

Questionmark US OnDemand Services Terms and Conditions

These terms and conditions (“Agreement”) shall be applicable to Questionmark’s provision of its “OnDemand” service for assessments and related support to Customer and shall govern all Orders entered into between the Parties with respect to such Services. Questionmark and Customer shall herein be referred to individually as a “Party” and collectively as the “Parties.”

Questionmark expressly limits acceptance to the terms and conditions set forth in this Agreement and the applicable Order. Any terms and conditions contained in a purchase order, request for proposal, order acceptance or similar document from Customer shall not constitute a part of the contract of sale between the Parties. Customer’s registration for, or use of, the Service shall constitute acceptance on the terms and conditions set forth in this Agreement and any additional or different terms proposed by Customer are hereby rejected.

1. Definitions

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

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

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

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

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

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

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

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

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

Commencement Date means the date set out in the Order.

Consulting Services means the consulting and/or training services provided by Questionmark to Customer as set forth on an applicable, mutually agreed upon Order or SOW.

Customer means the Party purchasing the Services provided by Questionmark.

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

Documentation means the audio and visual information, documents, software, products and services contained in the OnDemand Service or made available to Customer in the course of using the OnDemand Service.

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

Enterprise Support means the support and maintenance of the OnDemand Service as more particularly described in Section 14.3.

Fees means the sums payable by the Customer to Questionmark in consideration of the OnDemand Service and Standard Support together with sums payable in consideration of Enterprise Support and Consulting Services, if purchased, and such other services as more particularly described in the Order and any applicable SOW.

Force Majeure Event means any act, event, omission or accident beyond the reasonable control of either Party including, but not limited to, acts of God, war, threat of or preparation for war,

terrorist attack, civil commotion or war, nuclear, chemical or biological contamination, acts of any Government agency after the Effective Date (including restrictions on access to the open internet), fire, flood, earthquake, explosion or accidental damage, any labor dispute, denial of service attacks, non-performance by suppliers (that is itself caused by a force majeure event), interruption or failure of utility or transport service and the unavailability of labor or materials to the extent beyond the reasonable control of the Party affected.

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

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

Order means the written quotation for Services provided by Questionmark.

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

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

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

Questionmark Technology means all and any part of Questionmark's proprietary services, software, hardware, products, processes, algorithms, user interfaces, know how, techniques, designs and other tangible and intangible material or information provided by Questionmark to the Customer (and, at the Customer's request, Participants) as part of the Services. Questionmark Technology does not include Assessment Content.

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

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

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

Service Configuration means options and application program interfaces ("APIs") that have been enabled for the OnDemand Service and the limitations on the number of Assessments and Users that are permitted, which shall be more particularly described in the Order.

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

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

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

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

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

Term means the Initial Term together with any Renewal Term.

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

Users means Admin Users, Authors and Participants.

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

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

2. Questionmark's Obligations

2.1 OnDemand License and Authorization. In consideration of, and subject to, payment of the Fees, Questionmark grants to the Customer (together with its Affiliates) a non-exclusive, worldwide, royalty-free, non-transferable (except in the event of an assignment pursuant to Section 16.1), non-sublicensable license and authorization to access and use the OnDemand Service for the Term. This license shall be subject to the Service Configuration detailed on the Order and the terms of this Agreement. All rights not expressly granted to Customer hereunder are reserved by Questionmark, its suppliers, and its licensors.

Customer shall be responsible for all use of the Services by its Affiliates. On or before the Commencement Date, Questionmark shall provide the Customer with an individual password, identity code or other security code by which Customer may access the OnDemand Service via the internet.

2.2 Consulting Services. Following a request for Consulting Services, Questionmark shall produce a proposal and the Parties shall agree on a final form for the applicable Order or SOW which, when signed by both Parties, shall be the Order for Consulting Services. Customer shall be solely responsible to confirm that the Order satisfies Customer's operational needs and requirements and to identify any necessary modifications to the Order required. The Consulting Services shall be performed and delivered at the times and places listed in the applicable Order. Questionmark shall use commercially reasonable efforts to meet the timelines set in the Order.

2.2.1 Configuration. If an Order requires Questionmark to develop a customized configuration of the OnDemand Service specifically for Customer, upon the delivery of such customized configuration (each a, "**Configuration**"), Customer shall have twenty-one (21) days to review such Configuration for any material non-conformance with the terms of the Order. If the Customer reports any such material non-conformance to Questionmark in writing within the twenty-one (21) day period, Questionmark will remedy such material non-conformance within a commercially reasonable time based on the circumstances, targeted to be within thirty (30) Business Days, to bring it into material compliance with the Order. If the Customer does not report any material non-conformance within the twenty-one (21) day period, the Customer is deemed to accept the Configuration provided Questionmark has made reasonable efforts to confirm material conformance with Customer. If Questionmark is unable to bring the Configuration into material conformance with the Order after this process has been followed three (3) times, Customer may terminate the Order with respect to the Configuration and receive a refund for the returned, non-materially conforming Configuration. Unless specified otherwise on the Order, the Configuration will not be covered by any support plan. Configuration does not include the standard OnDemand Service or any feature thereof.

2.3 Divested Entities. If during the term of this Agreement Customer divests an entity which has been using the OnDemand Service as permitted hereunder (a "Divested Entity"), the Divested Entity shall be allowed to continue to use the OnDemand Service to the extent of its pre-divested use for no more than six (6) months after the date of divestiture, as long as Customer provides reasonable advance written notice to Questionmark and such Divested Entity agrees in writing to comply with the terms of this Agreement (including payment of Fees by Divested Entity if such post-divestment use has not been paid for by Customer). Notwithstanding the foregoing but without limiting any rights or remedies of Questionmark in respect of Divested Entity, Customer shall remain responsible to Questionmark for use of the OnDemand Service by Divested Entity. If any Divested Entity desires to use the

OnDemand Service beyond such six (6) month period, then such Divested Entity must enter into a separate license agreement with Questionmark.

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

3. Customer Obligations

3.1 Service Configuration. Customer may use the OnDemand Service during the Term solely in conformance with the terms of this Agreement, the Service Configuration Permitted Use and applicable laws. If Customer requires an increase in the Service Configuration, further charges may be due. If Customer exceeds the limitations of the Service Configuration, Questionmark may charge Customer for any excess use on a pro rata basis calculated with reference to the then current Order pricing. Questionmark will use commercially reasonable efforts to advise Customer of any such excess use of which it becomes aware.

3.2 Access Control and Usernames. Customer shall not allow any persons to be registered in, to access or use the OnDemand Service in excess of the number of Users authorized in the Service Configuration, measured on a rolling twelve (12) month basis. In the event that a Participant is removed from or no longer uses the OnDemand Service his or her allocated username may not be reassigned to another individual, unless otherwise expressly agreed in the Order. Notwithstanding the foregoing, Customer shall be permitted to exceed the number of Participants authorized in the Service Configuration by no more than ten percent (10%) at any one time (measured on a rolling twelve (12) month basis) where Participants are removed from the OnDemand Service because (i) their participation in Assessments is no longer required or due to associated errors or mistakes and the Customer adds new Participants or (ii) they cease to be employed or engaged by or attend the Customer or otherwise change roles with the Customer and the Customer adds new Participants. In the event that an Admin User or Author is removed from or no longer uses the OnDemand Service the allocated username may be reassigned to another individual. Customer shall not allow more than one individual to use a User Account and shall not share any User Account credentials with more than one individual.

3.3 Password Security. Customer shall keep confidential all usernames, passwords, identification codes and security codes provided by Questionmark and shall notify Questionmark promptly in the event that it suspects the loss or disclosure or any unauthorized use of any such username, password or code. Except for any activity that

occurs more than one (1) Business Day after notifying Questionmark of the suspected loss or disclosure or any unauthorized use of a username, password or code, the Customer shall be liable for any activity carried out under by a User or under any username, password, identification code or security code issued to it and shall take all reasonable efforts to prevent such breach and mitigate any losses.

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

Customer is prohibited from:

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

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

Questionmark may take all reasonable necessary action that it deems appropriate to address violations of this Section 3.7. Refunds or credits are not issued in connection with actions taken for violation of this Section 3.7.

3.8 Export Laws. The OnDemand Service may use encryption technology that may be subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 428/2009 (as amended), and the export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other U.S. governmental agencies, and the export control regulations of Switzerland and the European Union. As applicable,

Customer shall not use the OnDemand Service in, and shall not transfer or otherwise export or re-export any of the underlying information, software, or technology to, countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), and shall not permit such use by or transfer to a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer shall comply strictly with all applicable U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Questionmark warrants that at the Effective Date and as far as it is aware acting in good faith, the Export Control Classification Number (ECCN) for the OnDemand Service licensed by Questionmark hereunder in accordance with the Commerce Control List contained in the United States Export Administration Regulations or other relevant export regulations promulgated by a United States federal agency is EAR99.

- 3.9 Connections to OnDemand Service.** Customer shall, at its own cost, provide all Internet connections, hardware, software and all other equipment necessary to use the Services. Customer is responsible for ensuring prior to entering into this Agreement and during the Term that it is able to access and use the open internet in all jurisdictions in which it intends to use the Services. The inability of Customer or Participants to access and use the Services due to open internet restrictions shall not constitute a Service Incident, Unscheduled Downtime or failure by Questionmark to perform its obligations under this Agreement.
- 3.10 Application Program Interfaces.** Where the Service Configuration permits access to the OnDemand Service through Questionmark Application Program Interfaces ("APIs"), Customer shall only access the OnDemand Service through the APIs listed in the Order and in accordance with the documentation and instructions provided by Questionmark.
- 3.11 System Requirements.** The Services may only be used via compatible systems and/or compatible browsers. Questionmark maintains a list of compatible systems and/or browsers on its web site and may update the system specifications at its reasonable discretion.
- 3.12 Cooperation.** Customer shall provide Questionmark all access to information reasonably requested to enable Questionmark to provide the Services. Questionmark has no liability for any failure or delay to provide the Services to the extent such failure or delay is caused by Customer's failure to provide such information.
- 3.13 Data Backup.** The OnDemand Service includes a function for archiving and exporting Assessments, results and other data. Questionmark shall not be responsible or liable for Customer's deletion, correction, destruction, damage, loss or failure to store any such information or Customer Data including, but not limited to, an event where Customer fails

to make regular backups. Without limiting Customer's responsibility to backup and Questionmark's disclaimer of responsibility or liability as described in the immediately foregoing sentence, Questionmark shall make commercially reasonable efforts to make at least daily backups of Customer Data.

- 3.14 Code Upload.** If Customer wants to upload any executable software code into the OnDemand Service, Customer will pass such code to Questionmark prior to such upload, so that Questionmark can undertake an appropriate security vulnerability review and Customer shall pay Questionmark's reasonable, pre-agreed associated service charge for this review. For clarity, such a review is undertaken by Questionmark for the purposes of security of the OnDemand Service without warranty to Customer.
- 3.15 Assessment Content.** Customer shall comply with Schedule 2 in the event an Order refers to Customer licensing Assessment Content from Questionmark.

4. Fees

- 4.1 Fees.** In consideration of the Services, Customer shall pay all Fees in full and cleared funds and in the currency specified in the Order to the account or address designated by Questionmark from time to time. Where Customer has purchased Consulting Services, Questionmark shall invoice, and Customer shall pay, the relevant Fee for such Consulting Services as set out in the applicable Order. All Fees for pre-paid Services are non-refundable except in the event of termination by Customer for cause under Section 5.2.
- 4.2 Payment Terms.** All invoices shall be due and payable by Customer within 30 days of receipt of a valid and undisputed invoice, unless otherwise stated in the Order. Any invoices not disputed within forty-five (45) days of receipt shall be deemed accepted.
- 4.3 Taxes.** All Fees are exclusive of any applicable sales, use or value added taxes, import duties or other taxes, fees or levies imposed on the Services, whether now in force or demanded by any governmental entity at any later time, which if applicable Questionmark may collect from Customer for remittance to an applicable governmental entity. Upon request, Questionmark shall provide Customer with a valid tax identification number on a U.S. Internal Revenue Service Form W-9. All payments to be made by Customer to Questionmark under this Agreement shall be without set-off and without any deduction or withholding for any taxes, duties, imports, fees or charges. Should any taxes be due or demanded outside the United States based upon use of the Services by Customer, they will be wholly payable by Customer. Customer shall not be responsible for any taxes based on Questionmark's net income. No taxes shall be collected by Questionmark when Customer provides to Questionmark a valid relevant tax exemption certificate.
- 4.4 On-site Services.** On-site visits are not normally required. When on-site visits are requested by Customer an Order or SOW will document the Consulting Services required

and Customer shall pay Consulting Services Fees and Questionmark's reasonable out of pocket expenses incurred pursuant to such on-site visit including travel, lodging and subsistence, where applicable consistent with Customer's then current reasonable travel and expenses policy.

- 4.5 Renewal Fees.** Questionmark may change the Renewal Fees by giving 60 days' written notice to Customer prior to the expiration of the Term then in effect and such changes shall become effective upon the commencement of such Renewal Term.
- 4.6 Fees for Data Storage.** Use of the OnDemand Service allows unlimited storage for items, definitions, textual data, assessment definitions and results data but not for graphics, audio, video, and other multimedia files ("Media Files"). The maximum storage provided without additional charge to Customer for Media Files is specified on the applicable Order. If the amount of storage required for Media Files exceeds this limit, Customer will be invoiced in arrears for the reasonable additional storage fees as specified on the applicable Order but only if excess use continues for more than thirty (30) days after Questionmark provides notice of such excess use to Customer.
- 4.7 Credit cards.** If the Order references payment by credit card or if the Customer uses a credit card to pay, Questionmark may deduct Renewal Fees or other Fees when due from Customer's credit card.
- 4.8 Other Services.** The following are not included as part of the OnDemand Service but may be purchased as Consulting Services: troubleshooting integration issues and creating integration solutions with third party products, Assessment content development, Assessment content conversion, programming, configuration, assistance with template creation and Assessment style modification.
- 4.9 Questionmark's Remedies for Non-Payment.** Questionmark reserves the right to suspend or terminate this Agreement and Customer's access to the Services when payment has not been received within sixty (60) days of the due date, provided that Questionmark has given Customer notice of non-payment and such proposed suspension or termination. Questionmark reserves the right to impose a reasonable reconnection fee if Customer's account is suspended or terminated. Questionmark has no obligation to retain Customer Data and such Customer Data may be irretrievably deleted if Customer's account remains delinquent for more than ninety (90) days from date of suspension or termination.
- 4.10 Questionmark Reseller Terms.** If Customer has purchased the OnDemand Service from a Questionmark reseller, the terms of this Section 4 that contemplate payment directly from Customer to Questionmark are superseded by Customer's payment arrangement with such reseller and payment to Questionmark shall be made by such reseller. Notwithstanding the prior sentence, if such reseller fails to make timely payment of fees to Questionmark, Questionmark shall be entitled to all remedies available herein with regard to the termination of this Agreement and/or termination or suspension of the OnDemand

Service as if such payment had been due directly from Customer and, in the event that Customer has made payment to such reseller, Customer's sole recourse and remedy shall be against such reseller.

5. Term and Termination

5.1 Term. The Term of Customer's license to the OnDemand Service and access to the accompanying level of support services purchased by Customer shall begin on the Commencement Date and continue for the Initial Term. Thereafter, unless otherwise specified on the applicable Order, this Agreement and such license and accompanying support services shall be automatically renewed for additional one (1) year terms at the end of each Term unless either Party provides written notice of cancellation to the other Party at least thirty (30) days prior to expiration of the Term then in effect. Upon commencement of each Renewal Term, Questionmark will issue an invoice to Customer for the Renewal Fee for such Renewal Term.

5.2 Termination.

5.2.1 Termination for Cause. In addition to any other remedy that either Party has pursuant to this Agreement, either Party may terminate this Agreement for cause if: (i) the other Party materially breaches any term or condition of this Agreement, including, but not limited to, the payment of Fees, and fails to cure such breach within thirty (30) days after written notice of the same; (ii) the other Party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other Party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within ninety (90) days of filing.

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

5.3 Effect of Termination.

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

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

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

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

6. Confidential Information

6.1 Any prior non-disclosure agreements in force between the Parties shall remain valid and binding obligations in respect of disclosures made prior to the Effective Date by Questionmark and Customer, notwithstanding execution of this Agreement, unless otherwise provided for in those earlier non-disclosure agreements.

6.2 During the Term of this Agreement each Party (the "Disclosing Party") might disclose to the other Party (the "Receiving Party") written and/or oral information that the Disclosing Party considers to be Confidential Information (as defined herein). For the purpose of this Agreement, "Confidential Information" shall include, but not be limited to, the Questionmark Technology, Documentation, any Assessment Content, Customer Data, usernames, passwords, Questionmark's pricing, information of the Disclosing Party specifically marked or referenced as confidential, any information of public bodies or institutions that is defined or to be treated as such under federal or state laws and any and all other information which should reasonably be understood to be confidential or proprietary by the Disclosing Party. The term "Confidential Information" does not include information that (i) becomes generally available in the public domain, except as a result of a breach or violation of this Agreement by the Receiving Party; (ii) is in the possession of the Receiving Party prior to disclosure by the Disclosing Party, provided that the Receiving Party did not receive the information from a third party bound by any confidentiality obligation(s) to the Disclosing Party; and/or (iii) is developed or created by the Receiving Party independent from and without reference to Confidential Information disclosed by the Disclosing Party.

6.3 The Receiving Party shall give the Confidential Information of the Disclosing Party confidential treatment during the Term and after termination of this Agreement. The

Receiving Party shall use the Confidential Information only in connection with Receiving Party's performance under or in compliance with this Agreement and will not disclose Confidential Information to any third parties without the prior written consent of the Disclosing Party. The Receiving Party may disclose Confidential Information to each of its Representatives on a "need-to-know" basis only in connection with such Representatives' performance under, or compliance with, this Agreement; provided that the Receiving Party informs such Representative of the confidentiality obligations contained herein. Receiving Party shall be liable for any breach or violation of this Agreement by its Representatives. "Representatives," with respect to any Party, means its Affiliates and its and their respective directors, officers, employees, subcontractors, advisors and/or agents (including, without limitation, attorneys and accountants).

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

7. Security

Questionmark shall maintain information and physical security policies and procedures to protect Customer Data consistent with good industry practice. Questionmark represents and warrants that it is certified by a reputable third party against the ISO 27001 standard or comparable successor standard, and that its production data center used to deliver Assessments is audited, no less than annually, by a reputable third party against the SSAE 18 or ISO 27001 standards or comparable successor standards. On request, Questionmark shall provide to Customer copies of its certificates and a summary of the then current audit report for its production data center, if available, or such other generally provided documentation or information demonstrating compliance with such standards. Questionmark shall use reasonable efforts to respond to Customer questions regarding its security practices. Any reports, summaries thereof or information provided is Confidential Information of Questionmark. Questionmark shall use commercially reasonable efforts not to include in the OnDemand Service any computer viruses, malware, disabling devices or contaminants the purpose of which is to damage Customer's computer systems ("Contaminants"). Any feature of the OnDemand Service that monitors the Service Configuration or disables access to the OnDemand Service at the end of the Term is not a Contaminant.

8. Compliance with Laws and Data Protection

- 8.1 Customer Data.** Customer is responsible for the accuracy, quality, legality, reliability, appropriateness, intellectual property ownership and right of use of Customer Data, including ensuring that Customer Data is transmitted to and processed in the Services by Customer and provided to Questionmark in accordance with applicable laws, including for operation and maintenance of the Services, which Customer instructs Questionmark to undertake.
- 8.2 Data Protection.** Questionmark shall be deemed to be a "processor" and Customer a "controller" as such terms are understood and/or defined in data privacy laws with regard to Customer Data or the information passing through the OnDemand Service. Customer is responsible for ensuring that its use of the OnDemand Service and all information that the OnDemand Service receives and transmits pursuant to such use complies with all applicable local, state, national and foreign laws, treaties and regulations, including, without limitation, any applicable data protection and human rights laws regarding the transmission and processing of personal information. The Parties shall comply where applicable with their respective obligations in Schedule 1.
- 8.3 EU-US and Swiss-US Privacy Shield.** Questionmark shall maintain appropriate arrangements to certify itself under the EU-US and Swiss-US Privacy Shield frameworks, documented at <https://www.privacyshield.gov> ("Privacy Shield"), for as long as the Privacy

Shield remains supported by the US government, European Union and Switzerland respectively.

- 8.4 Protected Health Information.** Customer warrants and represents that it will not upload to the OnDemand Service or otherwise provide Questionmark with access to Protected Health Information as defined at 45 C.F.R. § 160.103 (“Protected Health Information”) unless and until the Parties agree and execute a separate HIPAA business associate agreement that provides for the satisfactory assurances required by 45 CFR § 164.502(e)(2) (“HIPAA BAA”). The Parties acknowledge and agree that the terms of the HIPAA BAA shall be exclusively applicable to Protected Health Information subsequently used by Customer in a defined area within the OnDemand Service to which Questionmark has access. Questionmark disclaims all responsibility and liability in respect of Protected Health Information that Customer may upload to the OnDemand Service prior to execution of a HIPAA BAA, or provided to Questionmark by Customer otherwise than as agreed between the Parties in a HIPAA BAA.
- 8.5 FCPA Compliance.** The Parties shall comply with all applicable U.S. anti-bribery and anti-corruption laws. In accordance with the provisions of the Foreign Corrupt Practices Act, the Parties shall not, either directly or indirectly, in order to assist in obtaining or retaining business for or with, or directing any business to, any person, make or cause to be made, a payment of money or offer, gift, promise to give or authorize the giving of anything of value to any foreign official or to any foreign political party or official thereof for the purposes of influencing any act or decision of that person in his, her or its official capacity, inducing that person to do or omit to do any act in violation of his, her or its lawful duty, securing any improper advantage or inducing that person to use his, her or its influence to affect or influence any official act or decision by such person.
- 8.6 FERPA.** If Customer is an educational agency or institution under the Family Educational Rights and Privacy Act and its implementing regulations (20 U.S.C. § 1232G; 34 Part 99)(“FERPA”), Questionmark acknowledges that for the purposes of this Agreement, Customer Data may include personally identifiable information from education records that are subject to FERPA (“FERPA Data”). To the extent Questionmark receives FERPA Data when providing the Services, Questionmark will in respect of such FERPA Data be functioning as a “school official” with legitimate educational interests as defined in FERPA, and will comply with FERPA. Customer understands Questionmark may have no or limited contact information for Customer’s students and students’ parents and that Customer shall be responsible for obtaining any consent to use of the OnDemand Service that may be required under applicable law, including where required from students’ parents.

9. Intellectual Property

- 9.1 Questionmark Intellectual Property.** Customer acknowledges

9.1.1 That any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, in Questionmark Technologies and any relevant Documentation or material provided by Questionmark will remain the sole property of Questionmark and its licensors.

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

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

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

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

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

10. Warranties

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

10.2 Questionmark Representations. Questionmark represents and warrants that (i) it will provide the OnDemand Service in a manner consistent with reasonably applicable general industry standards; (ii) the OnDemand Service will perform substantially in accordance with the online Documentation under normal use and circumstances; (iii) it will comply with

mandatory, generally applicable local, state, national and foreign laws, treaties and regulations including = data privacy laws in connection with Questionmark's performance under, and compliance with this Agreement of jurisdictions from which Questionmark provides the OnDemand Service; and (iv) as delivered, the OnDemand Service, Documentation and the Questionmark Technology will not violate any intellectual property rights of third parties.

10.3 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, QUESTIONMARK HEREBY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

Except as expressly provided herein, Questionmark, its suppliers, and its licensors do not represent or warrant that use of the OnDemand Service will be secure, timely, uninterrupted, error-free or operate in combination with any other system or data. Questionmark shall not be liable or otherwise responsible for any damage to, or loss of, Customer Data or any third party data provided by Customer, except to the extent caused by Questionmark. The Services might be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Although Questionmark will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events consistent with good industry practice and except as otherwise expressly provided in Section 14, Questionmark disclaims all liability or responsibility resulting from or related to such events.

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

11. Indemnity

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

connection with, the Services, other than to the extent due to reasons for which Questionmark is providing indemnification in Section 11.2, and (ii) infringement or misappropriation of a patent, copyright, trademark or other similar intellectual property or ownership right of a third party that results from the combination of the Services with the Customer Data and any other products, services, or business process(s) used, provided, licensed, or owned by Customer, and that would not have occurred but for such combination, including that results from Customer's breach of Schedule 2.

11.2 Questionmark's Indemnification. Questionmark shall indemnify, defend and hold Customer and Customer's parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents ("Customer's Indemnified Parties") harmless from and against all third party Losses to the extent arising out of or in connection with (i) Questionmark's infringement or misappropriation of a patent, copyright, trademark or other similar intellectual property right of a third party other than to the extent resulting from the circumstances described in Section 11.1(ii); (ii) personal injury (including death) and damage to tangible property caused by Questionmark's negligence or willful misconduct. Questionmark's obligations under Section 11(2)(i) shall not apply if the infringement or misappropriation arises from (a) an instruction from Customer that is infringing; or (b) modification of the OnDemand Service without Questionmark's approval and without which such infringement would not have occurred.

11.3 Indemnification Procedure. The indemnifying Party's ("Indemnifying Party") obligations to the indemnified Party ("Indemnified Party") in this Section 11 is subject to the following: (i) Indemnifying Party shall be notified in writing promptly of any such claim or demand, but failure to provide such notice shall not relieve the Indemnifying Party of its obligations except to the extent such delay adversely impacts the Indemnifying Party, (ii) Indemnifying Party shall have sole control of the defense of any action or such claim or demand and of all negotiations for its settlement or compromise; and (iii) Indemnified Party shall cooperate with Indemnifying Party in a reasonable way and at Indemnifying Party's expense to facilitate the settlement or defense of such claim or demand. The Indemnified Party may, at its expense and option, use counsel of its choosing to observe the defense of any such claim or demand. Indemnifying Party may not settle or otherwise dispose of a claim or demand that includes a finding or admission of culpability of, requires payment or performance on the part of, or otherwise materially adversely affects or admits fault or liability on the part of, the Indemnified Party without Indemnified Party's prior written consent, which consent shall not be unreasonably withheld.

12. Limitation of Liability

Except to the extent otherwise contemplated in Section 14, if an Assessment does not perform properly due to the fault of the Questionmark Technology, Questionmark shall allow the affected Participants to retake the Assessment at no additional charge to

Customer and this shall be Customer's remedy for such non-performance by Questionmark.

IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY EXCEED THE GREATER OF THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM OR ONE HUNDRED THOUSAND (100,000) UNITED STATES DOLLARS AND IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICES, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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

QUESTIONMARK SHALL HAVE NO LIABILITY WITH RESPECT TO CUSTOMER'S USE OF THE SERVICES WHERE QUESTIONMARK IS PROVIDING A FREE TRIAL.

13. Insurance

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

14. Support

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

14.2 Standard Support.

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

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

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

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

14.2.5 Questionmark will use reasonable efforts to respond to requests for assistance, up to a maximum of twenty (20) hours per month without accumulation of unused hours from one month to the next, during Working Hours to the extent described below:

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

	workarounds where answers could not be found in the manuals or knowledge base items.	standard and 24 x 7 for an additional fee.
3rd Line Technical Support	Resolve software issues with the OnDemand Services in a manner that does not consume support hours.	Provided by Questionmark and included as standard.
Chat Technical Support	Provide assistance to Designated Contacts using 24 x 7 browser text chat sessions and VoIP to help resolve issues.	Provided by Questionmark for an additional fee.
Participant Support	Provide assistance by phone, email, chat sessions, etc. to the Participant to assist them to use any part of the Service.	This is NOT a service currently provided by Questionmark, and is the responsibility of Customer.
Proctor/Invigilator Support	Provide assistance by phone, email, chat sessions, etc. to proctor/invigilators to assist them with the proctoring/invigilation process including but not limited to the use of Service.	This service is available from Questionmark for an additional fee.
Consulting Support	Provide assistance with template creation and modification to change look-and-feel of assessment, assessment content import, content transformations, custom development, support of custom development, consulting services, training services, data format changes, etc.	Defined within an Order and delivered for a fee that depends on the scale of the work required.

14.2.6 Questionmark will also provide free access to Designated Contacts to product and technical support information, online knowledge bases, manuals, Best Practice Guides, White Papers and news feeds.

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

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

14.3 Enterprise Support Service Level Agreement.

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

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

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

<p>Severity 1</p>	<p>An error isolated to the OnDemand Service that renders the service inoperative or causes the service to fail catastrophically, i.e. major system impact or system outage. This issue must be resolved before the Customer can use the OnDemand Service. All Severity 1 Issues have no workaround and Customer and Questionmark shall work closely together in order to resolve the error as soon as possible. Severity 1 issues are extremely rare and Questionmark escalates these issues to its highest priority.</p>	<p><u>Initial Response Time</u> (by email or callback) is within four (4) hours during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is four (4) hours during Working Hours.</p>
<p>Severity 2</p>	<p>An error isolated to the OnDemand Service which causes a serious impairment to a critical feature of the OnDemand Service, but where overall functionality is not interrupted. Usually a workaround is available for this type of issue, but such is not always the case. Questionmark will resolve all Severity 2 issues as soon as possible.</p>	<p><u>Initial Response Time</u> (by email or callback) is within eight (8) hours during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is four (4) hours during Working Hours during the</p>

		first three (3) Business Days and then updated as needed thereafter.
Severity 3	An issue that causes the failure of a noncritical aspect of the OnDemand Service and a satisfactory work-around already exists but the presence of this issue will result in User dissatisfaction.	<u>Initial Response Time</u> (by email or callback) is within two (2) Business Days during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is two (2) Business Days for the first week and as needed thereafter. Solution is provided as part of a future release.
Severity 4	An issue of minor significance. A slight variance exists between the product documentation and how the application actually performs.	<u>Initial Response Time</u> (by email or callback) is within two (2) Business Days during Working Hours. Customer update is every five (5) Business Days, during the first month, and as needed thereafter. Solution is provided as part of a future release at Questionmark's discretion.

14.3.4 Targeted Availability. The Assessment Delivery Service is targeted to be available to Customer twenty-four (24) hours a day, seven (7) days a week, at least 99.9% of the time measured on a monthly basis, excluding Scheduled Maintenance, Emergency Maintenance or due to a Force Majeure Event.

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

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

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

15. Notice

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

16. Miscellaneous

- 16.1 Assignment.** This Agreement may not be assigned by either Party without the prior written approval of the other Party, but may be assigned without consent of either Party, to (i) a parent, Affiliate or subsidiary entity of either Party, (ii) an acquirer of substantially all of the assets of either Party, or (iii) a successor of either Party by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Questionmark directly or indirectly owning or controlling 25% or more of Customer shall entitle Questionmark to terminate this Agreement for cause immediately upon written notice.
- 16.2 Dispute Resolution.** In the event of a dispute or other controversy between Questionmark and Customer arising out of this Agreement (“Dispute”), the disputing Party will give notice of the nature of the Dispute with reasonable detail to the other Party in writing (“Dispute Notice”). Following receipt of a Dispute Notice, neither Party shall suspend performance or terminate this Agreement until the dispute resolution procedures of this Section 16.2 have been followed. The Parties shall attempt to resolve Disputes promptly, initially by discussions between their respective representatives with day to day responsibility for administration of the Agreement, with escalation to senior management if the Dispute remains unresolved after thirty (30) days of receipt of a Dispute Notice. The Parties shall each make themselves reasonably available for purposes of attempting to resolve the Dispute. The Parties shall document the resolution of any Dispute in writing. If the Dispute remains unresolved after a period of sixty (60) days following receipt of a Dispute Notice, either Party may pursue other remedies. Notwithstanding the foregoing, either Party may take any action to safeguard Confidential Information or business operations without resorting to the dispute resolution procedures of this Section 16.2 and such actions shall not constitute a breach of this Agreement.

- 16.3 Force Majeure.** Neither Party shall be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (save for obligations on Customer to make payment) arising from or attributable to a Force Majeure Event provided that it promptly notifies the other Party in writing and uses all reasonable endeavors to mitigate the effect of the Force Majeure Event. Either Party shall be entitled to terminate this Agreement in the event that a Force Majeure Event endures for sixty (60) days.
- 16.4 No Waiver.** Failure by either Party to exercise or enforce any right or benefit conferred by this Agreement will not be deemed to be a waiver of any such right or benefit nor operate to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 16.5 Severability.** If any provision, or part provision, of this Agreement, is held by a court or competent authority to be invalid, illegal, or unenforceable, that provision or part provision shall be deemed deleted and the remainder of this Agreement shall continue in full force and effect.
- 16.6 Amendments.** No amendment of this Agreement shall be effective unless in writing and signed by the Parties.
- 16.7 Entire Agreement.** This Agreement, which includes the applicable Schedules, together with any Order (as defined herein) contains the entire understanding of the Parties regarding the subject matter hereof and supersedes any prior discussions or agreements concerning such subject matter. If Customer has purchased the OnDemand Service from a Questionmark reseller and the terms of any agreement or documentation between Customer and such reseller conflict with the terms of this Agreement, (i) Questionmark shall be entitled to perform and enforce this Agreement in accordance with its terms, (ii) as between Questionmark and Customer, the terms of this Agreement shall govern, and (iii) Customer's sole recourse and remedy for any loss, damage, expense or other liability caused by such conflict shall be against such reseller.
- 16.8 Reliance.** Customer acknowledges that Questionmark has set its prices and entered into this Agreement in reliance on the limitations of liability and disclaimers of warranties and damages set forth herein, and that the same form an essential part of the bargain between the Parties.
- 16.9 Independent Contractor.** The relationship of the Parties is that of independent contractor. Nothing herein shall create a partnership, joint venture, franchise, employment, or agency relationship between the Parties. Customer has no authority to enter into agreements of any kind on behalf of Questionmark and has no power or authority to bind or obligate Questionmark in any manner to any third party.

16.10 Governing Law and Forum. This Agreement shall be governed by Connecticut law (Connecticut being a state in the United States), without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the state and federal courts in Bridgeport, Connecticut.

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

16.11 U.S. Government Restricted Rights. If the OnDemand Service is licensed to or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with RESTRICTED RIGHTS. To the extent that a license of the OnDemand Service is considered a license of software, the OnDemand Service and accompanying Documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display or disclosure of the OnDemand Service and accompanying Documentation by the U.S. Government are subject to restrictions as set forth in this Agreement and pursuant to 48 C.F.R. 12.212, 52.227-14 (Alternate III), 52.227-19, 227.7202, and 1852.227-86, as applicable.

Schedule 1 – Data Protection

This Schedule 1 shall apply to any processing by Questionmark of personal data that is subject to the GDPR (as defined below) on behalf of Customer and subject to Customer giving Questionmark written notice prior to making any such personal data available to Questionmark for processing. Any conflict or inconsistency between this Schedule 1 and the other parts of this Agreement shall be resolved in favor of this Schedule 1 in respect of the subject matter hereof.

1. Definitions

The following definitions shall apply for this Schedule:

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

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

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

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

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

3. The Customer agrees that:

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

- 3.2 Customer shall be solely responsible for its compliance with Data Protection Law and all other laws applicable to Customer in using the Services including its use of Customer Personal Data. The Customer confirms that it is permitted to transmit to Questionmark for processing under this Agreement all Customer Personal Data without breach of any law, agreement, arrangement or duty or the rights of any third party.
- 3.3 The technical and organisational measures employed by Questionmark are detailed at www.questionmark.com/go/us-od-measures. Questionmark may update the technical and organizational measures from time to time and will make any updated version available to Customer at www.questionmark.com/go/us-od-measures and notify Customer only if there is a material reduction in measures.
4. Questionmark shall take all measures required pursuant to Article 32 of the GDPR, taking into account the state of the art, costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.
5. Questionmark will ensure that persons authorized to access Customer Personal Data have committed themselves to confidentiality even after their engagement ends.
6. When processing Customer Personal Data, Questionmark shall:
- 6.1 Implement the appropriate technical and organizational measures referred to in clause 3.3 in such a manner designed to ensure that processing will meet the requirements of Data Protection Law and ensure the protection of the rights of data subjects.
- 6.2 Only process Customer Personal Data upon Customer's instructions (including for operation and maintenance of the Services and as otherwise present in this Agreement), including regarding transfers of Customer Personal Data to a third country, unless required to do so by EU or EU member state law (including UK law) to which Questionmark is subject; in such case Questionmark shall inform Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. 'Customer's instructions' include the terms of this Agreement and any configuration of the Customer's instance of the Services made by the Customer.
7. Questionmark may:
- 7.1 Engage Subprocessors in accordance with this Agreement.
- 7.2 Continue to use the Subprocessors engaged by it prior to the Order date, subject to compliance with its obligations under Data Protection Law. A list of Questionmark's current organizational Subprocessors is provided to Customer at www.questionmark.com/go/us-od-subprocessors.

- 7.3 Not engage a new Subprocessor without providing prior written notice and opportunity to object to Customer. Questionmark shall satisfy this obligation by updating its list of organizational Subprocessors referred to at clause 7.2 above at least 28 days prior to authorizing a new organizational Subprocessor. Customer provides general written authorization to Questionmark's present and future engagement of individual, natural person contractors who are under obligations of confidentiality, and may obtain notice of such contractors at any time by requesting a list from Questionmark. Any objections to a new Subprocessor must be received within 28 days of notification, otherwise Customer is deemed to accept the new Subprocessor. If Customer reasonably objects to a new Subprocessor and such objection cannot be satisfactorily resolved within a reasonable time, Customer may terminate this Agreement without penalty upon 30 days' written notice to Questionmark. If Customer's objection remains unresolved 30 days after it was raised and no notice of termination has been received, Customer is deemed to accept the new Subprocessor.
- 7.4 Notwithstanding clause 7.3, Customer agrees that Questionmark may engage a new Subprocessor in emergencies and situations outside of Questionmark's reasonable control, including natural disaster or financial distress of an existing Subprocessor, subject to Questionmark updating the lists of Subprocessors referred to in clause 7.3 as soon as is reasonably practicable.
8. Questionmark shall respect the conditions referred to in Article 28 GDPR paragraphs 2 and 4 for engaging another processor. Questionmark shall ensure all Subprocessors are bound by written agreements requiring them to adhere to the same data protection obligations in accordance with Article 28(3) GDPR, as required by Article 28(4) GDPR. Questionmark shall remain fully liable to Customer for any processing of Customer Personal Data by a Subprocessor.
9. Questionmark's production data center used to deliver Assessments is located in the United States. Customer agrees that Questionmark may transfer Customer Personal Data to other countries (and process and provide access to such data in those other countries) for purpose of its provision of the Services, subject to Questionmark complying with its obligations in this Schedule 1, including clause 7, and providing that appropriate technical and organizational measures are implemented.
10. Questionmark shall:
- 10.1 Taking into account the nature of the processing, assist Customer by appropriate technical and organizational measures, insofar as is possible, for fulfilment of Customer's obligation to respond to requests for exercising data subject rights laid down in Chapter III GDPR in accordance with this clause 10.1.
- 10.1.1 Questionmark shall as permitted by applicable law and without undue delay notify Customer if it receives a request from a data subject in respect of that

person's Customer Personal Data. Questionmark shall not respond to a data subject request except to confirm the request relates to Customer.

10.1.2 To the extent Customer is unable to respond to the data subject request through general functionality of the Services, Questionmark shall upon request make commercially reasonable efforts to assist Customer for this purpose. In the event of assistance requiring significant time and/or resources by Questionmark, to be judged by Questionmark acting reasonably, Customer shall be responsible for the reasonable, pre-agreed costs arising from such assistance.

10.1.3 Notwithstanding the foregoing, Customer agrees that any restriction of processing Customer Personal Data is the exclusive responsibility of Customer.

10.2 Upon request provide reasonable assistance to Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of processing and information available to Questionmark. Such assistance shall be subject to Customer's payment of reasonable pre-agreed charges where the assistance required is not part of Questionmark's standard services then provided to all customers.

11. Questionmark shall notify Customer without unduly delay after becoming aware of a personal data breach in respect of Customer Personal Data.

12. Questionmark shall maintain a record of all categories of processing activities carried out on Customer Personal Data by Questionmark on behalf of Customer (for clarity excluding processing by Customer within the Services, which shall be Customer's responsibility) required by Article 30(2) GDPR and make such record available to the supervisory authority on request.

13. Questionmark shall at the choice of Customer, delete or make available all Customer Personal Data stored in the OnDemand Service for return to Customer within thirty (30) Business Days after the end of the Services in a reasonable standard file format, and delete existing copies unless EU law or EU member state law requires or permits storage of the Customer Personal Data.

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

questionnaires from Customer. Additional audit requirements shall be subject to separate written agreement of the Parties.

Schedule 2 – Assessment Content

This Schedule 2 applies if an Order refers to licensing of Assessment Content to Customer. Any conflict or inconsistency between this Schedule 2 and the other parts of this Agreement shall be resolved in favor 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 or test publisher that authors and owns the Assessment Content and who directly or with the assistance of Questionmark uploads this to and maintains it in the OnDemand Service.

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

2. Grant of License

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

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

2.3 Reports. It is possible to use the OnDemand Service to report on Results Data without including Assessment Content. However, if any Assessment Content, including question wording or question choices from Assessment Content, are produced in reports, such

Assessment Content remains the copyright of Licensor and may be used by Customer only as expressly authorized by this Schedule and must be kept confidential.

- 2.4 Intellectual Property.** Customer agrees that Licensor is the owner of the Assessment Content, and that no rights of ownership and/or intellectual property rights of any kind in Assessment Content are transferred to Customer. The license granted hereunder to Customer is expressly limited to the access and use rights conferred in this Schedule. Customer may not share the Assessment Content with any third party except as expressly provided for in this Agreement and any third party use shall be limited to the use permitted for Customer in this Schedule. Except as expressly permitted by this Schedule and any Order, Customer may not copy, download, transmit, redistribute, publish, modify or commercially exploit the Assessment Content or move Assessment Content outside the OnDemand Service. Customer may not hide or attempt to hide copyright information or identification of Licensor's ownership of the Assessment Content.
- 2.5 Email support.** Questionmark has licensed the Assessment Content from Licensor and is not itself able to answer questions about or provide assistance in using Assessment Content. If Customer has questions about Assessment Content or identifies possible issues in Assessment Content, Customer may contact Questionmark by email, and Questionmark will use reasonable efforts to pass questions or issues to the Licensor and pass responses received back. Section 14 of the main body of the Agreement shall not apply for this Schedule.
- 2.6 Updates.** Neither Licensor nor Questionmark is obliged to provide Assessment Content updates, but if Questionmark and Licensor do produce an update, Questionmark will make such update available to Customer within the OnDemand Service along with information on any changes. Any permitted modifications made to Assessment Content by Customer may need to be recreated in the event of any update, which modifications shall be the exclusive responsibility of Customer.

3. Customer Obligations

- 3.1 Assessment Content Configuration.** Customer may use the Assessment Content within the OnDemand Service during the Term solely in conformance with the terms of the Agreement and the Order.
- 3.2 Use of Assessments.** Customer agrees to take account of any information or documentation provided by Questionmark or Licensor regarding the validity and potential application of the Assessment Content. Notwithstanding the foregoing, Customer assumes sole responsibility for determining that Assessment Content and Assessments are appropriate and valid for its use purposes and requirements.
- 3.3 Confidentiality.** Customer shall protect Assessment Content as Confidential Information and use best efforts to ensure that Participants do not share it with others.

3.4 Data processing. Customer instructs Questionmark to review and process Results Data to help run the Services and to create, update and analyze Benchmarks and other aggregated data as described with reference to Customer Data in Section 3.5 of the Agreement. Customer may use Licensor as a sub-processor to help perform such instructions in addition to other sub-processors set out in the Agreement and for clarity may share Results Data, Benchmarks and other aggregated data with Licensor