

GENERAL SERVICES ADMINISTRATION
FEDERAL ACQUISITION SERVICE
AUTHORIZED FEDERAL SUPPLY SCHEDULE CATALOG/PRICE LIST

SCHEDULE 70 – General Purpose Commercial Information Technology Equipment, Software and Services



Performance Assessment Network
dba

PAN Testing

11590 N. Meridian St. Ste. 200 • Carmel, IN 46032-5651
P. 317-566-3270 • F. 317-566-3271

Contract Number: GS-35F-0022P
Contract Period: October 10, 2003 thru October 09, 2018
DUNS: 940048916
NAICS: 541511
WEB: www.PANPowered.com
Business size: Small

Pricelist Current through modification:
PO-0015 dated September 11, 2015

SIN	Description
132-32	Term Software License
132-51	Information Technology Professional Services
D302	IT Systems Development Services
D306	IT Systems Analysis Services
D307	Automated Information Systems Design and Integration Services
D308	Programming Services
D311	IT Data Conversion Services
D399	Other IT Services, Not elsewhere classified

Note: 1. All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.
2. Offeror's and Agencies are advised that the Group 70 – Information Technology Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected nor incidental to the traditionally accepted A/E Services
3. This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances, the services must be performance by the publisher or manufacturer or one of their authorized agents.

Contact for Contract Administration:

Doug Cole, COO, dcole@PANpowered.com

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order is available through **GSA Advantage!**, a menu-driven database system. The INTERNET address for **GSA Advantage!** is <http://www.gsaadvantage.gov>

For more information on ordering from Federal Supply Schedules click on the GSA Schedules link at www.gsa.gov

ABOUT PERFORMANCE ASSESSMENT NETWORK (PAN)

Performance Assessment Network, Inc. (PAN) was founded in Carmel, IN in 1997. PAN is dedicated to providing state-of-the-art, secure electronic (Internet-based) testing systems software and IT Professional Services for Government, Corporate and Education clients. All PAN activities are conducted with respect to the highest levels of business integrity and scientific veracity. Our core values are honesty, plurality, and discretion.

Our software development expertise delivers world-class Internet-based recruiting, selection, assessment, and content management solutions for HR directors, training departments, psychologists, physicians, vocational counselors, consultants, sales managers, educators, coaches, and others who use professional testing in their work.

All of PAN's software solutions meet the security and performance specifications of major western government and Global 1000 corporate clients. It also offers an accessible solution for mid-market compANies wanting to simplify their data-driven human capital practices without compromising quality and security.

We handle encrypted high-stakes selection, assessment, and testing programs for some of the most security-driven organizations in the world, and offer this same level of secure practice to all Clients. Full security information provided upon request.

PAN's mission is to develop secure, flexible, and cost-effective information system infrastructures that deliver assessment solutions to industry professionals. Solutions are delivered using active server pages (.asp), which allow immediate transmission of testing results to a SQL Server database, subsequent delivery of the scoring objects (Visual basic ActiveX dlls), and reports in a locked format (.pdf). PAN information systems environment is secured using Secured Socket Layer (SSL) and all data is passed using encryption. PAN leverages existing proprietary and licensed technical software and libraries to assist in rapid development of information delivery infrastructures.

Our implementation consultants work with you to achieve quick, valid information system solutions for sourcing, assessing, and documenting the vital information needed for successful talent assessment.

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1a. TABLE OF AWARDED SPECIAL ITEM NUMBERS (SINs):

SIN	Description	Rates
132-32	Term Software License	Attachment 2
132-51	Information Technology Professional Services	Attachment 1

1b. LOWEST PRICED MODEL NUMBER AND PRICE FOR EACH SIN:

SIN	Model	Price
132-32	Term Software License – Standard Platform	\$486.15
132-51	N/A Services Only	

1c. LABOR CATEGORY DESCRIPTIONS:**Senior developer**

Minimum/General Experience: 15 years in software development.

Functional Responsibility: Leads development and maintenance efforts supporting the new software application or developing enhancements to existing software. Focuses on most complex analytical and programming functions and acts as technical resource. Requires a high level of technical and analytical expertise in programming languages, data communications and a strong understanding of the business operation. Implements and performs quality assurance functions and support services.

Minimum Education: BS with certifications

Developer

Minimum/General Experience: 10 years in software development.

Functional Responsibility: Assist in the software design and programming including defining system requirements, customer requirements, developing diagrams and assisting in the implementation process. Develops prototypes, documentation and user training materials.

Minimum Education: BS with certifications

Project Manager

Minimum/General Experience: 15 years of overall Project Management experience.

Functional Responsibility: Acts as manager and overall point of contact between client and technical staff. Directs project-specific staff and reviews work products for completeness and adherence to customer requirements. Provides communication to management to review project plans, status reports, and deliverables. Develops overall project milestones and monitors the execution of the project against planned timelines.

Minimum Education: BA/BS

Senior Quality Assurance Analyst / Testing

Minimum/General Experience: 5-7 years applied experience in quality assurance evaluation of software applications; one year of experience evaluating source codes produced from automated generation process.

Functional Responsibility: Provides quality assurance testing and support for systems software, including utility and sort software, transaction processing software, communications software, and any other application or system level programs providing general support to multiple users. Conducts independent quality assurance testing and develops test models to evaluate application / system competency and to identify deficiencies, and makes recommendations on certification and acceptance.

Minimum Education: BS or equivalent with certifications

Administrative Support

Minimum/General Experience: 5 years of experience in providing administrative and business operations and support to government or commercial programs.

Functional Responsibility: Provides administrative and clerical support to information systems management principals and staff.

Minimum Education: Associates / equivalent experience / proven reliability

2. MAXIMUM ORDER*:

SIN	Amount
132-32	\$500,000
132-51	\$500,000

*If the best value selection places your order over the Maximum Order identified in this catalog/pricelist, you have an opportunity to obtain a better schedule contract price. Before placing your order, contact the aforementioned contactor for a better price. The contractor may (1) offer a new price for this requirement (2) offer the lowest price available under this contract or (3) decline the order. A delivery order that exceeds the maximum order may be placed under the schedule contract in accordance with FAR 8.404.

3. MINIMUM ORDER:

\$100.00

4. GEOGRAPHIC COVERAGE:

Domestic Delivery Only (48 Contiguous States, D.C., Hawaii, Alaska, and US Territories)

5. POINT(S) OF PRODUCTION:

USA

6. DISCOUNT FROM LIST PRICES:

Prices are listed as GSA Net, Discounts Deducted and IFF included.

7. QUANTITY DISCOUNT(S):

N/A

8. PROMPT PAYMENT TERMS:

Net 30

9A. GOVERNMENT PURCHASE CARDS MUST BE ACCEPTED AT OR BELOW THE MICRO-PURCHASE THRESHOLD.

PAN accepts Government Purchase Cards at or below the micro-purchase threshold.

9B. GOVERNMENT PURCHASE CARDS ARE ACCEPTED ABOVE THE MICRO-PURCHASE THRESHOLD.

PAN accepts Government Purchase Cards above the micro-purchase threshold.

10. FOREIGN ITEMS:

N/A

11a. TIME OF DELIVERY:

SIN	Delivery Time (Days ARO)
132-32	30 Days ARO
132-51	PAN will adhere to the delivery schedule stipulated in each delivery order and/or delivery order amendment.

11b. EXPEDITED DELIVERY:

As negotiated between PAN & Ordering Customer

11c. OVERNIGHT AND 2-DAY DELIVERY:

As negotiated between PAN & Ordering Customer

11d. URGENT REQUIREMENTS:

PAN will adhere to the delivery schedule stipulated in each delivery order and/or delivery order amendment.

12. FOB POINT:

Services - Destination

13a. ORDERING ADDRESS:

Performance Assessment Network, Inc.
11590 N. Meridian Street, Suite 200
Carmel, IN 46032-5651

- 13b. ORDERING PROCEDURES:**
For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in FAR 8.405-3
- 14. PAYMENT ADDRESS:**
Performance Assessment Network, Inc.
11590 N. Meridian Street, Suite 200
Carmel, IN 46032-5651
- 15. WARRANTY PROVISION:**
Determined per Task Order (132-51)
See EULA at Attachment 2 (132-32)
- 16. EXPORT PACKING CHARGES:**
N/A
- 17. TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE:**
PAN accepts Government Purchase Cards above or below the micro-purchase threshold.
- 18. TERMS AND CONDITIONS OF RENTAL, MAINTENANCE, AND REPAIR (IF APPLICABLE):**
N/A
- 19. TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE):**
N/A
- 20. TERMS AND CONDITIONS OF REPAIR PARTS INDICATING DATE OF PARTS PRICE LISTS AND ANY DISCOUNTS FROM LIST PRICES (IF AVAILABLE):**
N/A
- 20a. TERMS AND CONDITIONS FOR ANY OTHER SERVICES (IF APPLICABLE):**
See Attached GSA approved Terms and Conditions and EULA (Attachment 3)
- 21. LIST OF SERVICE AND DISTRIBUTION POINTS (IF APPLICABLE):**
N/A
- 22. LIST OF PARTICIPATING DEALERS (IF APPLICABLE):**
N/A
- 23. PREVENTIVE MAINTENANCE (IF APPLICABLE):**
N/A
- 24a. SPECIAL ATTRIBUTES SUCH AS ENVIRONMENTAL ATTRIBUTES**
(e.g. recycled content, energy efficiency, and/or reduced pollutants):
N/A
- 24b. SECTION 508 COMPLIANCE FOR EIT:**
The EIT Standards can be found at: www.section508.gov/
Supplies and Services found at www.PANTesting.com
- 25. DUNS NUMBER:**
940048916
- 26. NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE:**
PAN is Registered in SAM; Effective Date February 24, 2015 – February 24, 2016.



ATTACHMENT 1: LABOR CATEGORY PRICING

Title	GSA Net Price
Senior Developer	\$150.50
Developer	\$113.71
Project Manager	\$115.58
Senior Quality Assurance Analyst / Testing	\$93.29
Administrative Assistant	\$44.48

Terms and Conditions applicable to Information Technology (It) Professional Services (Special Item Number 132-51)

1. Scope.
 - a. The prices, terms and conditions stated under special item number 132-51 information technology professional services apply exclusively to it professional services within the scope of this information technology schedule.
 - b. The contractor shall provide services at the ordering activity location, as agreed to by the contractor and the ordering activity.
2. Performance Incentives.
 - a. When using a performance based statement of work, performance incentives may be agreed upon between the Contractor and the ordering office on individual fixed price orders or Blanket Purchase Agreements, for fixed price tasks, under this contract in accordance with this clause.
 - b. The ordering office must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
 - c. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.
3. Order.
 - a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
 - b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.
4. Performance of Services.
 - a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
 - b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
 - c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
 - d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.
5. Stop-Work Order (Far 52.242-15)(Aug 1989)
 - a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to

the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
6. Inspection of Services.
The Inspection of Services–Fixed Price (AUG 1996) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.
7. Responsibilities of the Contractor.
The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 Rights in Data – General, may apply.
8. Responsibilities of the Ordering Activity
Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT/EC Services.
9. Independent Contractor.
All IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.
10. Organizational Conflicts of Interest.
- a. Definitions.
“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.
“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An "Organizational conflict of interest" exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor's or its affiliates' objectivity in performing contract work.

- b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

11. Invoices.

The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

12. Payments.

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003)) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

- a. The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- b. The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—
 - (1) The offeror;
 - (2) Subcontractors; and/or
 - (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

13. Resumes.

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

14. Incidental Support Costs.

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

15. Approval of Subcontracts.

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

ATTACHMENT 2: TERM SOFTWARE PRICING

SUBSCRIPTION PLANS

Basic Platform	Standard Platform	Professional Platform	Expert Platform
FREE	\$486.15	\$1,701.51	\$4,861.46
<u>PAN BUSINESS EDITION – THE ULTIMATE TALENT MEASUREMENT PLATFORM</u>	<u>PAN BUSINESS EDITION – THE ULTIMATE TALENT MEASUREMENT PLATFORM</u>	<u>PAN BUSINESS EDITION – THE ULTIMATE TALENT MEASUREMENT PLATFORM</u>	<u>PAN BUSINESS EDITION – THE ULTIMATE TALENT MEASUREMENT PLATFORM</u>
<p>PAN LOGOS & COLORS ASSIGN & ADMINISTER TESTS CREDIT CARD OR PO PURCHASING BATTERY MULTIPLE ASSESSMENTS ALL PLATFORM LEVELS PROVIDE ACCESS TO PAN'S COMMERCIAL OFF THE SHELF (COTS) CATALOG OF ASSESSMENTS SINGLE ADMINISTRATOR INDIVIDUAL SCORE REPORTS EMAIL TEMPLATE MANAGEMENT UPLOADING OF CANDIDATES SELF-AUTHORED CONTENT PERSONALIZED REPORTS MODULE ACTIVITY LOGS</p>	<p>BRANDED LOGOS & COLORS ASSIGN & ADMINISTER TESTS CREDIT CARD OR PO PURCHASING BATTERY MULTIPLE ASSESSMENTS ALL PLATFORM LEVELS PROVIDE ACCESS TO PAN'S COMMERCIAL OFF THE SHELF (COTS) CATALOG OF ASSESSMENTS 3 ADMINS & 1 CLIENT INDIVIDUAL SCORE REPORTS EMAIL TEMPLATE MANAGEMENT UPLOADING OF CANDIDATES SELF-AUTHORED CONTENT PERSONALIZED REPORTS MODULE ACTIVITY LOGS STANDARD REPORTING MODULE CUSTOM DEMOGRAPHIC CREATION CUSTOM URL CREATION CUSTOM SYSTEM MESSAGES CREATE & MANAGE CANDIDATE GROUPS</p>	<p>BRANDED LOGOS & COLORS ASSIGN & ADMINISTER TESTS CREDIT CARD OR PO PURCHASING BATTERY MULTIPLE ASSESSMENTS ALL PLATFORM LEVELS PROVIDE ACCESS TO PAN'S COMMERCIAL OFF THE SHELF (COTS) CATALOG OF ASSESSMENTS 25 ADMINS & 10 CLIENTS INDIVIDUAL SCORE REPORTS EMAIL TEMPLATE MANAGEMENT UPLOADING OF CANDIDATES SELF-AUTHORED CONTENT PERSONALIZED REPORTS MODULE ACTIVITY LOGS STANDARD REPORTING MODULE CUSTOM DEMOGRAPHIC CREATION CUSTOM URL CREATION CUSTOM SYSTEM MESSAGES CREATE & MANAGE CANDIDATE GROUPS INVENTORY SHARING HIERARCHICAL SUB-CLIENT DATA WORKFLOW (BPM) MODULE PROCTORED TEST SCHEDULING (FEES APPLY) PERIODIC BILLING CUSTOM FORMS ATS/HRIS INTEGRATION (FEES APPLY)</p>	<p>BRANDED LOGOS & COLORS ASSIGN & ADMINISTER TESTS CREDIT CARD OR PO PURCHASING BATTERY MULTIPLE ASSESSMENTS ALL PLATFORM LEVELS PROVIDE ACCESS TO PAN'S COMMERCIAL OFF THE SHELF (COTS) CATALOG OF ASSESSMENTS UNLIMITED ADMINS INDIVIDUAL SCORE REPORTS EMAIL TEMPLATE MANAGEMENT UPLOADING OF CANDIDATES SELF-AUTHORED CONTENT PERSONALIZED REPORTS MODULE ACTIVITY LOGS STANDARD REPORTING MODULE CUSTOM DEMOGRAPHIC CREATION CUSTOM URL CREATION CUSTOM SYSTEM MESSAGES CREATE & MANAGE CANDIDATE GROUPS INVENTORY SHARING HIERARCHICAL SUB-CLIENT DATA WORKFLOW (BPM) MODULE PROCTORED TEST SCHEDULING (FEES APPLY) PERIODIC BILLING CUSTOM FORMS ATS/HRIS INTEGRATION (FEES APPLY)</p>

Basic Platform – this level is not a pilot program; it provides access the PAN platform with basic functionality; it is at no cost and the terms are renewed annually.

ATTACHMENT 3: END USER LICENSE AGREEMENT (EULA)

Online License Agreement, Terms and Conditions

1. License Agreement.

Performance Assessment Network, Inc. (“PAN”) grants to qualified entities (You) a non-transferable and non-exclusive license to use the PAN Internet-based test and survey system. The granting of this license is active upon issuance by Performance Assessment Network, Inc. of a PAN authorized user login id.

2. Term.

The term of this license agreement begins on the date on which the login id is issued, and will be continued until terminated by either party. You agree that all registration information is accurate and truthful. You also agree to immediately inform Performance Assessment Network, Inc. of any changes in the status of your Registration Information that may affect your eligibility as a PAN authorized user.

3. Orders and Payment.

Orders for test and survey products during the term of this agreement are subject to acceptance by Performance Assessment Network, Inc. and will be fulfilled subject to the terms and conditions of this agreement. You agree to accept billing for all applicable charges for PAN products at the time of order, together with any applicable taxes. Charges are due and payable in full within fifteen (15) days of order placement. Interest will be assessed in accordance with the Prompt Payment Act 31 USC 3903. Unused and unassigned instruments may be returned within 12 months from the date of purchase and refunds will be issued and will be subject to a 25 percent restocking fee. Returns will not be accepted after 12 months.

4. Proper User of Products.

You agree to use PAN products within the scope of your training and professional competence and in a manner consistent with their intended use. Your accessing clinical instruments certifies that you have the necessary clinical certification and training to do so. Your use of PAN products for human resource and pre-employment screening implies that you have full and current knowledge of the Equal Employment Opportunity Commission (EEOC) Uniform Guidelines on Employee Selection Procedures and employment law. You also agree that any tests or surveys you purchase from Performance Assessment Network, Inc. will be used by you or under your direct supervision in a manner consistent with all professional, ethical, and regulatory guidelines and standards.

5. Protection of Test and Survey Products.

Tests, surveys, reports, and delivery mechanisms on PAN are the proprietary property of Performance Assessment Network, Inc., and title to the products and all intellectual property rights protecting the products remains with Performance Assessment Network, Inc. You agree to take diligent and reasonable steps to keep the products and processes confidential and free from unauthorized access or use, and not to divulge, provide, or make the products available to a third person, unless said person is under your direct professional supervision. Further, you may not assign, convey, sublicense, or otherwise transfer this agreement or any right, license, or privilege to the products to another party.

You agree not to copy, duplicate, download, or otherwise disseminate test or survey products without the explicit written permission of Performance Assessment Network, Inc. You further agree not to modify or alter the physical or electronic characteristics of PAN tests, surveys, reports, or any aspect of the PAN electronic environment, and to not be party to any attempt to dismantle, reverse engineer, or electronically intrude into PAN proprietary systems.

6. Warranty.

Performance Assessment Network, Inc. warrants that neither the products nor the PAN proprietary system in their standardized form, nor their normal professional use will infringe upon any United States patent, copyrights, or trademarks existing at the time of the product delivery. You agree to promptly inform Performance Assessment Network, Inc. of any such potential infringement claim, including any arising outside of the U.S. Performance Assessment Network, Inc. agrees to indemnify and hold you harmless from and against such claims provided you have met the other terms and conditions of this agreement. If such an infringement claim arises, Performance Assessment Network, Inc. will furnish you with non-infringing replacement products or terminate this agreement in whole or part by crediting any ordered but unused products relative to the potential claim. Performance Assessment Network, Inc. makes no other warranties with respect to PAN products.

With respect to any goods provided to you under this agreement, Performance Assessment Network, Inc. disclaims any and all warranties, whether express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. If the goods sold pursuant to this agreement are defective, your sole and exclusive remedy shall be the replacement or repair, of the defective goods.

Each assessment product purchased on PAN entitles you to one test session. The test session enables one administration and report for the product ordered and is valid for a period of twenty-four months from the time of purchase.

7. Termination.

Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

8. Liability.

Liability of Performance Assessment Network, Inc. for loss or damage relating to this agreement or your use or inability to use PAN and its products shall be limited to the charges paid by you for the products involved. In no event will Performance Assessment Network, Inc. be liable to you for any claim made against you by any party or for any claim made by you for lost business or profits, or for indirect, special, or consequential damages. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from PAN's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9. General.

This agreement is governed by the Federal laws of the United States. It constitutes the complete agreement between you and Performance Assessment Network, Inc. regarding your status as an authorized user and Test Administrator of PAN.

TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE AS A SERVICE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)

The Contractor shall provide all Enterprise User License Agreements in an editable Microsoft Office (Word) format.

3. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

See EULA at Attachment 3.

- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. If no implied warranties are given, an express warranty of at least 60 days must be given in accordance with FAR 12.404(b)(2)
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number **877.449.8378** for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from **8:00AM to 5:00PM Eastern Time**.

5. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined: (select software maintenance type) :

1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

2. Software Maintenance as a Service (SIN 132-34)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to

communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

- b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.
6. PERIODS OF TERM LICENSES (SIN 132-32) AND MAINTENANCE (SIN 132-34)
 - a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
 - b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.
 - c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.
 - d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
 - e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.
 7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE
 - a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.
 - b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.
 - c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.
 - d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to ___% of all term license payments during the period that the software was under a term license within the ordering activity.
 8. TERM LICENSE CESSATION
 - a. After a software product has been on a continuous term license for a period of ___ months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under

this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

- b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number I32-34, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

9. UTILIZATION LIMITATIONS - (SIN 132-32, SIN 132-33, AND SIN 132-34)

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

10. SOFTWARE CONVERSIONS - (SIN 132-32 AND SIN 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license (132-

32), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

12. RIGHT-TO-COPY PRICING

The Contractor shall insert the discounted pricing for right-to-copy licenses.