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These Terms apply to your access to and use of the Questionmark OnDemand Service ("Service"). Please read these Terms carefully. Your attention is also specifically directed to Questionmark's privacy policy (published at: <http://www.questionmark.com/privacy>), as further referred to at Section 6 of these Terms, which shall apply to any personal data or information that you disclose to us in using the Service.

To use the Service, you must agree to these Terms. By your access or use of the Service, you agree to these Terms. If you do not agree to these Terms, you may not use the Service. These Terms are a legally binding contract between you and Questionmark. As used in these Terms, "Questionmark" or "us" means Questionmark Corporation of 260 Madison Avenue, 8th Floor, New York, NY 10016, USA.

1. Grant of License

In consideration of, and subject to, payment of the Fees as defined below, Questionmark grants you an individual license (the "License") to access and use the Service for purposes of taking an assessment(s) administered by or on behalf of a third party ("Test Publisher"). The License is personal to you, may not be transferred or assigned to any other person, and is subject to these Terms. All rights not expressly granted to you are reserved by Questionmark, its suppliers and licensors.

2. Fees

- 2.1 Fees. You are responsible for paying all Fees due in respect of the License granted hereunder (without set-off or deduction) to Questionmark's third party payment merchant or as otherwise directed by Questionmark ("Fees"). Fees are non-refundable unless expressly stated otherwise in these Terms or required by law.
- 2.2 Taxes. Fees are exclusive of any applicable sales, use or value added taxes, import duties or levies due based on your use of the Service, which may be collected from you by Questionmark's third party payment merchant or otherwise by Questionmark.

3. Your responsibilities

- 3.1 Usernames and Password Security. You are prohibited from sharing your account credentials with another person and from allowing another person to use your account. You must notify

Questionmark immediately if you suspect or become aware that your account credentials have been lost, or disclosed to or used by another person. You are responsible for all activities carried out using your account credentials.

- 3.2 **Restrictions on Use.** You may not modify or make derivative works based on the Service or any associated documentation, or in any way conceal, hide or attempt to hide copyright information or identification of Questionmark's or any other party's ownership of any materials to build a competitive product or service, build a product using similar ideas, features, functions or graphics of the Service, or copy any of the Service's ideas, features, functions or graphics. Photography, filming, video recording or sound recording of any part of the Service by you for any purposes is prohibited. You acknowledge that any assessment content is owned and/or provided by or on behalf of the Test Publisher and that you will comply with any instructions, conditions, use restrictions and policies provided by the Test Publisher in respect of the assessment content.
- 3.3 **Use of Assessments.** You understand that the assessment may be used by the Test Publisher or another third party to assess your knowledge, skills or allocate a score. The Test Publisher or another third party is solely responsible for the content, administration, fairness, quality, score algorithms, reliability, defensibility and validation of the assessment. You understand that Test Publisher or another third party has the sole responsibility and right to report on assessment results to you.
- 3.4 **Acceptable Use Policy and Compliance with Law.** You shall not use the Service to store or transmit anything reasonably likely to be offensive, harassing, threatening, abusive, obscene, illegal, defamatory, that breaches the rights of any third party, or contains software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs. You shall use the Service in compliance with Questionmark's Acceptable Use Policy (published at <https://www.questionmark.com/ondemand-use-policy>) which may be reasonably adjusted or updated from time to time as described therein.
- 3.5 **Export Laws.** You are prohibited from using the Service in any country as to which the US, European Union or Switzerland maintains an embargo and warrant that you are not a national or resident of such an embargoed country, or a person 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.
- 3.6 **Connections to the Service and System Requirements.** You are responsible for all Internet connections, hardware, software and all other equipment necessary to use the Service. The Service may only be used via compatible systems and browsers. Questionmark maintains a list of compatible systems and browsers on its web site and reserves the right to update this list from time to time.

4. Term and Termination

- 4.1 Term. The License shall commence on acceptance of these Terms and payment of the Fees and will automatically terminate once you have completed the applicable assessment(s) in accordance with the rules of the Test Publisher.
- 4.2 Termination. Questionmark may terminate the License if: (i) you breach these Terms and fail to cure such breach within twenty-one (21) days of notice of such breach (provided such breach is capable of cure); (ii) you violate any applicable law; or (iii) the Test Publisher instructs Questionmark to do so.
- 4.3 Effect of Termination.

Upon termination of the License, Questionmark's obligations under these Terms to provide the Service shall end. Questionmark may, in its discretion, provide you with a refund of Fees paid in the event of termination of the License pursuant to Section 4.2(iii) of these Terms, unless you have violated or breached any applicable law, any rules, policies or instructions of the Test Publisher, or these Terms. Questionmark may but has no obligation to retain your personal data or information following termination of the License unless prohibited by applicable law, but subject to the surviving sections of these Terms. The following sections of these Terms shall survive termination of the License: 2, 3, 4.3, 5, 6, 7, 8, 9, 10 and 12.

5. Confidential Information

- 5.1 Questionmark materials. You agree to treat as confidential and not disclose to any other party any materials or information provided to you by Questionmark that are marked as confidential or proprietary or that should reasonably be understood as such, including without limitation usernames, passwords, and pricing information. You agree only to use any such Questionmark confidential materials or information for purposes of using the License and to stop using, return to Questionmark or destroy such materials or information on termination of the License.
- 5.2 Assessment content. You agree to treat all assessment content and materials as confidential and understand that any reproduction, display or disclosure to any other party is prohibited without permission of the Test Publisher. You agree to comply with any further instructions on confidentiality and use provided by the Test Publisher.

6. Data Privacy

Your personal data and information. Questionmark will treat any personal data or information that you disclose to us in using the Service in accordance with our privacy policy (published at: www.questionmark.com/privacy). Questionmark is a "processor" and the Test Publisher (or its third party) is a "controller" as such terms are understood and/or defined in data

privacy laws with regard to your personal data or information (other than credit card transaction and related data) passing through the Service. You are responsible for the accuracy, quality, integrity, legality and appropriateness of all data and information that you add to the Service and will comply with any identification document requirements of the Test Publisher to take the assessment. You are also solely responsible for ensuring that your use of the Service complies with all applicable laws, treaties and regulations, including, without limitation, any applicable data protection laws.

YOU CONSENT TO QUESTIONMARK SHARING YOUR PERSONAL DATA AND INFORMATION, INCLUDING ASSESSMENT RESULTS AND ANY VIDEO, AUDIO OR IMAGE RECORDING, WITH ITS SUBCONTRACTORS, THE TEST PUBLISHER, ITS THIRD PARTY AND SUBCONTRACTORS, WHICH ORGANIZATIONS MAY HAVE THEIR OWN PRIVACY POLICIES, AND TO THE TRANSFER AND PROCESSING OF YOUR PERSONAL DATA AND INFORMATION TO AND IN OTHER COUNTRIES (INCLUDING OUTSIDE OF THE EUROPEAN UNION). YOU ALSO CONSENT TO QUESTIONMARK AND ITS SUBCONTRACTORS USING YOUR PERSONAL DATA AND INFORMATION FOR ANY NECESSARY TROUBLESHOOTING AND MAINTENANCE PURPOSES.

7. Intellectual Property

7.1 You acknowledge and agree:

- 7.1.1 Any and all patents, registered/unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable in the Service or any associated materials made available to you by Questionmark will remain the sole property of Questionmark and its licensors.
- 7.1.2 That the assessment content is owned by a third party, and that no rights of ownership and/or intellectual property rights of any kind in assessment content are transferred under these Terms.

8. Warranties

You represent and warrant that (i) you will use the Service and assessment content in compliance with all applicable laws; and (ii) your use of the Service and assessment content will not violate or infringe any intellectual property rights of any party.

Disclaimer of Warranties. THE SERVICE AND ASSESSMENT CONTENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, QUESTIONMARK AND ITS AFFILIATES, SUPPLIERS AND LICENSORS DISCLAIM ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

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9. Indemnity

You agree to indemnify, defend and hold Questionmark, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) to the extent arising out of or in connection with your use of the Service and/or breach of these Terms.

10. Limitation of Liability

If an assessment does not perform properly due to failings in the Service, Questionmark shall allow you to retake the assessment at no additional charge, or, at Questionmark's sole discretion, provide you with a refund of Fees paid by you, and in such event this shall be your sole remedy for Questionmark's non-performance.

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL QUESTIONMARK'S TOTAL AGGREGATE LIABILITY TO YOU EXCEED THE AMOUNT ACTUALLY PAID BY AND/OR DUE FROM YOU IN FEES PURSUANT TO THESE TERMS AND IN NO EVENT SHALL QUESTIONMARK AND/OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER 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 SERVICE (INCLUDING ASSOCIATED TRANSACTIONS) EVEN IF QUESTIONMARK OR ITS LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS AGREEMENT SHALL EXCLUDE QUESTIONMARK'S LIABILITY WHICH CANNOT BE PROPERLY EXCLUDED BY LAW. QUESTIONMARK SHALL HAVE NO LIABILITY WITH RESPECT TO YOUR USE OF THE SERVICE WHERE QUESTIONMARK IS PROVIDING A FREE TRIAL AND ANY CLAIM IN RELATION TO THE SERVICE OR THESE TERMS MUST BE FILED NO LATER THAN TWELVE (12) MONTHS AFTER SUCH CLAIM ARISES.

11. Support

Questionmark does not provide any support on assessment content and any questions on such should be directed to the Test Publisher. Questionmark has no obligation to provide any technical or other support in connection with its provision of the Service to you.

12. Miscellaneous

- 12.1 Assignment and Waiver. Questionmark may assign its rights under these Terms without notice. Failure by Questionmark to exercise or enforce any right or benefit conferred by these Terms will not be deemed to be a waiver of such right or benefit at a later date.
- 12.2 Severability. If any provision, or part provision, of these Terms, is held to be invalid, illegal, or unenforceable, that provision or part provision shall be deemed deleted and the remainder of these Terms shall continue in full force and effect.
- 12.3 Amendments to Terms; Service. Questionmark may change these Terms at any time. Questionmark will notify you of any material changes by email, when you login to your account, and/or by posting such changes on our website. If you do not agree with any changes to the Terms, you should stop using the Service. Your continued use of the Service after notification of changes to these Terms demonstrates your acceptance of the revised Terms. Questionmark may change the configuration of its network, equipment or any other item material to the provision of the Service at any time provided that such change does not adversely affect the Service.
- 12.4 Entire Agreement. These Terms constitute the entire agreement between you and Questionmark and supersede any prior agreements or discussions in respect of the subject matter hereof. Any additional or different terms proposed by you are rejected and shall not form part of the contract between you and Questionmark.
- 12.5 Relationship. Nothing in these Terms creates a partnership, joint venture, franchise, employment, or agency relationship between you and Questionmark. You and Questionmark are independent contractors.

- 12.6 Links. Where Questionmark provides hypertext links to third party sites, this is for information only and such links are not endorsements of any product or service in such sites. Questionmark accepts no liability resulting from your accessing such sites.
- 12.7 No Third Party Beneficiary. There are no third party beneficiaries to these Terms.
- 12.8 Governing Law and Forum. These Terms shall be governed by Connecticut law, Connecticut being a state of the United States, without regard to the choice or conflicts of law provisions of any jurisdiction. Any disputes, actions, claims or causes of action shall be subject to the exclusive jurisdiction of the state and federal courts in Bridgeport, Connecticut. If you are domiciled outside the United States, you 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 these Terms. To the fullest extent permitted by law, you expressly waive any right granted by that country that may confer to you any rights different than those specifically provided under these Terms.