

Questionmark Secure – Click-Through License Agreement

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Definitions

The following definitions shall apply:

"Assessment Sponsor" means the organization (free-standing board, professional association, certification committee, advisory committee, or entity within a business or industry) that offers an assessment.

"Data Controller" means the entity that determines the purposes, conditions and means of the processing of personal data.

"Data Processor" means the person or organization that processes data on behalf of Data Controller.

"Questionmark Privacy Policy" means Questionmark's privacy policy updated from time to time and documented at <https://www.questionmark.com/privacy>.

"Questionmark Server Software" means the software or software as a service provided by Questionmark that is installed on a web server to allow users to authenticate Questionmark Secure.

"Questionmark Secure" (the Program) means the web browser software supplied by Questionmark that provides web browser functionality but limits certain features usually provided within a commercial browser.

"Third Party Software" means software components that are not written by Questionmark, which are either third party libraries which Questionmark has purchased for use with the Program or open source software components which Questionmark has reviewed and included within the Program.

Grant of license

In consideration of, and subject to your agreement to this Agreement Questionmark grants You a non-exclusive, non-transferable perpetual free of charge license to install and use the Product only in conjunction with Questionmark Server Software subject to the limitations in this Agreement. This license does not grant you any rights to install or use the Product in conjunction with any web server not using Questionmark Server Software unless you purchase a separate license from Questionmark. The Program is licensed solely to You. You may make a reasonable number of back up copies of the Program, which are necessary, for the purposes of Your lawful use.

Storage/Network Use. You may store or install a copy of the Program on a storage device, such as a network server, used only to install the software on Your other computers over an internal network. An installation of the Program may not be shared or used concurrently on different computers.

Personal Data Capture: You understand that the purpose of Questionmark Secure is to deliver assessments in a locked down environment that provides a fair setting for the delivery of tests and exams to be taken with integrity. To aid integrity of an assessment process which is to the benefit of all participants and to society an Assessment Sponsor may use Questionmark Secure to collect data from your device and your actions during and surrounding an assessment which may be considered personal data under applicable privacy law.

During such data processing, the Assessment Sponsor acts as the Data Controller under applicable privacy law and Questionmark or its affiliate acts as the Data Processor. Questionmark or its affiliate acts on the instructions of the Data Controller and in compliance with the Questionmark Privacy Policy. Before taking an assessment, you should check the privacy policy and your agreement with the Assessment Sponsor to ensure that you are comfortable with the processing of your personal data.

Information captured when taking an assessment with Questionmark Secure may include the names of all processes running on the device, all URLs gone to within the Program, information on hardware associated with the device including peripherals and actions taken during the assessment including system commands like Ctrl-Alt-Del and changes of applications and other information about your actions and device configuration during and in connection with the assessment.

Description of other rights and limitations

Limitation on reverse Engineering, Decompilation, and Disassembly. Except for rights allowed within any Third Party Software, You may not reverse engineer, decompile, translate, create a derivative work, or disassemble the Program. You agree not to attempt to avoid or disable secure browser functionality in the Program, and will not permit others to do so.

You may not rent, lease, lend or otherwise provide rights to the Program free or for value, unless authorized in writing by Questionmark in each instance.

Software Updates: Subject to the Questionmark Privacy Policy, Questionmark may use any information You provide to provide product support, software enhancements, and for other business purposes, including but not limited to development. Questionmark may, at its sole discretion, provide You with updated software to add features and resolve problems, any such updates shall be considered part of the Program and subject to the terms and conditions of this Agreement.

Termination: Without prejudice to any other rights, Questionmark may terminate Your license if You fail to comply with the terms and conditions of this Agreement. In such event, You must destroy all Your copies of the Program.

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Delay or omission: No delay or omission by You or Questionmark in exercising any right or remedy in whole or part shall be construed as a waiver of it, or operate so as to limit or preclude any further or other exercise of it.

"As-IS" Condition; Suitability for purpose: You hereby acknowledge that the Program is furnished in "AS-IS" condition and that you agree to bear the entire risk that the Program will not be suitable for Your purpose and all other risks associated with the use and performance of the Program. It is Your responsibility to back up all important data and program files, to ensure that The Program is compatible with Your equipment configuration, and to test Your desired application to ensure that the Program properly supports it.

You acknowledge that the Program may be used to access third party programs that help assess your knowledge, skills and attitudes and allocate a score as a Participant. The score should be considered by the assessor as one piece of evidence about a Participant's knowledge, skill and/or attitude. When the score from an assessment delivered by the Program is being used to make decisions about a Participant, the assessor (and not Questionmark) is responsible for reviewing and evaluating the score to ensure that the appropriate decision has been made. The assessor (and not Questionmark) is solely responsible for use of the Program, including using the Program fairly and in a non-discriminatory manner. Should the assessor use the Program to deliver high stakes Assessments, or other kinds of Assessments which are used to make important decisions about people, You acknowledge that You and the assessor have a responsibility to thoroughly review and evaluate the scores arising from use of the Program, to ensure that the appropriate decisions are being made. You shall indemnify and hold Questionmark and/or its licensors harmless from any and all claims arising out of the use of the Program or use of the scores to determine decisions relating to Participants.

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No other warranties

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Applicable law

If You install this Program in the United States, Canada, Mexico, Central America or South America then this Agreement is governed by the laws of the State of Connecticut, and is a contract with Questionmark as Questionmark Corporation, 260 Madison Avenue, 8th Floor, New York, NY 10016, United States of America. If You install this Program outside these territories this Agreement is governed and construed in all respects by the laws of England, and is a contract with Questionmark as Questionmark Computing Limited, 3rd Floor 1 Ashley Road, Altrincham, Cheshire WA14 2DT, United Kingdom.

Whole agreement

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all previous representation and communications in that respect, except in the case of fraudulent misrepresentations.