

## Questionmark European OnDemand and Services Agreement

These terms and conditions (“Agreement”) shall be applicable to Questionmark’s provision of its “OnDemand” service for assessments and related support to Customer and shall govern all Orders 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. 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;

**Affiliate** 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 Content** means the questions, assessment structure and any other supporting content forming part of Assessments licensed to Customer as described in the Order. Assessment Content shall not include the software, scripts, documentation and templates provided by Questionmark and excludes Customer Data and Results Data;

**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;

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

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

**Commencement Date** means the date set out in the Order;

**Confidential Information** means all information (in whatever format) which relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of the disclosing Party or information which is marked a confidential or which may reasonably be regarded as the confidential information of the disclosing Party. Confidential Information includes Assessment Content;

**Consultancy Services** means the consultancy and/or training services provided by Questionmark to Customer (as more particularly described in clause 16) as set forth on an applicable, mutually agreed Order;

**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 not include the software, scripts, documentation and templates provided by Questionmark;

**Customised Service Configuration** means a customised configuration of the OnDemand Service that Questionmark develops and provides specifically for Customer as set forth on an applicable Order;

**Enterprise Support** means the support and maintenance of the OnDemand Service as more particularly described in Schedule 2;

**Fees** means the sums payable by the Customer to Questionmark in consideration of the OnDemand Service, Support, Consultancy Services (as applicable), as more particularly described in the Order;

**Force Majeure Event** means any act, event, omission or accident beyond the reasonable control of either Party including, but not limited to, acts of God, war, threat of or preparation for war, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, terrorist attack, civil commotion or war, nuclear, chemical or biological contamination or sonic boom, compliance with any law, regulation or directive, restrictions on access to the open internet, fire, explosion or accidental damage, failure of plant machinery or computers, any labour dispute, non-performance by suppliers and interruption or failure of utility or transport service;

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

**Minimum Fee** means the sum stated in the Order;

**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;

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

**Permitted Use** means the use of the OnDemand Service that has been agreed and documented on the Order;

**Questionmark** means Questionmark Computing Limited whose registered office is at Moor Place, 1 Fore Street, London EC2Y 9DT, England (company number 02278553);

**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 provided by Questionmark to the Customer (and, at the Customer's request, Participants) as part of the Services. Questionmark Technology does not include Assessment Content.

**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 unless this Agreement is terminated in accordance with clause 8;

**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;

**Services** means the services provided by Questionmark to the Customer including (but not limited to) those relating to access to the OnDemand Service and Support and, if selected by the Customer, Enterprise Support and Consultancy Services. The Services selected shall be more particularly described in the Order;

**Set Up Fees** means the sum set out in the Order and described as a Set Up Fee;

**Support** means the support and maintenance of the OnDemand Service as more particularly described in Schedule 1;

**Term** means the Initial Term together with any Renewal Term;

**User Account** means the profile stored within the OnDemand Service for a User;

**Users** means Admin Users, Authors and Participants.

**Working Hours** means the hours between 0900 to 1700 in the United Kingdom on Business Days unless otherwise defined within the Order.

## 2. Questionmark's Obligations

- 2.1 Questionmark shall supply the Services to the Customer using reasonable care and skill and in accordance with the terms of this Agreement.
- 2.2 On or before the Commencement Date, Questionmark shall provide the Customer with an individual password, identity code or other security code by which the Customer may access the OnDemand Service via the internet.
- 2.3 Any changes to the Services may be subject to additional Fees as agreed between the Parties in writing.
- 2.4 Without releasing it from any of its duties or obligations, Questionmark may, at any time, without notice, use companies in its group or subcontractors to perform some or all of its duties and obligations under this Agreement.
- 2.5 Questionmark may change the configuration of its network, equipment or any other item material to the provision of the Services at any time provided that such change does not adversely affect the Services.
- 2.6 If an Assessment does not perform properly due to the fault of Questionmark Technology, Questionmark shall allow the affected Participants to retake the Assessment at no additional charge to the Customer. This shall be the Customer's remedy for Questionmark's non-performance.
- 2.7 Questionmark shall not be liable for a failure in the OnDemand Service to the extent owing to:
  - 2.7.1. the Customer's failure to follow correctly Questionmark's reasonable instructions;
  - 2.7.2. malfunctioning of the Customer's hardware or software or failure of its software to interoperate with other software (including firmware) or operating systems and applications necessary for the Services;
  - 2.7.3. loss or corruption of any password, security code or other identification code unless caused by Questionmark;

- 2.7.4. loss of or corruption of data caused while the data is in transit to or from Questionmark's storage facility, where such loss/corruption is not within the control of Questionmark; or
  - 2.7.5. the Customer being frozen out of access to the Services owing to a denial of service attack (unless Questionmark did not implement reasonable safeguards against denial of service attacks).
- 2.8 Notwithstanding the definition of "Order" set forth in clause 1, if Customer has purchased the OnDemand Service from a Questionmark reseller, the definition of "Order" refers 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 Customer may use the OnDemand Service during the Term solely in conformance with the terms of this Agreement, the Service Configuration, Permitted Use and applicable laws. If Customer requires an increase in the Service Configuration, further charges may be due. If the Customer exceeds the limitations of the Service Configuration, Questionmark may charge Customer for any excess use on a pro rata basis calculated with reference to the then current Order pricing. Questionmark will use commercially reasonable efforts to advise Customer of any such excess use of which it becomes aware.
- 3.2 The Customer shall, at its own cost, provide all internet connections, hardware, software and all other equipment necessary to use the Services, unless otherwise agreed between the Parties. Customer is responsible for ensuring prior to entering into this Agreement and during the Term that it is able to access and use the open internet in all jurisdictions in which it intends to use the Services. The inability of Customer or Participants to access and use the Services due to open internet restrictions shall not constitute a Service Incident, Unscheduled Downtime or failure by Questionmark to perform its obligations under this Agreement.
- 3.3 The 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 unauthorised use or disclosure of any such username, password or code. 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, the Customer shall be liable for any activity carried out by a User or under any password, identification code or security codes issued to it and shall take all reasonable efforts to prevent such breach and mitigate any losses.

- 3.4 Where the Order permits access to the OnDemand Service through Questionmark APIs, the 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.
- 3.5 In the performance of the Services, Questionmark may require the disclosure by Customer of certain information, or access to certain of Customer's computer systems or databases. Customer agrees to provide Questionmark such access reasonably requested to enable Questionmark to provide the Services. Questionmark has no liability for any failure or delay to provide the Services to the extent such failure or delay is caused by the Customer's failure to provide such information or access.
- 3.6 The Customer may not modify or make derivative works based upon the OnDemand Services or any associated documentation or remove, hide or attempt to hide copyright information or identification of Questionmark's ownership of the OnDemand Services. Customer is prohibited from reverse engineering or accessing the Services to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the OnDemand Services, or (c) copy any ideas, features, functions or graphics of the OnDemand Services. Customer may monitor performance of the OnDemand Service but such information is Confidential Information of Questionmark under this Agreement.
- 3.7 The OnDemand Service may be used to correspond with Participants and to assess a Participant's knowledge, skills and attitudes and allocate a score. Customer is responsible for all correspondence with Participants. Scores should be considered one piece of evidence about a Participant's knowledge, skill and/or attitude. When the OnDemand Service is being used to make decisions about a Participant (such as whether to hire, promote or fire the Participant), Customer is solely responsible for the fairness, quality and validation of the Assessment and should review and evaluate the Participant's score to ensure that the appropriate decision has been made. Customer is solely responsible for its use of the OnDemand Service and Assessments, including entering and maintaining the Assessment material, validating the Assessment, checking this material, checking scores and checking reports. Customer shall indemnify and hold Questionmark, its suppliers, and/or its licensors harmless from any third party claims, liabilities, damages, costs and/or expenses and suits to the extent arising out of the use of Services or use of scores or outcomes to make decisions relating to Participants, including, but not limited to any employment decisions, whether favourable or adverse in nature or effect, made by Customer based upon Customer's use of the Service or scores produced from Customer's use of the Service, including, but not limited to, employment termination or discharge, or discipline; employee compensation; and/or employment promotions or advances.
- 3.8 The Customer will not use the OnDemand Service to store or transmit anything offensive, harassing, threatening, abusive, obscene, illegal, or defamatory, that breaches the rights of any third party, or contains viruses, worms, Trojan horses or

other harmful computer code, spyware, adware, malware, files, scripts, agents or programs.

Customer is prohibited from:

- (i) using the OnDemand Service to support criminal activity or illegal purpose;
- (ii) undertaking penetration testing of the OnDemand Service without 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) attempting 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;
- (vi) interfering with or disrupting the integrity or performance of the OnDemand Service or the data contained therein;
- (vii) attempting to gain unauthorized access to the OnDemand Service or its related systems or networks;
- (viii) using the OnDemand Service to send unsolicited e-mails or communications in any form;
- (ix) sending solicitations, such as charity requests, petitions for signatures, or any chain mail related materials;
- (x) knowingly violating an internet service provider's acceptable use policy and/or terms of service;
- (xi) assisting or permitting any persons in engaging in any of the activities described above.

Customer will take all actions necessary to stop any such activities of which it becomes aware immediately. Questionmark may check system files, email and other data for illegal content and materials, or for any other reasons deemed reasonably necessary.

Questionmark may take all reasonable necessary action that it deems appropriate to address violations of this clause 3.8. Refunds or credits are not issued in connection with actions taken for violation of this clause 3.8.

- 3.9 The Customer is responsible for the accuracy, quality, legality, reliability, appropriateness and intellectual property ownership and right of use of Customer Data, including ensuring that Customer Data is transmitted to and processed in the Services by Customer and provided to Questionmark in accordance with applicable laws, including for operation and maintenance of the Services, which Customer instructs Questionmark to undertake. Customer shall indemnify and hold harmless Questionmark against any third-party claims, losses or damages to the extent arising from or in connection with Questionmark's processing of the Customer Data pursuant to the provision of the Services in accordance with Agreement, including that result from Customer's breach of Schedule 4. For clarity, the indemnity obligation in this

clause 3.9 shall not apply to the extent the third party claim, loss, or damage is caused by Questionmark's breach of this Agreement.

- 3.10 Customer shall not allow any persons to be registered in, to access or use the OnDemand Service in excess of the number of Users authorized in the Service Configuration, measured on a rolling twelve (12) month basis. In the event that a Participant is removed from or no longer uses the OnDemand Service, his or her allocated username may not be reassigned to another individual, unless otherwise expressly agreed in the Order. Notwithstanding the foregoing, Customer shall be permitted to exceed the number of Participants authorized in the Service Configuration by no more than ten percent (10%) at any one time (measured on a rolling twelve (12) month basis) where Participants are removed from the OnDemand Service because (i) their participation in Assessments is no longer required or due to associated errors or mistakes and the Customer adds new Participants or (ii) they cease to be employed or engaged by or attend the Customer or otherwise change roles with the Customer and the Customer adds new Participants. In the event that an Admin User or Author is removed from or no longer uses the OnDemand Service, his or her allocated username may be reassigned to another individual. Customer shall not allow more than one individual to use a User Account and shall not share any User Account credentials with more than one individual.
- 3.11 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 may update the system specifications at its reasonable discretion.
- 3.12 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 such information or Customer Data including, but not limited to, an event where Customer fails to make regular backups. Without limiting Customer's responsibility to backup and 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.
- 3.13 If Customer wants to upload any executable software code into the OnDemand Service, Customer will pass such code to Questionmark prior to such upload, so that Questionmark can undertake an appropriate security vulnerability review and Customer shall pay Questionmark's reasonable, pre-agreed associated service charge for this review. For clarity, such a review is undertaken by Questionmark for the purposes of security of the OnDemand Service without warranty to Customer.

## 4. Licence and Authorisation

- 4.1 In consideration of, and subject to, payment of the Fees, Questionmark grants to the Customer (together with its Affiliates) a non-exclusive, worldwide, royalty-free, non-transferable (except in the event of a permitted assignment of this Agreement), non-



sublicensable licence and authorisation to access and use the OnDemand Service for the Term. The scope of the licence and authorisation is determined by this Agreement and the Order. All rights not expressly granted to Customer hereunder are reserved by Questionmark, its suppliers, and its licensors. Customer shall be responsible for all use of the Services by Affiliates.

- 4.2 The Customer grants to Questionmark the non-exclusive, royalty-free licence to use the Customer Data in connection with the provision of the Services. Customer authorizes Questionmark and its Affiliates to use Assessment results and other Customer Data (including personal data) for analysis purposes as part of the Services and to produce aggregated data for Assessment validation, anti-cheating, security, statistical analysis and product improvement purposes, including creating or updating Benchmarks. Benchmarks and other aggregated data shall not contain any information on any identifiable individual or from which any individual is identifiable and are owned by Questionmark. Questionmark shall also not disclose to any other Questionmark customers Benchmarks or other aggregated data that include (directly or by inference) any information identifying Customer or from which Customer is identifiable.

## 5. Fees

- 5.1 In consideration of the Services, the Customer shall pay the Fee or the Minimum Fee, whichever shall be the greater amount, without deduction or set off, in full and cleared funds and in the currency specified in the Order to the account nominated by Questionmark from time to time.
- 5.2 Following the Commencement Date, Questionmark shall invoice and the Customer shall pay the Fees and the Set Up Fees.
- 5.3 Where the Customer has selected Consultancy Services, Questionmark shall invoice, and the Customer shall pay, the relevant Fee for such services (as set out in the Order or agreed between the Parties from time to time in writing).
- 5.4 Unless otherwise stated in the Order, all invoices shall be due and payable by the Customer within 30 days of receipt of a valid invoice.
- 5.5 All Fees are non-refundable except in the event of termination under clauses 8.1.1 or 8.1.2, as set out in clause 8.2.
- 5.6 Questionmark may charge interest on any sum which remains unpaid after the due date for payment referred to in clause 5.4, such interest to be calculated from the due date for payment until payment (whether before or after judgment) at the monthly rate of 1.5% above the base rate from time to time of the Bank of England.

- 5.7 All Fees are exclusive of value added tax and any other sales taxes, import duties or other taxes, fees or levies imposed on the Fees (as opposed to taxes on Questionmark's business generally) which, if applicable, will be payable by the Customer at the then-prevailing rate.
- 5.8 Where on-site visits have been requested by the Customer, the Customer shall pay Questionmark's reasonable out of pocket expenses incurred pursuant to such on-site visit including travel, lodging and subsistence together with an additional Fee agreed between the Parties.
- 5.9 If the Customer requests additional services not comprising the Services (including but not limited to troubleshooting with third party products, Assessment content development, Assessment content conversion, programming, configuration, assistance with template creation and Assessment style modification), these shall be charged on an as-quoted basis and shall be subject to the terms of this Agreement and any other terms agreed in writing between the Parties.
- 5.10 Questionmark may change the Renewal Fees by giving 60 days' written notice to the Customer prior to expiration of the Term then in effect and such change shall become effective upon commencement of the Renewal Term.
- 5.11 If Customer has purchased the OnDemand Service from a Questionmark reseller, the terms of this clause 5 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, if 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.

## 6. Warranties

- 6.1 Questionmark will exercise reasonable skill and care in performance of the Services.
- 6.2 Questionmark warrants that:
- 6.2.1. it has all licences, consents and authorisations or rights under any relevant law, legislation, regulations or administrative orders that are required and applicable to Questionmark;
  - 6.2.2. it will perform its obligations in this Agreement in accordance with all laws, licences and regulations of jurisdictions from which Questionmark provides the OnDemand Service that are generally applicable to Questionmark; and

- 6.2.3. it has the full right, power and authority to enter into and perform this Agreement.
- 6.3 The Customer warrants that:
  - 6.3.1. it is, or is acting on behalf of, a business or lawfully constituted institution and that it has the full right, power and authority to enter into and perform this Agreement;
  - 6.3.2. it acknowledges that the Services are provided on an “as is” basis and that they are acceptable for the needs and requirements of the Customer;
  - 6.3.3. it has such licences and/or other authorisations or rights as may be necessary under any relevant law, legislation, regulation or administrative order, to receive the Services; and
  - 6.3.4. entry into this Agreement and use of the Services by the Customer does not violate or infringe any third party intellectual property or other rights.
- 6.4 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.

## 7. Liability and Indemnity

- 7.1 Subject to clause 7.3, neither Party shall be liable to the other Party for any indirect, incidental, special, punitive or consequential loss or damage, including loss of profit, anticipated savings, reputation, interest, penalties, revenue, business or legal or other professional costs and expenses.
- 7.2 Subject to clause 7.3, the maximum aggregate liability of either Party under or in connection with this Agreement (whether in contract or tort, including negligence, misrepresentation or otherwise) shall be a sum no greater than the higher of 200% of the Fees actually paid in accordance with clause 5 in the year in which the liability is incurred or one-hundred thousand UK pounds sterling (£100,000).
- 7.3 Nothing in this Agreement shall exclude or limit liability for:
  - 7.3.1. death or personal injury caused by its negligence;
  - 7.3.2. fraud or fraudulent misrepresentation;
  - 7.3.3. infringement or misappropriation of either party's intellectual property rights;

- 7.3.4. the indemnity obligations under this Agreement;
  - 7.3.5. any other liability which cannot be properly excluded by law.
- 7.4 Questionmark shall indemnify, defend and hold harmless Customer for direct, reasonable and proportionate costs, expenses, damages and losses suffered or incurred by Customer to the extent arising from a third party claim that results in a final non-appealable court judgment that the OnDemand Service, as delivered and used in accordance with this Agreement, intentionally infringes that third party's UK intellectual property rights. This indemnity shall not apply if the claimed or actual infringement arises from (a) an instruction from Customer that is infringing; (b) modification of the OnDemand Service without Questionmark's approval and without which such infringement would not have occurred; (b) use of the OnDemand Service in combination with any hardware or software not provided or approved by Questionmark, provided that such infringement would not have occurred but for such combination.

## 8. Termination

- 8.1 Either Party may terminate this Agreement, without prejudice to any of its rights and remedies, during the Term on written notice to the other:
- 8.1.1. for material breach by the other Party which is incapable of remedy;
  - 8.1.2. for material breach by the other Party which is capable of remedy but which the other Party fails to remedy within thirty (30) Business Days of having been notified of such breach;
  - 8.1.3. if the other Party has a receiver, administrative receiver, administrator or other similar officer appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other Party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or is unable to pay its debts or is deemed by section 123 of the Insolvency Act 1986 (or similar applicable law of another jurisdiction) to be unable to pay its debts, or undergoes or is subject to any analogous acts or proceedings under any foreign law and such petitions or proceedings are not dismissed within ninety (90) days of filing;
  - 8.1.4. if a Force Majeure Event continues for more than 60 days;
  - 8.1.5. at least fifteen Business Days prior to the expiry of the Initial Term or any Renewal Term.

- 8.2 Where the Customer terminates this Agreement under clause 8.1.1 or 8.1.2 above, it shall be entitled to a pro rata refund of pre-paid Fees for which no Services have been provided by Questionmark.

## 9. Effect of Termination

- 9.1 Following termination for whatever reason:
- 9.1.1. all outstanding invoices and all Fees which have not yet been invoiced shall become due and payable within five (5) Business Days;
  - 9.1.2. Questionmark shall within 30 days make available to the Customer a file (in a reasonable standard file format) of the Customer Data in the OnDemand Service and thereafter Questionmark may delete such Customer Data. If Customer Data is requested 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;
  - 9.1.3. If requested by Customer, Questionmark will provide Consultancy Services at a reasonable price to assist Customer with termination or transition of the Services as the Parties may reasonably agree in a separate Order.

## 10. 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 the Customer to make payment) arising from or attributable to a Force Majeure Event provided that it promptly notifies the other Party in writing and uses all reasonable endeavours to mitigate the effect of the Force Majeure Event.

## 11. Intellectual Property

- 11.1 The Customer acknowledges 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;
- 11.2 Questionmark shall retain ownership of all proprietary rights to any Customised Service Configuration developed, including certain rights, if any, that Questionmark has

pursuant to a license from another party. Upon full payment of the applicable Fees, Questionmark shall grant to the Customer a licence to use such Customised Service Configuration in accordance with the Service Configuration.

- 11.3 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 Customised Service Configuration ("Background Technology"). Questionmark retains all right, title and interest in and to the Background Technology, and hereby grants the Customer a non-exclusive license to use the Background Technology only to the extent necessary to use the Customised Service Configuration and OnDemand Service during the Term consistent with the terms of this Agreement and the Permitted Use.
- 11.4 Questionmark acknowledges that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, in Customer Data will remain the sole property of the Customer and its licensors.

## 12. Confidentiality

- 12.1 Each Party shall keep the other's Confidential Information secure and hold it in confidence and, unless required by law, shall not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than in performance of this Agreement.
- 12.2 Each Party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.3 Customer Data is the Confidential Information of the Customer and Assessment Content is, as between the Parties, the Confidential Information of Questionmark.
- 12.4 Any prior non-disclosure agreements in force between the Parties shall remain valid and binding obligations in respect of disclosures made prior the Commencement Date, notwithstanding execution of this Agreement, unless otherwise provided for in those earlier non-disclosure agreements.
- 12.5 This clause 12 shall survive termination of this Agreement, however arising .

## 13. Security and Data Protection

- 13.1 Questionmark shall maintain information and physical security policies and procedures to protect the Customer Data consistent with good industry practice.
- 13.2 Questionmark represents that it is certified by a reputable third party against the ISO 27001 standard or a comparable successor standard, and that its production data centre used to deliver Assessments is audited against the SSAE 18 or ISO 27001 standards or comparable successor standards. On request, Questionmark shall provide to Customer copies of its certificates and other reasonably requested security documentation.
- 13.3 Questionmark shall use reasonable efforts to respond to Customer questions regarding its security practices. Any reports, summaries thereof or information provided is Questionmark Confidential Information.
- 13.4 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"). 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.
- 13.5 The Parties shall comply with their respective obligations in Schedule 3.

## 14. Anti-bribery

Each Party shall comply with all anti-corruption and anti-bribery laws respectively applicable to each of them. Each Party shall maintain its own policies and procedures to ensure compliance with the requirements of this clause, and will enforce those policies and procedures where appropriate. The Parties shall promptly report to each other any request or demand for any undue financial or other advantage of any kind offered to or received by it in connection with this Agreement.

## 15. Export Laws

The OnDemand Service may use encryption technology that may be subject to licensing requirements under Council Regulation (EC) No. 428/2009 (as amended) and other export control regulations. 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 European Union and/or Switzerland maintains an embargo (collectively, "Embargoed Countries"). Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country. Customer

shall comply strictly with all applicable European Union and Swiss export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required.

## 16. Consultancy Services

- 16.1 Following a request for Consultancy Services, Questionmark shall produce a proposal and the Parties shall agree a final form which, when accepted, shall be the Order for Consultancy Services. It is the Customer's responsibility to confirm that the final form of the proposal satisfies Customer's operational needs and requirements.
- 16.2 Consultancy Services shall be performed and delivered at the times and places listed on the Order. Questionmark shall use reasonable commercial endeavours to meet the timescales stated in the Order.
- 16.3 If an Order requires Questionmark to develop a Customised Service Configuration, the Customer agrees that upon the delivery of the Customised Service Configuration the Customer shall have fifteen (15) Business Days to review such Customised Service Configuration for any material non-conformance with the Order. If the Customer reports the Customised Service Configuration is not in material conformance with the Order, Questionmark will remedy such material non-conformance to bring it into material compliance. If the Customer does not report any material non-conformance within the fifteen (15) Business Day period, the Customer is deemed to accept the Customised Service Configuration provided that Questionmark has made reasonable efforts to confirm material conformance with Customer. Unless otherwise specified in the Order, the Customised Service Configuration shall not be covered by any support plan. Customised Service Configuration does not include the standard OnDemand Service or any feature thereof.
- 16.4 Questionmark warrants that as delivered the Customised Service Configuration will not knowingly infringe any UK patent or third party copyright, trade secret, or other intellectual property rights. This warranty will not apply to any infringement that would not be such except for Customer's contributed design, software or other elements.
- 16.5 The Customer warrants that it will not make a request of Questionmark to produce a Customised Service Configuration that it knows would infringe any patent, or infringe any third party copyright, trade secret, or other intellectual property rights.

## 17. Assignment

The Customer may not assign this Agreement without prior written consent of Questionmark, such consent not to be unreasonably withheld.



## 18. 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 to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

## 19. Notices

Any notice required or authorised to be given under this Agreement may be delivered by hand, first-class mail or prepaid registered post to the address notified by the Parties from time to time and will be deemed served immediately if by hand or forty-eight (48) hours after posting. Any notice to Questionmark must be contemporaneously copied to legalnotices@questionmark.com. Questionmark may notify Customer of a general notices to all users of the OnDemand Service regarding important announcements for operation of the Service, including by email.

## 20. Severability

If any provision, or part provision, of this Agreement, is held by a court or competent authority to be invalid, illegal, or unenforceable, that provision or part provision shall be deemed deleted and the remainder of this Agreement shall continue in full force and effect.

## 21. Insurance

Subject to Questionmark's discretion to reasonably adjust its insurance arrangements due to changes in circumstances or applicable laws, Questionmark shall maintain the minimum following insurance policies during the Term: (i) public liability insurance of £5,000,000 any one occurrence; (ii) employers liability insurance of £10,000,000 per any one claim; (iii) professional liability insurance of £5,000,000 per any one claim; (iv) cyber insurance with limit of indemnity of £5,000,000 for third party liability and £1,000,000 for first party liability.

## 22. Variation

No variation of this Agreement shall be effective unless in writing and signed by the Parties.

## 23. Entire Agreement

This Agreement, which include the applicable Schedules, contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement. Nothing in this clause will operate to limit or exclude liability for fraud. 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.

## 24. Rights of Third Parties

This Agreement is not intended to convey upon any person who is not a Party any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce this Agreement.

## 25. Independent Contractor

- 25.1 The relationship of the Parties is that of independent contractor. Nothing herein shall create a partnership, joint venture, franchise, employment, or agency relationship between the Parties.
- 25.2 Neither Party shall have the authority to enter into agreements of any kind on behalf of the other Party nor shall have the power or authority to bind or obligate that other Party in any manner to any third party.

## 26. Governing Law

This Agreement shall be governed and construed in accordance with the laws of England and Wales and the Parties irrevocably agree to the exclusive jurisdiction of the Courts of England.

## Schedule 1 - Standard Support for OnDemand Service “Support”

1. Where the Customer receives Support, this Schedule 1 shall apply.
2. The Customer shall notify Questionmark of the individuals up to the limit specified in the Order that will be Customer’s designated contacts for requesting support via phone and email (“Designated Contacts”).
3. Questionmark shall provide Support in English (unless otherwise specified on the Order) to Designated Contacts.
4. Customer may substitute Designated Contacts on a permanent or temporary basis upon written notice to Questionmark.
5. Customer shall ensure that Customer’s Designated Contacts subscribe to Questionmark’s OnDemand Services new feed during the Term.
6. Questionmark will use reasonable efforts to respond to requests for assistance (up to a maximum of twenty (20) hours per month without accumulation of hours from one month to the next) during Working Hours to the extent described below:

Service Name	Description	Provision
OnDemand Service Support	Maintenance of the OnDemand Service 24 x 7 to maintain uptime. Maintenance of OnDemand Service does not consume support hours.	Provided by Questionmark and/or its sub-contractors 24 x 7.
1st Line Technical Support	Providing assistance by phone and email to Designated Contacts to resolve technical issues that might result in resetting servers, keeping people informed of server status, and answering questions where the answers could be found in the 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	Providing assistance by phone and email to Designated Contacts to resolve technical issues 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	Fix technical issues with the OnDemand Services	Provided by Questionmark and included as standard.
Chat Technical Support	Assistance provided to Designated Contacts using 24 x 7 browser text	Provided by Questionmark for an additional fee.

	chat sessions and VoIP when connectivity helping to resolve issues.	
Participant Support	Any assistance provided 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	Any assistance provided 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	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.

7. Questionmark may 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.

## Schedule 2 – Enterprise Support Service Level Agreement

1. When Customer purchases Enterprise Support, this Schedule 2 shall apply in addition to the provisions of Schedule 1.
2. Questionmark will use commercially reasonable efforts to respond to and remedy each Service Incident based on its severity level set forth below. The severity level of a Service Incident will be determined by Questionmark in its reasonable discretion.
3. The Customer will use commercially reasonable efforts to provide accurate and prompt notification of any issue with the OnDemand Service so that Questionmark may promptly take remedial action. Questionmark will respond to the Designated Contact within the Initial Response Time specified below, based on the Service Incident’s severity level. Notwithstanding anything to the contrary contained in the 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 Service with a compatible system or web browser.

<b>Severity 1</b>	An error isolated to the Questionmark 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.	<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.
<b>Severity 2</b>	An error isolated to the Questionmark 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.	<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.
<b>Severity 3</b>	An issue that causes the failure of a noncritical aspect of the OnDemand Service and a	<u>Initial Response Time</u> (by email or callback) is within

	satisfactory work-around already exists but the presence of this issue will result in user dissatisfaction.	two (2) Business Days during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is two (2) Business Days for the first week and as needed thereafter. Solution is provided as part of a future release.
<b>Severity 4</b>	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.

4. Scheduled Maintenance is planned service downtime to proactively upgrade the OnDemand Service to resolve any issues and/or enhance functionalities. Typically, Scheduled Maintenance activities will be scheduled during non-peak and non-business hours to maximize the availability of the Service to the Participants. However, Questionmark, in its sole discretion, shall determine when the Scheduled Maintenance shall be performed.
5. Emergency Maintenance might cause downtime and is required to fix software and/or hardware issues, including applying security patches and replacing required hardware or software, which cannot be postponed until the next available Scheduled Maintenance period. Questionmark in its sole discretion, shall determine when Emergency Maintenance shall be performed.
6. During Scheduled Maintenance and Emergency Maintenance periods, the OnDemand Service may not be accessible by Users. Questionmark will provide the Customer with advance notice for all Scheduled Maintenance and, if possible, for Emergency Maintenance activities, which will impact the availability and usefulness of the OnDemand Service to Users.
7. 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.

## Schedule 3 – Data Protection

Any conflict or inconsistency between this Schedule 3 and the other parts of this Agreement shall be resolved in favour of this Schedule 3 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”), the Data Protection Act 2018 and any future United Kingdom law or regulation relating to the processing of personal data and privacy.

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

“Customer Personal Data” means all personal data 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.
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 The technical and organisational measures employed by Questionmark are detailed at [www.questionmark.com/go/eu-od-measures](http://www.questionmark.com/go/eu-od-measures). 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/eu-od-measures](http://www.questionmark.com/go/eu-od-measures) and notify Customer only if there is a material reduction in measures.

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 the Order date, 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/eu-od-subprocessors](http://www.questionmark.com/go/eu-od-subprocessors).

7.3 Not engage a new Subprocessor without providing prior written notice and opportunity to object to Customer. Questionmark shall satisfy this obligation by updating its list of organizational Subprocessors referred to at clause 7.2 above at least 28 days prior to authorizing a new organizational Subprocessor. 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 remain fully liable to Customer for any processing of Customer Personal Data by a Subprocessor.
9. Customer agrees that Questionmark may transfer Customer Personal Data to other countries (and process such data in those countries) as reasonably necessary to provide the Services. Questionmark shall only transfer Customer Personal Data from the European Economic Area ("EEA"), Switzerland and the United Kingdom to countries not subject to an adequacy decision of the European Commission if having in place a valid transfer mechanism recognized by the European Commission (including data processing agreements incorporating the EU Standard Contractual Clauses (Processors)("SCCs"), entry into which by Questionmark is authorized by Customer on its behalf as data controller). Notwithstanding any other provision of this Agreement, Questionmark may transfer Customer Personal Data inside the United Kingdom subject to compliance with UK data protection law. Questionmark's US Affiliate is self-certified to the EU-U.S. and Swiss-U.S. Privacy Shield frameworks ("Privacy Shields") and Questionmark will ensure that such entity maintains its self-certification and compliance with the Privacy Shields, or other appropriate mechanism whilst processing Customer Personal Data. Questionmark's production data centre used to deliver Assessments is located in the United Kingdom or EEA. This Schedule incorporates by reference the Data Transfer and Processing Agreement including the SCCs found at [www.questionmark.com/go/eu-od-dtpa](http://www.questionmark.com/go/eu-od-dtpa) between Questionmark and Customer ("DTPA"), if and to the extent required by Data Protection Law as described in the DTPA.
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 the reasonable, pre-agreed costs arising from such assistance.
  - 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 pre-agreed charges 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 reasonable standard file format, and delete existing copies unless EU law or EU member state law requires or permits 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.

## Schedule 4 – Assessment Content

This Schedule 4 applies if an Order refers to licensing of Assessment Content to Customer. Any conflict or inconsistency between this Schedule 4 and the other parts of this Agreement shall be resolved in favour of this Schedule 4 in respect of the subject matter hereof.

### 1. Definitions

The following definitions shall apply for this Schedule:

**Licensors** means the organization or test publisher that authors and owns the Assessment Content and who directly or with the assistance of Questionmark uploads this to and maintains it in the OnDemand Service.

**Results Data** means answers, scores and results and other information collected or derived from Participants taking Assessment Content. Results Data excludes Assessment Content.

### 2. Grant of License

**2.1 Assessment Content License.** In consideration of, and subject to, payment of the Fees, Questionmark grants to the Customer as part of the Services a non-exclusive, non-transferable, non-sublicensable license and authorization to access and use Assessment Content with Participants in the OnDemand Service during the Term subject to the limits and terms of this Agreement and the Order. Unless the Order expressly permits wider use, Assessment Content may only be used for Customer's internal purposes including by its Affiliates and for assessing its partners, and may not be resold to third parties. All rights not expressly granted to Customer hereunder are reserved by Questionmark and Licensors, and their respective suppliers and licensors.

**2.2 Assessment Content modification.** No modification of Assessment Content is permitted other than as expressly provided for in an Order. Notwithstanding that an Order may permit Assessment Content modification, Customer acquires no ownership, proprietary or other rights in or to any such modifications or derivatives other than to use such modifications or derivatives to the same extent as it may use Assessment Content under this Agreement. All other rights in and to modifications to or derivatives of Assessment Content are reserved to Questionmark and Licensors, and their respective suppliers and licensors. Neither Assessment Content nor any modifications or derivatives thereof shall constitute "Work Product" or works-for-hire under any applicable laws.

**2.3 Reports.** It is possible to use the OnDemand Service to report on Results Data without including Assessment Content. However, if any Assessment Content, including question wording or question choices from Assessment Content, are produced in reports, such Assessment Content remains the copyright of Licensors and may be used by Customer only as expressly authorized by this Schedule and must be kept confidential.

- 2.4 Intellectual Property.** Customer agrees that Licensor is the owner of the Assessment Content, and that no rights of ownership and/or intellectual property rights of any kind in Assessment Content are transferred to Customer. The license granted hereunder to Customer is expressly limited to the access and use rights conferred in this Schedule. Customer may not share the Assessment Content with any third party except as expressly provided for in this Agreement and any third party use shall be limited to the use permitted for Customer in this Schedule. Except as expressly permitted by this Schedule and any Order, Customer may not copy, download, transmit, redistribute, publish, modify or commercially exploit the Assessment Content or move Assessment Content outside the OnDemand Service. Customer may not hide or attempt to hide copyright information or identification of Licensor's ownership of the Assessment Content.
- 2.5 Email support.** Questionmark has licensed the Assessment Content from Licensor and is not itself able to answer questions about or provide assistance in using Assessment Content. If Customer has questions about Assessment Content or identifies possible issues in Assessment Content, Customer may contact Questionmark by email, and Questionmark will use reasonable efforts to pass questions or issues to the Licensor and pass responses received back. Neither Schedule 1 nor Schedule 2 of the Agreement shall apply for this Schedule.
- 2.6 Updates.** Neither Licensor nor Questionmark is obliged to provide Assessment Content updates, but if Questionmark and Licensor do produce an update, Questionmark will make such update available to Customer within the OnDemand Service along with information on any changes. Any permitted modifications made to Assessment Content by Customer may need to be recreated in the event of any update, which modifications shall be the exclusive responsibility of Customer.

### 3. Customer Obligations

- 3.1 Assessment Content Configuration.** Customer may use the Assessment Content within the OnDemand Service during the Term solely in conformance with the terms of the Agreement and the Order.
- 3.2 Use of Assessments.** Customer agrees to take account of any information or documentation provided by Questionmark or Licensor regarding the validity and potential application of the Assessment Content. Notwithstanding the foregoing, Customer assumes sole responsibility for determining that Assessment Content and Assessments are appropriate and valid for its use purposes and requirements.
- 3.3 Confidentiality.** Customer shall protect Assessment Content as Confidential Information and use best efforts to ensure that Participants do not share it with others.
- 3.4 Data processing.** Customer instructs Questionmark to review and process Results Data to help run the Services and to create, update and analyze Benchmarks and other aggregated data as described with reference to Customer Data in Section 4.2 of the Agreement. Customer may use Licensor as a sub-processor to help perform such

instructions in addition to other sub-processors set out in the Agreement and for clarity may share Results Data, Benchmarks and other aggregated data with Licensor.