

## QUESTIONMARK ONPREMISE SOFTWARE, CONSULTING SERVICES, AND SOFTWARE SUPPORT TERMS AND CONDITIONS (“TERMS AND CONDITIONS”)

THE FOLLOWING TERMS AND CONDITIONS GOVERN USE OF THE SOFTWARE AND ANY ASSOCIATED PAPER DOCUMENTATION OR "ON-LINE" OR ELECTRONIC DOCUMENTATION (COLLECTIVELY THE "QUESTIONMARK ONPREMISE SOFTWARE") AND SHALL GOVERN ALL ORDER FORMS ENTERED INTO BETWEEN THE PARTIES WITH RESPECT TO THE QUESTIONMARK ONPREMISE SOFTWARE AND OTHER SERVICES REFERRED TO HEREIN. QUESTIONMARK EXPRESSLY LIMITS ACCEPTANCE TO THESE TERMS AND CONDITIONS AND THE TERMS OF THE APPLICABLE ORDER FORM. ANY TERMS CONTAINED IN A PURCHASE ORDER, REQUEST FOR PROPOSAL, ORDER ACCEPTANCE OR SIMILAR DOCUMENT FROM CUSTOMER SHALL NOT CONSTITUTE PART OF THE CONTRACT BETWEEN THE PARTIES UNLESS SUCH TERMS ARE EXPRESSLY INCORPORATED IN THE APPLICABLE ORDER FORM. CUSTOMERS PROVISION OF A SIGNED ORDER FORM REFERENCING THESE TERMS AND CONDITIONS AND/OR PROVIDING A PURCHASE ORDER BASED ON A QUOTATION PROVIDED BY QUESTIONMARK THAT REFERENCED THESE TERMS AND CONDITIONS AND/OR USE OF THE QUESTIONMARK ONPREMISE SOFTWARE SHALL CONSTITUTE ACCEPTANCE OF THESE TERMS AND CONDITIONS AND ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CUSTOMER ARE HEREBY REJECTED. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, OR DO NOT HAVE THE AUTHORITY TO ACCEPT THESE TERMS AND CONDITIONS, YOU SHOULD NOT PROVIDE QUESTIONMARK WITH A SIGNED ORDER FORM/PURCHASE ORDER REFERENCING THESE TERMS AND CONDITIONS NOR USE NOR PERMIT INSTALLATION OF THE QUESTIONMARK ONPREMISE SOFTWARE. THIS IS A USE LICENSE ONLY OFFERED BY QUESTIONMARK. QUESTIONMARK ONPREMISE SOFTWARE MAY NOT BE COPIED EXCEPT AS SPECIFICALLY PROVIDED BELOW.

These 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 either (a) Questionmark Corporation, a Connecticut corporation, only when Questionmark OnPremise Software is installed within the United States, Canada, Mexico, Central and South America, (b) Questionmark GmbH, a German company, where Questionmark GmbH is referred to on the Order, and (c) Questionmark Computing Limited, an English company, in all other cases. Questionmark and Customer shall be referred to herein individually as a "Party" and collectively as the "Parties."

## 1. This Agreement

- 1.1 Copyright. Questionmark OnPremise Software, is licensed, not sold, and is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Questionmark OnPremise Software is supplied by Questionmark and it shall remain the property of Questionmark and/or its licensors.
- 1.2 Use. Questionmark OnPremise Software is provided for Customer's use only under the terms of this Agreement. By deploying, copying, or otherwise using the Questionmark OnPremise Software, Customer agrees to be bound by the terms of this Agreement.
- 1.3 Configuration. Customer agrees to ensure that its use of the Questionmark OnPremise Software will not, at any one time, exceed the Server Configuration. Customer agrees to take all reasonable measures to prevent unauthorized use of its licensed copy of the Questionmark OnPremise 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 any system which identifies or authenticates Participants to take Assessments via Questionmark OnPremise Software whether or not the Participant identity is recorded within Questionmark OnPremise Repositories.
  - (b) "Admin User" means any person that uses Questionmark OnPremise Software to create, manage, monitor and report on Assessments.
  - (c) "Ancillary Software" means software that is not part of the Questionmark OnPremise Software but which is installed before or after the Questionmark OnPremise Software to run alongside the Questionmark OnPremise Software and which has its own open source license agreement which sets out certain rights and obligations for use of Ancillary Software.
  - (d) "Approved Platform" means a platform on which Questionmark OnPremise Software can be installed comprising of hardware and/or virtual machines, network, operating system, database management system and other system setup which will be advised from time to time by Questionmark.
  - (e) "Approved and Supported Install" means an installation or upgrade of Questionmark OnPremise Software performed by Questionmark personnel or by a consultant trained and authorized by Questionmark.
  - (f) "Assessment" means a systematic method of obtaining data, evidence or results, including but not limited to tests, examinations, questionnaires, and surveys.
  - (g) "Assessment Content" means any questions, answer choices, assessment structure and any other supporting content forming part of Assessments licensed to Customer by Questionmark 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.

- (h) "Assessment Content Fee" means the fee payable for Assessment Content set out on the Applicable Invoice.
- (i) "Authorized Number" means the number of the installs of the Questionmark OnPremise Software or number of Participants, Assessments, User Accounts, Admin Users, Authors, or other numerical limits set forth in the Server Configuration.
- (j) "Business Days" may be specified on the Order. If it is not specified, then "Business Days" shall mean US non-holiday weekdays for Agreements with Questionmark Corporation, UK non-holiday weekdays for Agreements with Questionmark Computing Limited and German non-holiday weekdays for Agreements with Questionmark GmbH.
- (k) "Commercial Use" means any use of the Questionmark OnPremise 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.
- (l) "Consulting Services" means any consulting, installation and/or training services provided by Questionmark to Customer as set forth in an Order.
- (m) "Country of Installation" means the country where the Questionmark OnPremise Software is installed unless otherwise specified within the Server Configuration.
- (n) "Designated Contacts" are the individuals that have been identified, attended a formal training course and are permitted to contact Questionmark for support.
- (o) "Evaluation Purposes" is limited to a Customer's evaluation of the functions and/or hosting requirements of the Questionmark OnPremise Software but not for administering actual Assessments of Participants or any other reason.
- (p) "Fees" means the License Fee, Software Support Fee, Assessment Content Fee and any other agreed fees, as applicable according to the Order.
- (q) "Hosting Services" means to supply computer facilities, services and/or resources for a charge to a third party.
- (r) "License Fee" means the license fee for the Questionmark OnPremise Software, as set out on the Applicable Invoice; if Customer is evaluating the Questionmark OnPremise Software prior to payment, the License Fee is waived for the evaluation Term of License.
- (s) "License Commencement Date" means the date on which the Questionmark OnPremise Software was installed or licensed.
- (t) "Normal Business Hours" may be specified on the Order. If it is not specified, then if the Agreement is with Questionmark Corporation, "Normal Business Hours" shall mean 9:00 a.m. to 5:00 p.m. US Central Standard Time on non-holiday weekdays, 9.30am to 5.30pm UK time on non-holiday weekdays if the Agreement is with Questionmark Computing Limited and 9.00am to 5.00pm Central European Time if the Agreement is with Questionmark GmbH.

- (u) "Order" means the written quotation or SOW provided by Questionmark for a specific Server Configuration for Questionmark OnPremise Software and/or Software Support and/or Consulting Services and/or Assessment Content.
- (v) "Participant" means any person that participates in an Assessment by answering questions or otherwise responding to the Assessment process.
- (w) "Repository" means the database(s) and other files used to store data about the specific configuration details of the Questionmark OnPremise Software installation, integrations, Assessments, people, access control, results, and other related materials.
- (x) "Server Configuration" means the configuration for Questionmark OnPremise Software as defined in an Order or an Applicable Invoice. If Customer deploys this software for Evaluation Purposes, the Server Configuration allows 50 (fifty) Authorized Number of Participants for a Term of License of 14 days from the License Commencement Date. Unless otherwise expressly stated on an Applicable Invoice or Order, 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.
- (y) "Service Request" means a request from Customer to Questionmark for assistance in resolving an issue or error with Questionmark OnPremise Software, as more particularly described in the SLA.
- (z) "Software Support" means support for Questionmark OnPremise Software, as further described in Clause 4.
- (aa) "Software Support Fee" means the fee payable for Software Support, if applicable.
- (bb) "SOW" means a statement of work which defines the services to be provided, deliverables, Fees, invoicing and payment terms.
- (cc) "Support Commencement Date" means the start date for support services as set out on the Order.
- (dd) "Term of Assessment Content License" means the period stated in an Order or Applicable Invoice during which Customer is licensed to access and use Assessment Content.
- (ee) "Term of License" means the term of the license (evaluation or purchase, as the case may be) of the Questionmark OnPremise Software stated in an Order or Applicable Invoice.
- (ff) "Term of Support" means the term of Software Support as stated in an Order or Applicable Invoice.
- (gg) "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 Questionmark OnPremise Software or open source software components which Questionmark has reviewed and included within the Questionmark OnPremise Software. Third Party Software excludes Ancillary Software.
- (hh) "User Account" means the user profile stored within the Repository for an Admin User and/or Participant.

- (ii) "Version" means the version of the Questionmark OnPremise Software as specified on an Order or Applicable Invoice, or if not specified, the most recently available version.

## 2. Grant of License

- 2.1 Grant of License. Questionmark hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use, for Evaluation Purposes only, for the evaluation Term of License, starting on the License Commencement Date, the Version and Server Configuration of the Questionmark OnPremise 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 or sales taxes as applicable), Questionmark grants Customer a non-exclusive, non-transferable, non-sublicensable license to use for the purchase Term of License, starting on the License Commencement Date, the Version and Server Configuration of the Questionmark OnPremise 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 exceeding the Server Configuration 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 Questionmark OnPremise Software, which are necessary, for the purposes of its lawful use pursuant to this Agreement. Customer may also use the Ancillary Software subject to the terms and conditions of the Ancillary Software terms and conditions shipped with the Ancillary Software. All rights not expressly granted to Customer hereunder are reserved by Questionmark, its suppliers, and licensors. Nothing in this Agreement is intended to restrict any rights granted under the Ancillary Software licenses.
- 2.2 Rights. This Agreement grants Customer the following rights for the Questionmark OnPremise Software:
  - (a) Customer may deploy 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 Questionmark OnPremise Software to deliver and administer online Assessments. The Authorized Server may belong to Customer or to an internet hosting service that is using the Questionmark OnPremise 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. In order

for Questionmark to support Questionmark OnPremise Software, Customer must commission an Approved and Supported Install.

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

2.3 User Accounts. Customer is licensed to store within the Questionmark OnPremise Software's Repositories, at any moment in time, data for no more than the Authorized Number of User Accounts specified in the Server Configuration. 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 Questionmark OnPremise Software, the allocated username may be reassigned to another individual.

2.4 Number of Participants and Assessments. Customer is licensed to store within the Questionmark OnPremise Software's Repositories, at any moment in time, data for no more than the Authorized Number of Participants and Assessments specified in the Server Configuration. However if Customer uses an Access Control System, Customer may NOT provide access to the Questionmark OnPremise 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 Questionmark OnPremise 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 and Assessments held in the Repositories, including any deleted within the previous twelve months, does not exceed the Authorized Number of Participants and Assessments. Customer shall permit and provide all cooperation and information requested by Questionmark in any audit regarding compliance with the Server Configuration and Authorized Number of installs, Participants, Assessments and Assessment Content.

2.5 APIs. The Questionmark OnPremise 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 Questionmark OnPremise 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 Questionmark OnPremise 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 Questionmark OnPremise 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 authorized by Questionmark.

### 3. Description of other Rights and Limitations

- 3.1 Intellectual Property Rights. All title and intellectual property rights, including copyrights, in and to Questionmark OnPremise 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. Questionmark OnPremise Software is protected by laws governing intellectual property rights and international treaty provisions. Except as expressly permitted herein, Customer may not copy the Questionmark OnPremise Software, Ancillary Software, Third-Party Software or printed materials accompanying such software. Questionmark OnPremise Software displays and Ancillary Software may display certain copyright notices and licensee information of Questionmark OnPremise Software and Ancillary Software and Customer agrees not to alter, remove, conceal or otherwise interfere with such notices.
- 3.2 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.
- 3.3 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.

- 3.4 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 Questionmark OnPremise 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, and shall take all reasonable efforts to prevent such acts, omissions and breaches and mitigate any losses.
- 3.5 Limitation on reverse Engineering, Decompilation, and Disassembly. Customer may not reverse engineer, decompile, translate, create a derivative work, or disassemble Questionmark OnPremise Software, except and only to the extent that a prohibition imposed by applicable law or legal authority precludes this limitation or its enforcement.
- 3.6 Rental. Customer may not rent, lease, lend or otherwise provide rights to Questionmark OnPremise 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.
- 3.7 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 Questionmark OnPremise 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 Questionmark OnPremise Software is an upgrade, any transfer must include all Customer's prior versions of Questionmark OnPremise Software and any prior versions of the predecessor program Questionmark Perception if licensed by Customer.
- 3.8 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 Questionmark OnPremise Software and subject to the terms and conditions of this Agreement.
- 3.9 Suitability for purpose. The Questionmark OnPremise Software, Ancillary Software, Third-Party Software and Assessment Content is provided "as is" and Customer hereby agrees to bear the entire risk that Questionmark OnPremise Software and Assessment Content will not be suitable for Customer's purpose and all other risks associated with the installation, use and performance of Questionmark OnPremise Software and Assessment Content. 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 Questionmark OnPremise Software is compatible with Customer's equipment configuration, and to test Customer's desired application to ensure that Questionmark OnPremise Software properly supports it.

- 3.10 System software. Customer is responsible for licensing all operating system software, database engine and other system software required by Questionmark OnPremise Software.
- 3.11 Termination. Without prejudice to any other rights, Questionmark may terminate Customer's licenses under this Agreement and use of Software Support if Customer fails to comply with the terms and conditions of this Agreement or fails to pay Questionmark's invoice for the Fees when due. In such event, Customer must destroy all Customer's copies of Questionmark OnPremise Software, Third-Party Software, all of its component parts and Assessment Content. In addition, where an Order specifies that Software Support Fees and/or Assessment Content Fees are payable, notwithstanding any other provision of this Agreement and without prejudice to any other rights, Customer shall cease to be permitted to use the Questionmark OnPremise Software and/or Assessment Content and Questionmark shall not be obligated to provide Software Support and/or Assessment Content if Customer fails to pay Questionmark's invoice for Software Support Fees and/or Assessment Content Fees within thirty (30) days after notice that the same is thirty (30) days or more delinquent, until such time as Customer pays all such outstanding invoices.
- 3.12 Third Party Software. Where Questionmark OnPremise Software includes Third Party Software, Questionmark grants Customer a non-exclusive, non-transferable, non-sublicensable right and license to use the Third Party Software only in connection with Customer's license of Questionmark OnPremise Software and for no other purpose(s). In the event that Customer wishes to use the Third Party Software for any purpose(s) other than in connection with the license of Questionmark OnPremise 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 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.
- 3.13 Upgrades. If Questionmark OnPremise 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 Questionmark OnPremise Software. Customer may use

the resulting upgraded copy of Questionmark OnPremise 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.

- 3.14 United States Government Restricted Rights. Questionmark OnPremise Software and documentation are provided with RESTRICTED RIGHTS. To the extent that a license to Questionmark OnPremise Software is considered a license of software, Questionmark OnPremise Software and associated documentation are “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to 48 CFR 12.212 and 227.7202, and “restricted computer software” pursuant to 48 CFR 52.227-19(a), as applicable. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (b)(1) and (2) of the commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, or 48 CFR 12.212, 48 CFR 52.227-14 (Alternate III), 48 CFR 227.7202, and 48 CFR 1852.227-86, as applicable. The manufacturer is Questionmark Computing Limited/London, United Kingdom.
- 3.15 Wording on purchase orders. Any provision(s) contained within any purchase order or similar document that Customer might provide in ordering the Questionmark OnPremise Software or Support shall have no force or effect, including without limitation modifying, amending or supplementing the terms of this Agreement.
- 3.16 Customer’s responsibility to Participants. Customer acknowledges that Questionmark OnPremise Software may be used to correspond with Participants and to assess a Participant’s knowledge, skills and attitudes and allocate a score. Scores should be considered one piece of evidence about a Participant’s knowledge, skill and/or attitude. When Questionmark OnPremise Software and Assessment Content is being used to make decisions about a Participant, Customer should review and evaluate the Assessment Content and score to ensure that the appropriate decision has been made. Customer is solely responsible for its use of Questionmark OnPremise Software and Assessment Content, including entering and maintaining any of its own Assessment material, checking all material including Assessment Content, checking scores, checking reports, and using Questionmark OnPremise Software and Assessment Content fairly and in a non-discriminatory manner. Should Customer use Questionmark OnPremise Software and/or Assessment Content 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 all materials including Assessment Content, scores, and reports produced by Questionmark OnPremise 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 Questionmark OnPremise Software, Assessment Content or use of the scores to make 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 Questionmark OnPremise Software or Assessment Content, 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 Questionmark OnPremise Software to hold or process personal data. The Parties shall in addition comply with their respective obligations in Schedule 1, if applicable.

3.17 Responsibility in event of Questionmark performing Installation or Upgrade. In the event that an Order or applicable SOW requires Questionmark to install or upgrade software remotely or on-site, responsibilities are divided as follows (unless otherwise detailed in the Order or SOW):

3.17.1 Customer responsibilities:

- a) Set up the Approved Platform with sufficient processing and storage capacity in advance of the install or upgrade;
- b) Apply any required security hardening to the Approved Platform and ensure that all versions of operating systems, database management software and other system software are up to date and that there is a process in place for Customer to receive and apply security updates;
- c) Set up and managing security for the environment including appropriate physical security, network security, antimalware/anti-virus software, firewalls, intrusion detection and security systems, database management and other measures;
- d) Install and configure the system software pre-requisites advised by Questionmark in advance of the install or upgrade;
- e) Backing up any existing Repository or other data in advance of the install/upgrade and backup of the Repository, data and software after the install/upgrade, and setting up a continuous process to backup the Repository and data on an ongoing basis, and run restore tests to check the backup procedures work;
- f) Providing safe and secure access to the environment with sufficient privileges for Questionmark personnel to perform the install or upgrade and for providing Internet connectivity to aid the install;
- g) Make appropriate personnel (including network and database support personnel) available to assist Questionmark in the performance of its responsibilities;
- h) Check and agree all terms of "click through" license agreements which Questionmark is required to install, including those of Questionmark supplied software;

- i) Select, implement and maintain security controls for its access, use, backup, recovery, monitoring and security of the data accessed and stored by Questionmark OnPremise Software;
- j) Remove access or change/reset passwords as applicable for Questionmark personnel after the install is completed and manage authentication and authorization of its Admin Users;
- k) Identify and interpret applicable laws, regulations, and statutes (including but not limited to data privacy laws) that affect Customer's systems, programs, or data to which Questionmark will have access during the Services, and ensure the systems, programs, and data meet the requirements of those laws, regulations and statutes.

#### 3.17.2 Questionmark responsibilities:

- a) Ensure its personnel are well trained in the installation of Questionmark OnPremise Software;
- b) Ensure its personnel installing the Questionmark OnPremise Software follow all reasonable security procedures communicated in advance by Customer;
- c) Use all reasonable efforts to perform the install or upgrade of Questionmark OnPremise Software effectively and within the timelines agreed;
- d) Provide documentation to the Customer as to where and how Questionmark OnPremise Software has been installed or upgraded;
- e) Provide instructions to Customer on how Questionmark OnPremise Software access passwords can be changed after Questionmark has completed the install.

#### 3.17.3 Joint responsibilities:

- a) Where applicable, schedule and attend a kick-off call to agree the installation and configuration timeline and steps;
- b) Make any configuration settings in Questionmark OnPremise Software required post install;
- c) Run tests to check that the software is installed and functioning appropriately.

Any delay in performing Customer responsibilities may result in additional charges and/or delay in completion of the install/upgrade.

## 4. Support

- 4.1 Software Support. The terms of Software Support shall be as set out in this Agreement except as amended in any Order. The software and Server Configuration covered under Software Support and the Term of Support will be as indicated on the Order.
- 4.2 Approved Platform. Customer will be responsible for maintaining and supporting an Approved Platform, for the installed version of Questionmark OnPremise Software. Questionmark is not responsible for maintaining or supporting the Questionmark OnPremise Software unless it is hosted by an Approved Platform.

- 4.3 Approved and Supported Install. Questionmark is responsible for installing the Questionmark OnPremise Software at the start of the Initial Term and Customer shall pay the Fees for such installation. Questionmark will only be required to support the Questionmark OnPremise Software if the software has been installed on an Approved Platform.
- 4.4 Term. Software Support shall be provided during the Term of License. As an exception to the foregoing, for Customers that have a license to Questionmark OnPremise that was migrated from the predecessor program Questionmark Perception, Software Support shall be provided for the Term of Support specified on an Order, after which it shall renew for additional one (1) year terms unless otherwise specified on an Order or terminated by either Party at the end of the then current Term of Support on having provided written notice to the other Party not less than ninety (90) days prior to the end of the then current Term of Support.
- 4.5 Charges and Billing. Charges for Software Support shall be included as part of the License Fee or for Customers that have a license to Questionmark OnPremise that was migrated from the predecessor program Questionmark Perception, shall be separately outlined as Software Support Fees on an Order. Billing shall be annually in advance unless otherwise specified on the Order. 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 judgment). Any invoices not disputed within thirty (30) days of receipt shall be deemed accepted. Questionmark shall be under no obligation to provide any services or products if Customer is in default of its payment obligations. If the license of Software Support is allowed to lapse by Customer, a buy-in fee of thirty-seven and a half percent (37.5%) of the then current list price of Questionmark OnPremise Software will be charged for the first year of Customer becoming licensed for the current version or the first year of Software Support, as applicable. If a newer version of Questionmark OnPremise Software is available, the newer version of the software may be licensed for an upgrade charge that is determined by Questionmark, in its sole discretion, at the time of the release.
- 4.6 Changes in Terms, Conditions, and Fees. Questionmark may change the 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 then current Term of License or Term of Support, as applicable. Customer may, by not less than thirty (30) days written notice to Questionmark, terminate this Agreement 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.

- 4.7 Taxes and Duties. There shall be added to the 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.
- 4.8 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 any problem, certify that the problem is with Questionmark's software, and to certify that the problem has been fixed.
- 4.9 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.
- 4.10 Modifications. Customer must inform Questionmark in writing of any modifications made by it to the Questionmark OnPremise 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 Communications Responsibility and Costs. Customer will be responsible for all costs of any network or Internet connections at its site and the associated line-use charges. Customer may provide remote network access for Questionmark to the environment . Such access will be solely for the purpose of installing and upgrading software, diagnosing and fixing problems and supporting Customer's use of the software. Questionmark shall have no responsibility for any failure or delay in providing the applicable Support Services where Customer fails or delays to provide such access as described in this clause 4.11.
- 4.12 Software Support. During the Term of License, or during the Term of Support for Customers that must and do pay Software Support Fees to receive Software 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 License, or during the Term of Support for Customers that must and do pay Software Support Fees to receive Software Support, Customer contacts that are subscribed to Questionmark's communities will receive:



- (a) Notifications of the new releases when 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 information feeds for product and technical support information.

4.13 Additional Software Support. Additionally, these services will be made available during Normal Business Hours during the Term of License, or for Customers that must and do pay Software Support Fees to receive Software Support, during the Term of Support:

- 1) 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.
- 2) 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 deploying 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 Service Request due to Customer's inactivity. A Service Request 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 endeavours to respond to Service Requests according to the following priorities and response times:
  - a) "Severity 1 issue" means an error isolated to the Questionmark OnPremise Software 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 OnPremise software. All Severity 1 issues have no workaround and Customer and Questionmark shall work closely together 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 OnPremise Software, 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.
  - 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 OnPremise Software 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 with the Questionmark OnPremise Software. 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.
- 3) Visibility of Questionmark Processes. Questionmark will provide regular updates on outstanding issues and share the visibility of the escalation process to Customer

within the guidelines set by the communicated priority.

- 4) Dedicated Technical Support Representatives available for technical consulting, including to be available during high risk periods (such as critical server upgrades) within Normal Business Hours. Dedicated Technical Support Representatives may be scheduled for chargeable consulting activities subject to quotation, agreement and a Statement of Work being accepted.

4.14 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 a new installation of the Questionmark OnPremise Software;
- b. Assistance with an installation of updates to Questionmark OnPremise Software (in excess of two updates per year which are included as part of Support Services without additional charge);
- c. Software Support services outside of Normal Business Hours;
- d. Assistance with configuration of templates;
- e. Assistance with non-Questionmark ("3rd Party") products are 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;
- f. Strategic, business process, and change management consulting;
- g. Product training (whether web based or face-to-face);
- h. Assessment Content, and Assessment content development;
- i. Application and software development (programming);
- j. Systems architecture;
- k. Travelling and/or on-site visits;
- l. Integration support including QMWISe configuration and/or other API configuration.

4.15 Requirement to Install Upgrades. Customer agrees to promptly commission an Approved and Supported Install or, if agreed with Questionmark, otherwise complete an upgrade for new releases, hot fixes and service packs of software covered by the Software Support and agrees that failure to promptly commission such Approved and Supported Install or where agreed to install these new releases, hot fixes and service packs shall release Questionmark from its support obligations under this Agreement and any relevant Orders until such time as the new release is installed. Questionmark shall have no liability or responsibility to Customer or any party where Customer deviates from Questionmark's instructions for upgrade or for Customer error in installing upgrades when Questionmark and Customer agree that Customer may install upgrades of the Questionmark OnPremise Software.

When Questionmark installs the software or upgrades for Customer, then for the limited purposes of installing the software, and without otherwise limiting Section 10.4, Questionmark is acting as an agent for Customer.

- 4.16 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.
- 4.17 Proprietary Rights. All proprietary rights in or to the Questionmark OnPremise Software provided to Customer by Questionmark and all changes, additions, and/or enhancements to such software, including all upgrades, shall remain the sole property of Questionmark.
- 4.18 Termination of Software Support. In the event of termination of Software Support, all Software Support Fees payable for the entire Term of Support, as applicable, 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 Software Support Fee within thirty (30) 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), paying Consulting Services fees for updating the install (if applicable) and paying the then applicable Software Support Fee.

## 5. Consulting Services

- 5.1 Consulting Services. Following a request for Consulting Services, Questionmark may produce a quotation or 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) Business Day period, Customer is deemed to have accepted such Deliverable and Customer waives and releases Questionmark from and against any claim, liability, damage, demand, cost and/or expense, or suit arising from or related to such Deliverable developed by Questionmark on behalf of Customer other than in case of a Third Party IP Claim. In the event the Deliverable is not in material conformance with the terms of the SOW, Customer must notify Questionmark within the ten (10) Business 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, Deliverables are not 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 Deliverables will be set out in the Order.

## 6. Local Laws and Export Control

- 6.1 Export control. Questionmark OnPremise 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 Questionmark OnPremise 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 Questionmark OnPremise 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. 428/2009 (as amended) and the United States Export Administration Regulations, 15 C.F.R. Parts 730-774.

Questionmark, its suppliers, and its licensors make no representation that Questionmark OnPremise Software is appropriate or available for use in other locations. If Customer uses Questionmark OnPremise 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 Questionmark OnPremise 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 and as delivered, the Questionmark OnPremise Software, any Deliverables and Assessment Content do not infringe any patent, copyright or trade secret right of any third party.

When a License Fee or consultancy fee (as applicable) has been paid Questionmark warrants that Questionmark OnPremise 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 an Approved and Supported Install conducted, 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 as "Questionmark Warranted Code" even if not part of Questionmark OnPremise Software. This warranty only applies to Questionmark OnPremise Software, Deliverables and Questionmark Warranted Code as distributed by Questionmark (including updates provided by Questionmark from time to time that are installed by Questionmark or, if applicable, in accordance with Questionmark's instructions).

- 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 or Assessment Content License Fees paid with respect to the just prior three (3) month period and any pre-paid Fees, 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 Questionmark OnPremise Software, Deliverable or Assessment Content has resulted



from modifications (even where such modification is expressly permitted by an applicable open source license), accident, abuse, installation error by Customer or misapplication. Any replacement copy of Questionmark OnPremise 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 Questionmark OnPremise Software was licensed 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 Questionmark OnPremise Software, Deliverable or Assessment Content, 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 Questionmark OnPremise Software, Deliverable or Assessment Content, Questionmark shall: (i) modify Questionmark OnPremise Software, Deliverable or Assessment Content so that it becomes non-infringing but of substantially equivalent functionality; or (ii) replace Questionmark OnPremise Software, Deliverable or Assessment Content 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 Questionmark OnPremise Software, Deliverable or Assessment Content and refund all applicable Fees or relevant consultancy fees paid on a five year use amortization schedule from the License Commencement Date or Assessment Content commencement date, as applicable.

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 Questionmark OnPremise Software, Deliverable or Assessment Content, 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; 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, Questionmark OnPremise Software, Deliverable or Assessment Content; and/or any modification by Customer or any third party of the Questionmark OnPremise Software, Deliverable or Assessment Content. 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, EITHER EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY, WITH REGARD TO QUESTIONMARK ONPREMISE SOFTWARE, ANCILLARY SOFTWARE, THIRD PARTY SOFTWARE, DELIVERABLES, CONSULTING SERVICES, ASSESSMENT CONTENT AND SOFTWARE SUPPORT SERVICES.

7.5 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO CLAUSE 7.6 BELOW, IN NO EVENT SHALL QUESTIONMARK OR ITS SUPPLIERS BE LIABLE FOR (a) ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, 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 QUESTIONMARK ONPREMISE SOFTWARE, ANCILLARY SOFTWARE, THIRD PARTY SOFTWARE, DELIVERABLES, CONSULTING SERVICES, ASSESSMENT CONTENT OR SOFTWARE SUPPORT SERVICES, EVEN IF QUESTIONMARK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBJECT TO CLAUSE 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 QUESTIONMARK ONPREMISE SOFTWARE, SOFTWARE SUPPORT OR DELIVERABLES (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 QUESTIONMARK ONPREMISE SOFTWARE, ANCILLARY SOFTWARE, THIRD PARTY SOFTWARE, DELIVERABLES, CONSULTING SERVICES, ASSESSMENT CONTENT OR SOFTWARE SUPPORT SERVICES, INCLUDING WITHOUT LIMITATION ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, 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 QUESTIONMARK ONPREMISE SOFTWARE, ASSESSMENT CONTENT 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 OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR RESTRICTED BY APPLICABLE LAW.
- 7.7 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN THE EVENT THAT CUSTOMER ORDERS SERVICES FOR AN ADDITIONAL TERM OF SUPPORT, TERM OF LICENSE OR TERM OF ASSESSMENT CONTENT LICENSE, CUSTOMER EXPRESSLY WAIVES AND FOREVER RELEASES QUESTIONMARK FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, LAWSUITS, LIABILITIES, LOSSES, JUDGMENTS, AND/OR COSTS RELATED TO OR IN ANY WAY CONNECTED WITH ALL ITS USE OF THE QUESTIONMARK ONPREMISE SOFTWARE, SUPPORT SERVICES OR ASSESSMENT CONTENT DURING THE INITIAL TERM OF SUPPORT, TERM OF LICENSE AND TERM OF ASSESSMENT CONTENT LICENSE AND ANY PRIOR ADDITIONAL TERMS OF SUPPORT, TERMS OF LICENSE AND TERMS OF ASSESSMENT CONTENT LICENSE.

## 8. Purchase from a Questionmark Reseller

- 8.1 Questionmark Reseller Terms. Notwithstanding the definition of "Order" set forth in Clause 1, if Customer has obtained a license to use the Questionmark OnPremise Software and/or Software Support and/or Consulting Services and/or Assessment Content 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 Questionmark OnPremise Software and/or Software Support and/or Assessment Content only in conformity with such Order, including with regard to the Term and the Server 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 obtained a license to use the Questionmark OnPremise Software and/or Software Support and/or Consulting Services and/or Assessment Content 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/Assessment Content 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.

- 8.3 Reseller Terms. If Customer has obtained a license to use the Questionmark OnPremise Software and/or Software Support and/or Consulting Services and/or Assessment Content 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, Consulting Services or Assessment Content, 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, to only disclose the Confidential Information to their respective employees, affiliates, sub-contractors and agents on a "need to know" basis, and not use the Confidential Information for any other purpose. Confidential Information shall include, but not be limited to the Questionmark OnPremise Software and the specifications and requirements of such, Assessment Content, 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. Receiving Party shall be liable for any breach or violation of this Agreement by its employees, affiliates, sub-contractors and agents.

## 10. General

- 10.1 Applicable law. If Questionmark OnPremise Software is installed in the United States, Canada, Mexico, Central America or South America then this Agreement is a contract with Questionmark as Questionmark Corporation, 333 W 39th Street, Suite 1003, New York, NY 10018, 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 Questionmark OnPremise Software is installed outside these territories and other than as further specified below, this Agreement is a contract with Questionmark as

Questionmark Computing Limited, New Kings Beam House, 22 Upper Ground, South Bank, London SE1 9PD, England, United Kingdom 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.

If the Order is entered into between Customer and Questionmark GmbH, this is a contract with Questionmark as Questionmark GmbH, Hopfenstr. 8, 80335, Munich, Germany and which shall be governed and construed in accordance with the laws of Germany and Customer irrevocably agrees to the exclusive jurisdiction of the Munich 1 courts.

- 10.2 Customer domicile. Should Customer be domiciled in a country outside the United States, England or Germany, as applicable based on the Questionmark contracting entity, 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 the laws of 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.
- 10.4 Independent contractor. The relationship of the Parties is that of independent contractor, and nothing herein shall be construed to create a partnership, joint venture, franchise, employment, or agency relationship between the Parties. Customer shall have no authority to enter into agreements of any kind on behalf of Questionmark and shall not have the power or authority to bind or obligate Questionmark in any manner to any third party.
- 10.5 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.

A copy of this Agreement is installed for reference in a Questionmark OnPremise install directory.

## Schedule 1 – Data Protection

This Schedule 1 (“Schedule”) applies automatically for customers with a licensee address on the Order that is within the European Union or United Kingdom. For other customers, this Schedule applies only if the Order specifies that Schedule 1 – Data Protection is applicable. In each case, this Schedule shall apply only in respect of personal data that is provided to Questionmark by Customer for Software Support or Consulting Services and is subject to the General Data Protection Regulation (EU) 2016/679 (“GDPR”) or Data Protection Act 2018. Otherwise, this Schedule is not applicable and does not form part of the Agreement. In delivering the Services it is not ordinarily expected that Customer will provide Questionmark with access to Personal Data.

Questionmark will make any modified version of this Schedule available to Customer on its website, which modified version becoming applicable on its date of posting providing such modifications do not involve additional obligations on Customer. Any conflict or inconsistency between this Schedule and the other parts of this Agreement shall be resolved in favour of this Schedule in respect of the subject matter hereof.

### 1. Definitions

The following definitions shall apply for this Schedule:

“Data Protection Law” means the 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 that Questionmark processes on behalf of Customer in providing Services 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.

“Services” means the Software Support, Consulting Services and any applicable services relating to Assessment Content, provided by Questionmark to Customer pursuant to this Agreement.

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

2. The subject-matter of the processing is providing Services involving the processing of Customer Personal Data. The duration of the processing is the period during which Questionmark is providing Services to Customer. 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 provided to Questionmark by Customer, including if applicable 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. 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.

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 appropriate technical and organizational measures 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. Questionmark represents that it is certified by a reputable third party against the ISO 27001 standard or a comparable successor standard and upon written request shall provide Customer with copies of its certificates and other reasonably requested documentation about its security.

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 an implicit direction that any Customer Personal Data sent to Questionmark is intended to be processed for investigation, troubleshooting or review purposes.

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. Questionmark's current organizational Subprocessors that may process Customer Personal Data are included within the lists found at [www.questionmark.com/go/od-subprocessors](http://www.questionmark.com/go/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 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, Questionmark may engage a new Subprocessor in emergencies and situations outside of Questionmark's reasonable control, including natural disaster or financial distress of an existing Subprocessor, subject to Questionmark updating the lists of Subprocessors referred to in clause 7.3 as soon as is reasonably practicable.
8. Questionmark shall respect the conditions referred to in Article 28 GDPR paragraphs 2 and 4 for engaging another processor. Questionmark shall ensure all Subprocessors are bound by written agreements requiring them to adhere to the same data protection obligations in accordance with Article 28(3) GDPR, as required by Article 28(4) GDPR. Questionmark shall as between the Parties remain fully liable to Customer for any processing of Customer Personal Data by a Subprocessor.
9. 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 Corporation is self-certified to the EU-U.S. and Swiss-U.S. Privacy Shield frameworks ("Privacy Shields") and will maintain its self-certification and compliance with the Privacy Shields, or other appropriate mechanism whilst processing Customer Personal Data. If required to do so by Data Protection Law, Customer shall complete and submit to Questionmark the Data Transfer and Processing Agreement including the SCCs found at [www.questionmark.com/go/op-dtpa](http://www.questionmark.com/go/op-dtpa) prior to providing any Customer Personal Data to Questionmark.

10. Questionmark shall, 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. The parties agree that the nature of the processing by Questionmark is such that provision of such assistance is inapplicable unless expressly agreed otherwise in a separate agreement.
11. Upon request Questionmark shall 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.
12. Questionmark shall notify Customer without undue delay after becoming aware of a personal data breach in respect of Customer Personal Data.
13. 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 software, which shall be Customer's responsibility) required by Article 30(2) GDPR and make such record available to the supervisory authority on request.
14. Questionmark shall delete all Customer Personal Data after the end of the Services relating to processing, and delete existing copies unless EU law or EU member state law requires storage of the Customer Personal Data.
15. 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 2 – Assessment Content

This Schedule 2 applies only if an Order refers to licensing of Assessment Content by Questionmark to Customer. Any conflict or inconsistency between this Schedule 2 and the other parts of this Agreement shall be resolved in favour of this Schedule 2 in respect of the subject matter hereof.

### 1. Definitions

The following definitions shall apply for this Schedule:

**Licensors** means the organization that authors and owns the Assessment Content. Licensors may be Questionmark or a third party.

**Results Data** means answers, scores, 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 Assessment Content Fees, Questionmark grants to the Customer a non-exclusive, non-transferable, non-sublicensable, royalty-free license and authorization to use Assessment Content with Participants within the Questionmark OnPremise Software only, during the Term of Assessment Content License and subject to the limits and terms of this Agreement and the Order. Questionmark will make the Assessment Content available to Customer for inclusion in the Questionmark OnPremise Software. Assessment Content 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 or other rights in or to any such modifications or derivatives other than to use such modifications or derivatives as Assessment Content under this Agreement. All 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 is "Work Product" or works-for-hire under any applicable laws.
- 2.3 Reports.** It is possible to use the Questionmark OnPremise Software 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 Agreement and the Order and must be kept confidential.

**2.4 Updates.** Neither Licensor nor Questionmark is obliged to provide Assessment Content updates, but if Questionmark or Licensor do produce an update, Questionmark will notify Customer regarding how such update will be made available. 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 only within the Questionmark OnPremise Software. Customer shall at any time upon request promptly certify to Questionmark its use volumes for Assessments commenced, completed and unfinished using Assessment Content. Customer shall not interfere with any tracking mechanism used by Questionmark for measuring usage. Customer shall permit and provide all cooperation and information requested by Questionmark in any audit regarding Assessment Content use volumes, which shall include Questionmark auditing Customer's database to track results counting.

**3.2 Use of Assessments.** Customer agrees to follow any information or documentation provided by Questionmark or Licensor regarding the validity and potential application of the Assessment Content and use of Other Materials (as defined below). Notwithstanding the foregoing, Customer assumes sole responsibility for determining that Assessment Content and Assessments are appropriate and valid for its purposes and requirements.

**3.3 Confidentiality.** Customer shall protect Assessment Content as Confidential Information of Licensor and ensure that Participants do not share it with others. Assessment Content remains Confidential Information of Licensor after termination or expiry of Customer's license to use Assessment Content. Customer shall immediately notify Questionmark of any actual, threatened or suspected breach of confidentiality in respect of Assessment Content and reasonably assist Licensor in responding to such event.

**3.4 Compliance with Laws.** Customer will ensure that its use of Assessment Content complies with all applicable laws.

**3.5 Data processing.** Questionmark may gather and process aggregate data pertaining to Customer's use of Assessment Content, including item analysis, for statistical analysis, product improvement and other related purposes.

**3.6 Assessment Content Fees.** Customer shall pay the Assessment Content Fees in accordance with the Applicable Invoice. Assessment Content Fees are due based on the number of Assessments completed using Assessment Content, however Questionmark may charge Assessment Content Fees for Assessments using Assessment Content that are commenced but not finished if it detects a pattern of such use (excluding due to problems with Questionmark OnPremise Software). If Customer exceeds the limitations on use of



Assessment Content in the Order, Questionmark may charge Customer for the excess use at its then-current list prices. Any Assessment Content volumes not fully utilized during any Term of Assessment Content License may not be carried forward to any future Term of Assessment Content License and no refunds shall be provided in this event.

**3.7 Changes in Terms, Conditions and Fees.** Clause 4.5, 4.6, and 4.7 of the main body of the Agreement shall apply for Assessment Content as if therein references to “Assessment Content,” “Assessment Content Fees,” and “Term of Assessment Content License” are substituted for references to “Software Support,” “Fees” and “Term of License” except that charges for Assessment Content are not included as part of the License Fee or Software Support Fee.

## 4. Intellectual Property

**4.1 Intellectual Property.** Licensor is the owner of the Assessment Content, and no rights of ownership and/or other intellectual property rights in Assessment Content are transferred to Customer. The license granted to Customer is expressly limited to the rights conferred in this Schedule.

**4.2 Restrictions.** 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. Except as expressly permitted by this Schedule, Customer may not copy, download, transmit, redistribute, publish, modify or commercially exploit the Assessment Content or move Assessment Content outside the Questionmark OnPremise Software. Customer may not hide or attempt to hide copyright, trademark or other ownership information or identification of Licensor’s ownership of the Assessment Content.

**4.3 Other Materials.** Licensor retains all ownership rights in any names, logos, marks, templates, scripts, software and documentation accompanying or provided with Assessment Content (“Other Materials”) and Customer acquires no rights in Other Materials except to display and use such Other Materials along with the Assessment Content as expressly permitted or required under this Agreement or applicable law.

**4.4 Infringement.** Customer shall promptly notify Questionmark of any actual, threatened or suspected infringement of intellectual property rights in Assessment Content or Other Materials. Customer shall indemnify and hold Questionmark and/or Licensor and their respective suppliers and licensors harmless from any and all claims, liabilities, damages, costs and/or expenses and suits arising out of any claim that Customer’s use of the Assessment Content or Other Materials violates the intellectual property rights of any other party (including Questionmark or Licensor).

## 5. Support

Questionmark shall make reasonable efforts to provide email support for use of Assessment Content. If Customer has questions about or identifies possible issues with 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 by email. Clause 4 (Support) of the Agreement shall not apply to Assessment Content.

## 6. Termination

**6.1 Assessment Content.** Upon termination or expiry of Customer's license to use Assessment Content, Customer shall immediately cease all use of and delete all Assessment Content from the Questionmark OnPremise Software. Customer shall cooperate with Questionmark in any audit required by Questionmark to confirm deletion of Assessment Content and shall certify such deletion in writing to Questionmark upon request. Customer shall not retain any copies of Assessment Content following termination or expiry of its license to use Assessment Content.

**6.2 Results Data.** Customer may retain Results Data in the Questionmark OnPremise Software after termination or expiry of its license to use Assessment Content. If Results Data retention results in any retention of elements of Assessment Content question wording or choices, such elements of Assessment Content remain the exclusive property of Licensor, may not be used by Customer other than directly with retained Results Data and shall remain Confidential Information of Licensor.