Section 1, if Customer has purchased the Perception Server Software and/or Software Support and/or Consulting Services from a Questionmark reseller, the definition of "Order" shall refer to the Order between Questionmark and such reseller. Questionmark shall be obligated to provide a license for the Perception Server Software and Software Support 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.
- 8.2 Payment to Reseller. If Customer has purchased the Perception Server Software and/or Software Support and/or Consulting Services from a Questionmark reseller, the terms of this Agreement that contemplate payment directly from Customer to Questionmark are superseded by Customer's payment arrangement with such reseller and payment to Questionmark shall be made by such reseller. Notwithstanding the prior sentence, in the event that such reseller fails to make timely payment of fees to Questionmark, Questionmark shall be entitled to all remedies available herein with regard to the termination of this Agreement and/or termination or suspension of Software Support as if such payment had been due directly from Customer and, in the event that Customer have made payment to such reseller, Customer's sole recourse and remedy shall be against such reseller.
- 8.3 Reseller Terms. If Customer has purchased the Perception Server Software and/or Software Support and/or Consulting Services 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.

9. CONFIDENTIAL INFORMATION

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

10. GENERAL

- 10.1 Applicable law. If Customer installs Perception Server Software in the United States, Canada, Mexico, Central America or South America then this Agreement is a contract with Questionmark as Questionmark Corporation, 535 Connecticut Avenue Suite 100 Norwalk, Connecticut 06854, United States of America and 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 shall be subject to the exclusive jurisdiction of the state and federal courts located in Bridgeport, Connecticut, USA.

If Customer installs Perception Server Software outside these territories this Agreement is a contract with Questionmark as Questionmark Computing Limited, 30 Coleman Street, London EC2R 5AL, England and shall be governed and construed in accordance with the laws of England and Wales and Customer irrevocably agrees to the exclusive jurisdiction of the Courts of England.

- 10.2 Customer domicile. Should Customer be domiciled in a country outside the United States or England, Questionmark shall have no liability to Customer resulting from the applicability and/or enforcement of the laws of that country related in any way to this Agreement. Customer hereby expressly waives any right granted by that country that may confer to Customer any rights different than those specifically contemplated and provided under this Agreement. Customer shall defend and indemnify Questionmark against any and all claims related to any claims or additional obligations imposed on Questionmark due to the application and/or enforcement of law in other jurisdictions.
- 10.3 Whole agreement. This Agreement (including Orders agreed between the parties which are subject to it) constitutes the entire agreement between the parties relating to its subject matter and supersedes all previous representation and communications and agreements in that respect, except in the case of fraudulent misrepresentations.

If proceeding with this install, a copy of this Agreement is installed for future reference as the file server_license.pdf in the install directory. Please refer to this file to review this Agreement after installing.