

# Questionmark PTS Client Order Terms and Conditions

These terms and conditions (together with the Order (as defined below), the "Agreement") apply to the Services provided pursuant to the Order referring to this document and form part of the Order. Any terms and conditions contained in a purchase order, request for proposal, order acceptance or similar document from Client is hereby rejected.

## 1. Definitions

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

**Admin User** means any person authorized by Client that uses Questionmark Technology to manage, monitor and report on Clients Tests and/or Candidates.

**Assessment Delivery Service** means the part of the OnDemand Service used by Candidates in answering online Client Tests and excludes other parts of the OnDemand Service including those parts related to authoring, administering, printing, scanning and reporting on Client Tests.

**Business Day** means every day excluding Saturdays, Sundays and any national holidays throughout the United States.

**Candidate** means the individual with access to the OnDemand Service that is tested using a Client Test.

**Certification Process** means the standards, policies, procedures, testing instruments and related activities by which individuals are publicly identified as qualified. Certification Process may include certification, recruitment and/or promotion.

**Client Data** means the data, information and material provided or submitted by Client or Users in the participation in Client Tests. Client Data does not include the software, scripts, Documentation and templates provided by Questionmark, PTS Item Banks, Client Tests or the results of Client Tests.

**Client Tests** are those tests developed by a Client for training and/or to support their Certification Process using the PTS Item Banks and delivered using the OnDemand Service. Client Tests exclude Client Data.

**Documentation** means the audio and visual information and documents contained in the OnDemand Service or made available to Client by Questionmark in the course of Client's using the OnDemand Service.

Fees means the sums payable by Client or Candidate to Questionmark and PTS, to be collected by Questionmark, in consideration of the Services, as provided for in this Agreement and the Order.

Force Majeure Event means any event beyond the reasonable control of a Party including, but not limited to, acts of God, war, threat of or preparation for war, terrorist attack, civil commotion or riots, nuclear, chemical or biological contamination, acts of any Government agency after the Effective Date, natural disaster or accidental damage, any labor dispute, denial of service attacks, non-performance by suppliers or subcontractors (itself caused by a force majeure event), interruption or failure of utility or transport service and the unavailability of labor or materials.

OnDemand Service means the software-as-a-service using Questionmark Technology and provided by Questionmark for the creation, delivery, monitoring and reporting on Client Tests.

Order means the written quotation or memorandum of understanding for Services provided to Client by Questionmark and signed by Questionmark, PTS and Client (each individually a "Party" and collectively, the "Parties") referring to these terms and conditions.

PTS Item Banks means those item banks made available by PTS to Client within the OnDemand Service for Client to develop Client Tests to support Client's Certification Process or for Client's training purposes.

Questionmark Technology means all and any part of Questionmark's and its licensors' proprietary services, software, hardware, products, processes, algorithms, user interfaces, know how, techniques, designs and other tangible and intangible material or information which is provided by Questionmark as part of the Services. Questionmark Technology does not include PTS Item Banks.

Services means the services provided under this Agreement to Client by Questionmark and/or PTS, as described in the Order.

User means Admin Users and Candidates.

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

And capitalized terms used in these terms and conditions without definition shall have the meanings given to them in the Order.

## **2. Grant of License by PTS to Client**

- 2.1 General. Subject to payment of the Fees and the mutual promises in this Agreement, PTS grants to Client a non-exclusive, royalty-free, non-transferable, non-sublicensable license to access and use PTS Item Banks in the OnDemand Service solely to construct Client Tests in accordance with this Agreement

- 2.2 Restrictions. PTS Item Banks are protected under United States and international software, copyrights, trade mark registrations and licensing permits. PTS may but has no obligation to provide updated versions of PTS Item Banks or support prior versions. Client shall not copy PTS Item Banks or Client Tests outside the OnDemand Service.

### **3. Grant of License by Questionmark to Client**

Subject to payment of the Fees and the mutual promises in this Agreement, Questionmark grants to Client a non-exclusive, royalty-free, non-transferable, non-sublicensable license and authorization to access and use the OnDemand Service solely for purposes of constructing and allowing Candidates to take Client Tests using PTS Item Banks within the OnDemand Service in accordance with this Agreement. Client may not use the OnDemand Service to deliver Client Tests otherwise than as expressly contemplated by this Agreement and the Order.

### **4. PTS Obligations**

- 4.1 PTS Item Banks. PTS is responsible for providing and maintaining PTS Item Banks in the OnDemand Service, including entering, checking, maintaining and validating PTS Item Bank material, as well as for the legality, reliability, availability and appropriateness of PTS Item Banks, including ensuring PTS Item Banks are transmitted to and processed in the Services and provided in accordance with applicable laws.
- 4.2 Client Assistance. PTS will work with Client to achieve the following: role set up, User set up, authoring, maintaining ongoing availability of, delivery and reporting on PTS Item Banks using generally available OnDemand Service functionality, and ensuring the PTS Item Banks are and remain suitable and appropriate for the intended purpose.

### **5. OnDemand Service Obligations**

- 5.1 Password Security. Client and PTS shall keep confidential all usernames, passwords, identification and security codes provided by Questionmark and shall notify Questionmark promptly if they suspect loss, disclosure or any unauthorized use thereof. Except for any activity occurring more than one (1) Business Day after notifying Questionmark, Client and PTS shall be liable for any activity carried out under any username, password, identification code or security code issued to them.
- 5.2 Restrictions on Use. Client and PTS may not modify or make derivative works based on the OnDemand Service or any associated Documentation; or hide or attempt to hide copyright information or identification of Questionmark's, its licensors' or PTS's respective ownership of the OnDemand Service, PTS Item Banks or Client Tests. Client and PTS may not reverse engineer or access the OnDemand Service to (a) build a competitive product or service or build a product using similar ideas, features, functions or graphics of the OnDemand Service, or (b) copy any ideas, features, functions or graphics of the OnDemand Service. Client and PTS may not access the OnDemand Service for competitive purposes, including monitoring availability, performance, functionality or benchmarking. Photography, filming, video

recording or sound recording of any part of Questionmark's services, PTS Item Banks or Client Tests for commercial, private or public performance purposes is prohibited without advance written permission from Questionmark or PTS respectively.

- 5.3 Acceptable Use. Client and PTS shall not use the OnDemand Service to store or transmit anything reasonably likely to be offensive, harassing, obscene, or defamatory. Client and PTS will use, and Client will ensure that Candidates use, the OnDemand Service in accordance with Questionmark's acceptable use policy, located at <https://www.questionmark.com/ondemand-use-policy>.
- 5.4 Export. 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 export controls. Client and PTS 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 US, Switzerland, United Kingdom and/or the EU maintains an embargo, and shall not permit such use by or transfer to a national or resident thereof, or any person/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. Client and PTS shall comply strictly with all export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.
- 5.5 Data Backup and Quality Assurance. Questionmark shall not be responsible for Client's or PTS's deletion, correction, destruction, damage, loss or failure to store any Client Data, Client Tests and results or PTS Test Banks including, but not limited to, where Client or PTS fails to make regular backups. Questionmark may collect usage data to understand how Client uses the OnDemand Service and its features.

## 6. Client Obligations

- 6.1 Access Control and Usernames. Client is responsible for all actions of its Users and 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.
- 6.2 Use of Assessments. The OnDemand Service may be used to correspond with Candidates and to assess a Candidate's knowledge, skills and attitudes and allocate a score. Client is solely responsible for all correspondence with Candidates. Scores should be considered one piece of evidence about a Candidate's knowledge, skill and/or attitude. Client is solely responsible for the fairness, quality and validation of the Client Test and should review and evaluate the Candidate's score to ensure that the appropriate decision has been made. Client is solely responsible for its Certification Process and training, the use of the OnDemand Service, including ascertaining that the Client Test is appropriate for the purpose, testing and validating the Client Test, and checking the scores produced by the Client Test are valid.

- 6.3 Contact Information. Client shall provide Questionmark with complete and accurate billing and contact information.
- 6.4 New PTS Item Banks. In the event an Order requires PTS to develop new items for PTS Item Banks, such new items must be reviewed and approved by Client at least twenty (20) days prior to the scheduled assessment date to allow PTS sufficient time to load the items into the OnDemand Service. For the avoidance of doubt, any such items added to PTS Item Banks shall be and will remain owned by PTS in accordance with Section 12.2 of this Agreement.
- 6.5 PTS Item Bank Challenges. An Order may make provision for PTS assisting Client with challenges received by or on behalf of Candidates to PTS Item Bank items. In such case, all actions required to address challenges shall be performed by PTS and Client and Questionmark has no responsibility for these matters.

## 7. Fees

- 7.1 General. The Fees shall be paid as provided for in the Order.
- 7.2 Taxes. All Fees are exclusive of any applicable sales, use or value added taxes, import duties or other taxes, fees or levies imposed on use of the Services, which Questionmark may collect from Client for remittance to an applicable governmental entity. All payments to be made by Client shall be without set-off or any deduction/withholding for any taxes, duties, imports, fees or charges. Should any taxes be due or demanded outside the United States, relating to use of the Services by Client, they will be wholly payable by Client.
- 7.3 Remedies for Non-Payment. Questionmark may suspend or terminate an Order and Client's access to the OnDemand Service when payment has not been received within twenty-one (21) days of the due date. Questionmark has no obligation to retain Client Data and Client Tests and results and such Client Data and Client Tests and results may be irretrievably deleted if Client's account remains delinquent for more than sixty (60) days from date of suspension or termination.

## 8. Term and Termination

- 8.1 Term. The term of this Agreement and the licenses granted hereunder shall begin on the Effective Date and continue for any period that an Order is applicable.
- 8.2 Termination. This Agreement is non-terminable without cause. Any Party may terminate this Agreement for cause if: (i) the other Party materially breaches any term or condition of this Agreement and, if curable, fails to cure such breach within thirty (30) days after written notice of the same; (ii) a Party becomes the subject of a petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, in case of involuntariness if such petition or proceeding is not dismissed within ninety (90) days of filing.

- 8.3 Effect of Termination. On termination of this Agreement, all Fees or charges payable shall immediately become due by Client, and the obligations of Questionmark and PTS under this Agreement to provide the Services shall end. On termination, Questionmark will make available to Client continued access to the OnDemand Service for up to thirty (30) days solely for Client to report or download Client Data and Client Test result scores. After this period, Questionmark has no obligation to retain and may delete Client Data, Client Tests or Client Test results or scores. During such post-termination period, Client remains bound by the restrictions and limitations of this Agreement.

## 9. Confidential Information

- 9.1 This Section 9 applies only to Confidential Information shared by a Party with all other Parties to this Agreement. Any disclosures of Confidential Information one Party makes to another Party alone shall be subject to separate non-disclosure agreements, including any prior agreements which shall separately remain in full force and effect.
- 9.2 During the Term, a Party (each a "Discloser") might disclose certain written and/or oral Confidential Information to the other Parties ("Recipients"). "Confidential Information" shall include, but not be limited to, Questionmark Technology, Documentation, PTS Item Banks, Client Tests, user names, passwords, pricing, security information and any other information which should reasonably be understood to be confidential or proprietary.
- 9.3 Recipients shall keep Discloser Confidential Information confidential, including after termination or expiry of this Agreement. Recipient shall use Confidential Information only in connection with this Agreement and will not disclose Confidential Information to any third party without prior written consent of Discloser. Notwithstanding the foregoing, the Recipients may disclose Confidential Information to each of their Representatives on a "need-to-know" basis only in connection with such Representatives' performance under, or compliance with, this Agreement. Recipients 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). Client agrees that each of Questionmark and PTS may disclose to each other Client Confidential Information (including Client Data) given to each of them individually, subject to any restrictions separately agreed between Client and Questionmark or PTS respectively, and that Client has secured any necessary consents from Candidates. Client understands that performance of this Agreement will involve Candidates seeing Confidential Information, including Client Tests and PTS Item Banks, and Client will take all reasonable measures to ensure that Candidates do not disclose this Confidential Information to any third parties, or use it other than as expressly contemplated by this Agreement. Client shall be responsible to Questionmark and PTS for any loss, liability or damage caused by a Candidate's prohibited use or disclosure of Confidential Information where Client has failed to take such reasonable measures.

- 9.4 On termination or expiration of this Agreement, Recipients will return or delete and destroy all Confidential Information of Discloser, including but not limited to copies and derivative works created therefrom, with no copies retained except that any of Discloser'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 Recipients, subject to such Confidential Information not being used. Any Confidential Information retained by Recipients pursuant to this paragraph shall be held in continued compliance with the terms and conditions of this Agreement.
- 9.5 Recipients' breach of this Section 9 may cause irreparable injury and damage to Discloser 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 Discloser, Discloser will be entitled to seek, and Recipients hereby waives any objection to Discloser's application for, specific performance and injunctive relief (both temporary and permanent) without the posting of a bond.

## 10. Security

Questionmark shall maintain security policies and procedures to protect the Client Data consistent with good industry practice. Questionmark is certified by a reputable third party against the ISO 27001 standard or comparable successor standard, and its production data center used to deliver Client Tests is audited, no less than annually, by a reputable third party against the SSAE 18 or ISO 27001 standards or comparable successor standards.

## 11. Compliance with Laws and Data Protection

- 11.1 **Client Data.** Client is responsible for the accuracy, quality, integrity, reliability, appropriateness and ownership or right of use of all Client Data, including ensuring that Client Data is transmitted to and processed in the Services and provided to Questionmark for all use in accordance with applicable laws, including for operation and maintenance of the Services, which Client instructs Questionmark and PTS to undertake as necessary.
- 11.2 **Data Privacy.** Questionmark and PTS shall be deemed "processors" and Client a "controller" as such terms are understood in data privacy laws with regard to Client Data. Client expressly authorizes and instructs Questionmark to share Client Data with PTS. Client shall ensure that Client's use of the OnDemand Service and that all information that the OnDemand Service receives and transmits pursuant to such use, including the sharing by Questionmark of Client Data with PTS, complies with all applicable laws, including regarding the processing of personal data.
- 11.3 **Protected Health Information.** Client and PTS each warrant and represent that they 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 unless and until the applicable



Parties agree and execute a separate HIPAA business associate agreement to provide the satisfactory assurances required by 45 CFR § 164.502(e)(2).

- 11.4 FCPA Compliance. The Parties will comply with all applicable U.S. anti-bribery and anti-corruption laws, including for clarity the Foreign Corrupt Practices Act.

## 12. Intellectual Property

- 12.1 Questionmark Intellectual Property. Client and PTS agree:
- 12.1.1 That 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.
  - 12.1.2 No Party will be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of another Party without the prior written consent of that other Party.
- 12.2 PTS Intellectual Property. Any and all intellectual property rights whatsoever and wheresoever enforceable, contained in the PTS Item Banks and Client Tests transmitted or stored using the OnDemand Service remain the sole property of PTS and its licensors. The Parties agree that PTS owns Client Test results (subject to any rights and restrictions in personal information included within Client Test result answers).

## 13. Warranties

- 13.1 PTS Representations. PTS represents and warrants that (i) its use of and the PTS Item Banks and Client Tests used within the OnDemand Service will not infringe upon or violate any intellectual property rights or other rights of any other party and it has all rights necessary to grant the license granted to Client in this Agreement; (ii) PTS Item Banks will be appropriate and suitable for Clients to use to construct Client Tests; and (iii) it will use the OnDemand Service and provide the PTS Item Banks in compliance with all applicable laws.
- 13.2 Questionmark Representations. Questionmark represents and warrants that (i) it will provide the OnDemand Service in a manner consistent with applicable general industry standards; (ii) the OnDemand Service will perform substantially in accordance with the online Documentation under normal use and circumstances; and (iii) as delivered, the OnDemand Service will not infringe upon or violate any intellectual property rights of third parties and it has all rights necessary to grant the license granted to Client in this Agreement.
- 13.3 Client Representations. Client represents and warrants that (i) its use of and the Client Data, PTS Item Banks and Client Tests used within the OnDemand Service will not infringe on or violate any intellectual property rights or other rights of any other party; (ii) it will use the



OnDemand Service, Client Data, PTS Test Banks and Client Tests in compliance with all applicable laws.

- 13.4 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, QUESTIONMARK AND PTS 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.

QUESTIONMARK SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES OF ANY KIND IN ANY WAY RELATED TO PTS ITEM BANKS AND CLIENT TESTS AND RESULTS. QUESTIONMARK HAS NO LIABILITY RELATED TO PTS ITEM BANKS AND CLIENT TESTS AND RESULTS, INCLUDING IN RESPECT OF ACCURACY, COMPLETENESS, RELIABILITY, COMPLIANCE WITH APPLICABLE LAWS AND FOR ANY DECISIONS TAKEN BASED ON OR RELATED TO PTS ITEM BANKS, CLIENT TESTS AND RESULTS. PTS IS RESPONSIBLE FOR MAINTAINING PTS ITEM BANKS IN THE ONDEMAND SERVICE AND QUESTIONMARK HAS NO LIABILITY RESULTING FROM PTS ITEM BANK CONTENT OR THE UNAVAILABILITY OF OR ERRORS IN PTS ITEM BANKS DUE TO PTS ACTS OR OMISSIONS. QUESTIONMARK HAS NO LIABILITY FOR ACTIONS OF USERS.

The OnDemand Service might be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Although Questionmark will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events consistent with good industry practice, Questionmark disclaims any liability resulting from or related to such events.

## 14. Indemnities

- 14.1 PTS's Indemnification. PTS shall indemnify, defend and hold Client and Questionmark and their respective parent organizations subsidiaries, Affiliates, officers, directors, employees, attorneys and agents harmless from and against any third party claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs (collectively, "Losses") arising out of or in connection with (i) PTS's use of, or the PTS Test Banks and Client Tests used in connection with, the OnDemand Service; and (ii) infringement or misappropriation of any intellectual property right of a third party resulting from combination of the OnDemand Service or Client Data with the PTS Test Banks and any other products, services, or business process(s) used, provided, licensed, or owned by PTS, that would not have occurred but for such combination.
- 14.2 Questionmark's Indemnification. Questionmark shall indemnify, defend and hold Client and PTS and their respective parent organizations subsidiaries, Affiliates, officers, directors, employees, attorneys and agents harmless from and against any Losses to the extent arising out of or in connection with (i) Questionmark's infringement or misappropriation of any intellectual property right of a third party other than to the extent resulting from the

circumstances described in Section 14.2(ii) and 14.3(ii); (ii) personal injury (including death) and damage to tangible property caused by Questionmark's negligence or willful misconduct.

- 14.3 Client's Indemnification. Client shall indemnify, defend and hold PTS and Questionmark and their respective parent organizations subsidiaries, Affiliates, officers, directors, employees, attorneys and agents harmless from and against any Losses arising out of or in connection with (i) Client's use of, or the Client Data used in connection with, the OnDemand Service and Client Tests; and (ii) infringement or misappropriation of any intellectual property right of a third party that results from the combination of the OnDemand Service or PTS Test Banks or Client Tests with Client Data and any other products, services, or business process(s) used, provided, licensed, or owned by Client, that would not have occurred but for such combination.

## 15. Limitation of Liability

If a Client Test does not perform properly due to the fault of the Questionmark Technology, Questionmark shall allow the affected Candidate to retake the Client Test at no additional charge and this shall be Client's sole remedy for Questionmark's non-performance.

IN NO EVENT SHALL ANY PARTY'S TOTAL AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT EXCEED FIFTY THOUSAND (50,000) UNITED STATES DOLLARS AND IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, COSTS OF COVER OR USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES.

THE ABOVE LIMITATIONS OF LIABILITY SHALL NOT APPLY TO THOSE SECTIONS OF THIS AGREEMENT DEALING WITH (A) BREACHES OF CONFIDENTIAL INFORMATION, (B) INTELLECTUAL PROPERTY, AND (C) INDEMNIFICATION FOR THIRD PARTY CLAIMS. FURTHER, NOTHING IN THIS AGREEMENT SHALL EXCLUDE ANY PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE, FRAUD OR ANY OTHER LIABILITY THAT CANNOT BE PROPERLY EXCLUDED BY LAW.

## 16. Support

- 16.1 Support by PTS to Client. PTS will provide email and telephone support from 9am to 5pm U.S. Eastern Standard Time ("EST") on Business Days to Client relating to use of the OnDemand Service and PTS Item Banks and seek to respond to all issues within one Business Day.
- 16.2 Support by Questionmark to PTS. Questionmark will not support Client directly, however, Questionmark will support PTS in English from 9am to 8pm EST on Business Days to support PTS's support to Client as follows:
- 16.2.1 1st Line Technical Support. Assistance by phone, email, internet chat, and Voice over Internet Protocol ("VoIP") to designated contacts at PTS 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.

16.2.2 2nd Line Technical Support. Assistance by phone and email to designated contacts at PTS to answer questions and provide workarounds where answers could not be found in the manuals or knowledge base items.

16.2.3 3rd Line Technical Support. Work required by Questionmark to resolve software issues with the OnDemand Service in a manner that does not consume support hours.

16.2.4 OnDemand Service Support. The Assessment Delivery Service is targeted to be available to Client 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. Questionmark will provide PTS with details of its Scheduled Maintenance schedule. Questionmark will, where possible, provide notice for Emergency Maintenance. Questionmark will use good faith efforts to minimize the duration of and perform any Scheduled Maintenance and Emergency Maintenance during off peak hours and, whenever possible, minimize impact to PTS and Client. "Emergency Maintenance" means maintenance that is required and cannot be safely postponed until the next Scheduled Maintenance period to fix software and/or hardware issues and apply security patches. "Scheduled Maintenance" means maintenance that is planned in order to add features, resolve issues and/or enhance functionalities. PTS's designated contacts for Questionmark shall subscribe to Questionmark's OnDemand newsfeed.

16.3 Support by Client. Client's support obligations shall be as follows:

16.3.1 Client Provided Support. Assistance by phone, email, chat sessions, etc. to proctors, academies and Client's partners to assist them with the proctoring/invigilation process including but not limited to the use of the OnDemand Service.

16.3.2 Candidate Support. Assistance by phone, email, chat sessions, etc. to the Candidate.

## 17. Notice

The Parties may give notice to each other by first class mail or pre-paid post to the addresses provided on page one of this Agreement or as specified by a Party from time to time. Such notices shall be deemed to have been given 2 Business Days after posting. Any notice to Questionmark must be contemporaneously copied to [legalnotices@learnosity.com](mailto:legalnotices@learnosity.com).

## 18. Miscellaneous

18.1 Assignment. This Agreement may not be assigned by any Party without the prior written approval of the other Parties.

- 18.2 Force Majeure. No Party shall be in breach of this Agreement, nor liable for any failure or delay in performance arising from or attributable to a Force Majeure Event provided it promptly notifies the other Parties in writing and uses all reasonable endeavors to mitigate the effect of the Force Majeure Event. Any Party may terminate this Agreement if a Force Majeure Event endures for sixty (60) days.
- 18.3 No Waiver. Failure by any Party to exercise or enforce any right or benefit conferred by this Agreement will not be deemed a waiver of any such right or benefit on any later occasion.
- 18.4 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.
- 18.5 Amendments. No amendment of this Agreement shall be effective unless it is in writing and signed by each of the Parties.
- 18.6 Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior discussions or agreements. Those terms which by their nature are intended to survive, will survive expiration or termination of this Agreement.
- 18.7 Independent Contractor. The Parties are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, franchise, employment, or agency relationship. None of the Parties shall have any authority to enter into agreements on behalf of another Party and shall not have the power or authority to bind or obligate another Party in any manner. The Parties acknowledge that they have each taken or had the opportunity to take separate legal advice prior to entering into this Agreement.
- 18.8 Governing Law and Forum. This Agreement shall be governed by the law of the jurisdiction where Client's address as noted in the Order is located, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the state and federal courts located in the that jurisdiction, except that if the Client's address as noted in the Order is outside of the United States of America, the governing law and jurisdiction shall be Connecticut, USA. Should Client be domiciled in a country outside the United States, Client 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.
- 18.9 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.