



GENERAL SERVICES ADMINISTRATION

FEDERAL SUPPLY SERVICE

AUTHORIZED

FEDERAL SUPPLY SCHEDULE PRICE LIST

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

MULTIPLE AWARD SCHEDULE (MAS)

SPECIAL ITEM NUMBER 54151 - SOFTWARE MAINTENANCE SERVICES FSC/PSC Code J070

Software maintenance services 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 services includes person-to-person communications regardless of the medium used to communicate: telephone support, online technical support, customized support, and/or technical expertise which are charged commercially.

SPECIAL ITEM NUMBER 518210C – CLOUD AND CLOUD-RELATED IT PROFESSIONAL SERVICES FSC/PSC Code D305

Includes commercially available cloud computing services such as Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) and emerging cloud services. IT professional services that are focused on providing the types of services that support the Government's adoption of, migration to or governance/management of Cloud computing. Specific labor categories and/or fixed price solutions (e.g. migration services, etc.) that support activities associated with assessing Cloud solutions, refactoring workloads for Cloud solutions, migrating legacy or other systems to Cloud solutions, providing management/governance of Cloud solutions, DevOps, developing cloud native applications or other Cloud oriented activities.

SPECIAL ITEM NUMBER 611420 - INFORMATION TECHNOLOGY TRAINING FSC/PSC Code U012

Includes training on hardware, software, cloud, and other applicable systems.

SPECIAL ITEM NUMBER 54151S - INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
FSC/PSC Code D399

IT Professional Services and/or labor categories for database planning and design; systems analysis, integration, and design; programming, conversion and implementation support; network services, data/records management, and testing.

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.

Note 2: Offerors and Agencies are advised that the MAS 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.

Note 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.

For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at fss.gsa.gov.

Contract Number: GS-35F-0380Y

Period Covered by Contract: May 3, 2012 to May 2, 2022

Questionmark Corporation
35 Nutmeg Drive, Suite 330
Trumbull, CT 06611
Telephone: 800-863-3950
Web: www.questionmark.com

Contract Administrator: John Kleeman, Secretary (john@questionmark.com; 800-863-3950)

Business size: Small

Woman-Owned Small Business: No

Contractor's Taxpayer Identification Number (TIN): 06-1485644

Veteran Owned Small Business (VOSB): No

CAGE Code: 1BNX1

Pricelist current through Modification #A812, effective July 15, 2020.

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CUSTOMER INFORMATION

INFORMATION FOR ORDERING ACTIVITIES APPLICABLE TO ALL SPECIAL ITEM NUMBERS

SPECIAL NOTICE TO AGENCIES: Small Business Participation

SBA strongly supports the participation of small business concerns in the Federal Acquisition Service. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.gsaadvantage.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.gsa.gov/fas) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1a. TABLE OF AWARDED SPECIAL ITEM NUMBERS

SPECIAL ITEM NUMBER (SIN)	DESCRIPTION
54151	Software Maintenance Services
518210C	Cloud and Cloud-related IT Professional Services
611420	Information Technology Training
54151S	Information Technology Professional Services

1b. LOWEST PRICED MODEL NUMBER AND LOWEST UNIT PRICE FOR THAT MODEL FOR EACH SPECIAL ITEM NUMBER AWARDED IN THE CONTRACT

Please refer to our Price List starting on page 46.

1c. HOURLY RATES

Please refer to our Price List starting on page 46.

2. MAXIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)

a. The Maximum Order for the following Special Item Numbers (SINs) is \$500,000:

Special Item Number 54151 - Software Maintenance Services

Special Item Number 518210C – Cloud and Cloud-Related IT Professional Services
Special Item Number 54151S - Information Technology Professional Services

- b. The Maximum Order for the following Special Item Numbers (SINs) is \$25,000:
Special Item Number 611420 - Information Technology Training.

3. MINIMUM ORDER (All dollar amounts are exclusive of any discount for prompt payment.)
\$100.

4. GEOGRAPHIC COVERAGE (DELIVERY AREA):

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:

- The Geographic Scope of Contract will be domestic and overseas delivery.
- The Geographic Scope of Contract will be overseas delivery only.
- The Geographic Scope of Contract will be domestic delivery only.

5. POINT(S) OF PRODUCTION

35 Nutmeg Drive, Suite 330, Trumbull, CT 06611.

6. DISCOUNT FROM LIST PRICES OR STATEMENT OF NET PRICE

Prices shown are NET Prices; Basic Discounts have been deducted.

7. QUANTITY DISCOUNTS

None.

8. PROMPT PAYMENT TERMS

Net 30 days.

9a. NOTIFICATION WHETHER GOVERNMENT PURCHASE CARDS ARE ACCEPTED OR NOT
ACCEPTED AT OR BELOW THE MICRO-PURCHASE THRESHOLD

Government purchase cards are accepted at or below the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:

Sales and general enquiries: 800-863-3950

Technical support for technical questions: 800-597-3950

9b. NOTIFICATION WHETHER GOVERNMENT PURCHASE CARDS ARE ACCEPTED OR NOT ACCEPTED ABOVE THE MICRO-PURCHASE THRESHOLD

Government purchase cards are accepted above the micro-purchase threshold. The Contractor and the ordering agency may agree to use the credit card for dollar amounts over the micro-purchase threshold (See GSAR 552.232-79 Payment by Credit Card). In addition, bank account information for wire transfer payments will be shown on the invoice.

10. FOREIGN ITEMS (LIST ITEMS BY COUNTRY OF ORIGIN)

The original manufacturer of the Contractor’s Perception software, support for which is provided pursuant to SIN 54151, is Contractor’s parent company, Questionmark Computing Limited, of London, United Kingdom.

11a. TIME OF DELIVERY (CONTRACTOR INSERT NUMBER OF DAYS)

The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
SIN 518210C	5 Days for Cloud Services; as agreed with ordering agency for Cloud-Related IT Professional Services.
SIN 54151	As agreed with ordering agency
SIN 611420	As agreed with ordering agency
SIN 54151S	As agreed with ordering agency

11b. EXPEDITED DELIVERY

Contact Contractor

11c. OVERNIGHT AND 2-DAY DELIVERY

Not applicable

11d. URGENT REQUIREMENTS

Contact Contractor

12. FOB POINT

Destination

13a ORDERING ADDRESS:

Questionmark Corporation
35 Nutmeg Drive, Suite 330
Trumbull, CT 06611
Telephone: 800-863-3950
Fax: 800-339-3944

13b. ORDERING PROCEDURES

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.
- c. FAR 8.405.3 Blanket purchase agreements (BPAs).

14. PAYMENT ADDRESS

Questionmark Corporation
35 Nutmeg Drive, Suite 330
Trumbull, CT 06611

15. WARRANTY PROVISION

- a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:
 - (1) Time of delivery/installation quotations for individual orders;
 - (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.
 - (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.
- b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.
- c. The maintenance/repair service provided is the standard commercial terms and conditions for the type of products and/or services awarded.

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

No other warranties are provided.

16. EXPORT PACKING CHARGES (IF APPLICABLE)

Not applicable.

17. TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE (ANY THRESHOLDS ABOVE THE MICRO-PURCHASE LEVEL).

Government purchase cards are accepted above the micro-purchase threshold. The Contractor and the ordering agency may agree to use the credit card for dollar amounts over the micro-purchase threshold (See GSAR 552.232-79 Payment by Credit Card). In addition, bank account information for wire transfer payments will be shown on the invoice. The following telephone number can be used by ordering activities to obtain technical/ordering assistance:

Sales and general enquiries: 800-863-3950

Technical support for technical questions: 800-597-3950

18. TERMS AND CONDITIONS OF RENTAL, MAINTENANCE, AND REPAIR (IF APPLICABLE).

Not applicable.

19. TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE).

Not applicable.

20. TERMS AND CONDITIONS OF REPAIR PARTS INDICATING DATE OF PARTS PRICE LISTS AND ANY DISCOUNTS FROM LIST PRICES (IF APPLICABLE).

Not applicable.

20A. TERMS AND CONDITIONS FOR ANY OTHER SERVICES (IF APPLICABLE).

Not applicable.

21. LIST OF SERVICE AND DISTRIBUTION POINTS (IF APPLICABLE).

Not applicable.

22. LIST OF PARTICIPATING DEALERS (IF APPLICABLE).

Not applicable.

23. PREVENTIVE MAINTENANCE (IF APPLICABLE).

Not applicable.

24a. SPECIAL ATTRIBUTES SUCH AS ENVIRONMENTAL ATTRIBUTES (E.G., RECYCLED CONTENT, ENERGY EFFICIENCY, AND/OR REDUCED POLLUTANTS).

Not applicable.

24b. IF APPLICABLE, INDICATE THAT SECTION 508 COMPLIANCE INFORMATION IS AVAILABLE ON ELECTRONIC AND INFORMATION TECHNOLOGY (EIT) SUPPLIES AND SERVICES AND SHOW WHERE FULL DETAILS CAN BE FOUND (E.G. CONTRACTOR'S WEBSITE OR OTHER LOCATION.) THE EIT STANDARDS CAN BE FOUND AT: WWW.SECTION508.GOV/.

I certify that in accordance with 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), FAR 39.2, and the Architectural and Transportation Barriers Compliance Board Electronic and

Information Technology (EIT) Accessibility Standards (36 CFR 1194) General Services Administration (GSA), that all IT hardware/software/services are 508 compliant

Section 508 compliance information on the supplies and services in this contract are available at the following website address (URL): <https://support.questionmark.com/go/vpat>

The EIT standard can be found at: www.Section508.gov/

25. DATA UNIVERSAL NUMBER SYSTEM (DUNS) NUMBER

399827914

26. NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE

Registered – registration at date of this price list expires on 17 April 2021 and will be renewed.

27. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003)

- (a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule. Questionmark OnDemand for Government is hosted in a US-based, Federal Risk and Authorization Management Program (FedRAMP) approved data center used by US government agencies and their service contractors, and OnDemand for Government has achieved FedRAMP Authorization. The Questionmark OnDemand for Government Security Package contains an agency recommend for FedRAMP Moderate and DoD Impact Level 4 and Questionmark OnDemand for Government has now received an Authority to Operate (ATO) for Moderate.
- (b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- (c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program. Questionmark OnDemand for Government is hosted in a US-based, Federal Risk and Authorization Management Program (FedRAMP) approved data center used by US government agencies and their service contractors, and OnDemand for Government has achieved FedRAMP Authorization. The Questionmark OnDemand for Government Security Package contains an agency recommend for FedRAMP Moderate and DoD Impact Level 4 and Questionmark OnDemand for Government has now received an Authority to Operate (ATO) for Moderate.

- (d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.
- (e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- (f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.
- (g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- (h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.
- (k) Overtime: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).

28. PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. Ordering Activities procuring open market items must follow FAR 8.402(f).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

- (2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
- (3) The items are clearly labeled on the order as items not on the Federal Supply Schedule and they conform to the rules for numbering line items at subpart 4.10; and
- (4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

29. BLANKET PURCHASE AGREEMENTS (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

30. CONTRACTOR TEAM ARRANGEMENTS

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

31. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS: ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

31.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS): Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

31.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS): Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-

STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDs should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

32. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

- (a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and
- (b) The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

TERMS AND CONDITIONS APPLICABLE TO SOFTWARE MAINTENANCE SERVICES (SPECIAL ITEM NUMBER 54151)

SOFTWARE SUPPORT

a. "Normal Business Hours" shall mean 9:00 a.m. to 5:00 p.m. Central Standard Time on non-holiday weekdays.

b. Initial Term.

The initial term of the Software Support Agreement shall commence on the date invoiced and shall continue for one (1) year plus any initial fractional month, after which it may be terminated by either party at the end of the initial or a rollover annual term on having provided ninety (90) days prior written notice to the other party. If the date of commencement shall fall on a day other than the first day of the month, the initial term shall be deemed to include the twelve (12) full months next following the date invoiced.

c. Charges and Billing.

Charges for support services shall be in accordance with the GSA price list. Billing shall be annually for the year ahead. All amounts are in United States dollars to be paid to Contractor. Contractor shall be under no obligation to provide any services or products if ordering activity is in default of ordering activity's payment obligations. Ordering activity may only enter into the Software Support Agreement at the time of purchase. After ordering activity's initial purchase, or if the Software Support Agreement shall lapse, a buy-in fee of thirty-seven and a half percent (37.5%) of the then current list price will be charged for the first year, provided ordering activity is licensed for the current version. Future versions may be licensed for an upgrade charge that is determined by Contractor, in its sole discretion, at the time of the release.

d. Ordering activity Responsibilities.

Ordering activity agrees to communicate with Contractor in English unless otherwise agreed. Ordering activity agrees to provide Contractor with log and data files, as requested, and with access to; and sufficient support, and test time, on ordering activity's computer system to duplicate the problem, certify that the problem is with the Contractor's software, and to certify that the problem has been fixed.

Ordering activity agrees to advise Contractor of up to three (3) contacts that will be ordering activity's designated contacts for purposes of requesting support. Contractor will have no responsibility hereunder with respect to any support request from any member of ordering activity's organization other than the designated individual(s). These contacts may be changed from time to time, at no charge. Ordering activity agrees that these contacts are currently subscribed or will be subscribed and remain subscribed to Contractor's communities during the term of the agreement.

Ordering activity agrees to promptly install new releases of covered software and agrees that failure to promptly install new releases shall release Contractor from its support obligations under the Software Support Agreement until such time as the new release is installed.

Ordering activity will be responsible for maintaining a platform, hardware, database management system ("DBMS"), operating system, and network compatible with the installed version of the Licensed Software, including newly released versions. Contractor will not be responsible for maintenance of the software other than under the then current operating system and DBMS

releases. If at any time Contractor experiences problems with a new operating system or DBMS release, Contractor will promptly inform ordering activity of the latest release under which Contractor supports the software.

Ordering activity must inform Contractor in writing of any modifications made by ordering activity to the software. Contractor shall have no obligation under the Software Support Agreement to maintain such modified portions of the software or to maintain portions of the software affected by the modified portions of the software. Corrections for difficulties or defects traceable to ordering activity errors or system changes will be billed at standard Contractor time and material rates.

e. Basic Software Support Services (SSP) provided

Particular software covered under the Software Support Agreement will be as indicated on the Invoice. Each such invoice will reference these Terms and Conditions. During the term of the Software Support Agreement, Contractor will correct or replace software and/or provide services necessary to remedy or avoid any programming error, to the extent such programming error is caused by Contractor, and which significantly affects use of the software. Such correction, replacement, or services will be accomplished after ordering activity has identified and notified Contractor of any such error in accordance with Contractor's reporting procedures.

During the term of the Software Support Agreement, ordering activity's contacts that are subscribed to Contractor's communities will receive:

1. New releases of covered software (not charged as options) as they are released by Contractor;
2. Technical or operation assistance to up to three (3) identified and trained contacts via email and phone up to a maximum of twenty (20) person-hours per month without accumulation of hours from one month to the next during Normal Business Hours; and
3. Free access to the Contractor's online knowledge bases, manuals, Best Practice Guides and White Papers.
4. Free Access to Contractor's RSS news feeds for product and technical support information.
5. Opportunity to send employees to Contractor's User Conference at the prevailing rate for Ordering Activities with a software support agreement.

Any corrections or alterations to or new versions of the software that Contractor may deliver to ordering activity under the Software Support Agreement shall be limited to one (1) copy of such software and documentation delivered to ordering activity. Additional sets of documentation are available for purchase by ordering activity. Software and documentation furnished to ordering activity under maintenance are furnished solely for ordering activity use at sites and only for copies under maintenance.

f. Enterprise Software Support Services (ESSP) provided

If ordering activity purchases Enterprise Level Support (ESSP) the following services, in addition to the Basic Software Support Services, will be made available during Normal Business Hours:

1. Dedicated Technical Support Representative. Contractor will use commercial reasonable efforts to allocate a Dedicated Technical Support Representative for ordering activity to work with on an ongoing basis. Notwithstanding the foregoing, Contractor reserves the right to

delegate to, or allocate, another Contractor representative to assist ordering activity in the event that the Dedicated Technical Support Representative is unavailable for any reason.

2. Retain System Profiles. Ordering activity will provide details of their system configuration and product usage to Contractor and Contractor will retain this information, and Ordering activity hereby grants Contractor permission to retain this information for the Dedicated Technical Support Representative, and other Contractor representatives, if appropriate, to have easy access to assist with problem diagnosis and resolution. Ordering activity may provide Contractor with this information in any manner or form, including but not limited to, phone, email or web based forms.
3. Service Level Agreements (SLAs). Ordering activity will commit the required resources during their normal business hours to assist Contractor with reproducing and resolving any error(s) and/or issue(s), obtaining and installing patches, and/or using a workaround or reducing the severity of the error. Contractor agrees to use commercially reasonable efforts to work with the ordering activity to resolve the issue in accordance with the specifications of the SLA. Ordering activity and Contractor acknowledge and agree that reasonable and timely efforts must be made by all parties involved for a timely resolution. If ordering activity fails to communicate with Contractor, without notice, for a period of three (3) business days, then Contractor may, upon notice, close the support incident due to inactivity on the part of the ordering activity. A support incident may be reopened upon request of the ordering activity within thirty (30) consecutive days of closure, however, once a Service Request is closed for more than thirty (30) consecutive days, the issue will be considered permanently closed, and it cannot be reopened. If further work is necessary, a new service request will be opened, and all pertinent information, data and materials may need to be resubmitted before work can continue and all previous support benchmarks are reset. Contractor will set Severity levels at its sole discretion and will use commercial reasonable endeavors to respond to service requests according to the following priorities and response times:

- “Severity 1 issue” means an error isolated to the Questionmark Product that renders the product inoperative or causes the product to fail catastrophically, i.e. major system impact or system outage. This issue must be resolved before the ordering activity can utilize the Questionmark Product. All Severity 1 Issues have no workaround and ordering activity and Contractor shall work closely together in order to resolve the error as soon as possible.

Initial Response Time (by email or callback) is within four (4) hours during Normal Business Hours.

Maximum Time Between Updates (by email or callback or implementation in System) is four (4) hours during Normal Business Hours.

- “Severity 2 issue” means an issue which causes a serious impairment to a critical feature of the Questionmark Perception application, but where overall

functionality is not interrupted. Usually a workaround is available for this type of issue, but such is not always the case. Contractor will resolve all Severity 2 issues as soon as possible.

Initial Response Time (by email or callback) is within eight (8) hours during Normal Business Hours.

Maximum Time Between Updates (by email or callback or implementation in System) is four (4) Hours during Normal Business Hours during the first three (3) business days and then updated as needed thereafter.

- “Severity 3 issue” means an issue that causes the failure of a non-critical aspect of the Questionmark Perception application and a satisfactory work-around already exists but the presence of this issue will result in user dissatisfaction. This is the default priority.

Initial Response Time (by email or callback) is within two (2) business days during Normal Business Hours.

Maximum Time Between Updates (by email or callback or implementation in System) is two (2) business days for the first week and as needed thereafter.

- “Severity 4 issue” means an issue of minor significance. A slight variance exists between the product documentation and how the application actually performs.

Initial Response Time (by email or callback) is within two (2) business days during Normal Business Hours.

Ordering activity update is every five (5) business days, during the first month, and as needed thereafter.

Solution is provided as part of a future release at Contractor’s discretion.

4. Visibility of Contractor Processes. Contractor will provide regular updates of outstanding issues and share the visibility of the escalation process to ordering activity within the guidelines set by the communicated priority.
5. Ability to schedule Technical Service Engineer’s time to be available during critical server upgrades. Contractor allows Dedicated Technical Support Representatives to be scheduled during Normal Business Hours at mutually convenient times to be available for a ordering activity during high-risk periods (such as server upgrades).
6. Dedicated Technical Support Representatives available for technical consulting. Dedicated Technical Support Representatives may be scheduled for chargeable consulting activities subject to quotation, agreement and a Statement of Work being accepted.

g. Available Services:

The following services are not covered by this Software Support Agreement, but may be available from Contractor for a fee, include but are not necessarily limited to:

- 1) Assistance with configuration of templates and workflows.
- 2) Assistance with non-Questionmark ("3rd Party") products is not covered by this agreement. When troubleshooting issues with the interactions between Questionmark products and 3rd Party products, Contractor will participate in conference calls with the ordering activity and the 3rd Party, when coordinated by ordering activity.
- 3) Strategic, business process, and change management consulting.
- 4) Product training (whether web based or face-to-face).
- 5) Assessment content development.
- 6) Application and software development (programming).
- 7) Systems architecture.
- 8) Travelling and/or on-site visits.
- 9) QMWISe configuration and/or other API configuration.

h. Communications Responsibility and Costs.

Ordering activity will be responsible for all costs of any modem and/or network connections at ordering activity's site and the associated line-use charges. Any modem or network access by Questionmark may be subject to ordering activity's approval and such access will be solely for the purpose of diagnosing problems and supporting ordering activity's use of the software.

i. Travel and Hotel Expenses.

On-site visits are not normally required and not provided for under the Software Support Agreement. However, on-site consulting visits can be arranged for a fee. When ordering activity requests an on-site visit ordering activity will reimburse Contractor for any out-of-pocket expenses incurred at ordering activity's request, including travel to and from ordering activity's site, lodging, car rental, and meals.

j. Proprietary Rights.

All proprietary rights in or to the software provided to ordering activity by Contractor and all changes, additions, and/or enhancements to such software, shall remain the sole property of Contractor.

k. Ordering activity's Responsibility to Participants.

Ordering activity acknowledges that the software may be used to assess a participant's knowledge, skills and attitudes and allocate a score. The score should be considered one piece of evidence about a participant's knowledge, skill and/or attitude. When the software is being used to make decisions about a participant, ordering activity should review and evaluate the score to ensure that the appropriate decision has been made. Ordering activity acknowledges and agrees that ordering activity is solely responsible for use of the software, including entering and maintaining the assessment material, checking this material, checking scores, checking reports, and using the software fairly. Should ordering activity use the software to deliver high stakes assessments, or other kinds of assessments, which are used to make important decisions about people, ordering activity acknowledges that ordering activity has a responsibility to thoroughly review and evaluate the materials, scores, and reports produced by the software, to ensure that the appropriate decisions are being made. Ordering activity shall indemnify and hold Contractor and/or its licensor harmless from any and all claims, liabilities, damages, costs and/or expenses and suits arising out of the use of the software or use of the scores to determine decisions relating to participants, including but not limited to any and all claims, liabilities, damages, costs and/or expenses, and suits arising from, related to, or caused by any employment decisions, whether favorable or adverse in nature or effect, made by

ordering activity based upon ordering activity's use of the software or scores produced from ordering activity's use of the software, including but not limited to employment termination or discharge, or discipline; employee compensation; and/or employment promotions or advances.

I. Warranty for support services

LIMITED WARRANTY. Contractor warrants that support engineers will make commercially reasonable efforts to solve any problem issues; however, ordering activity acknowledges and agrees that there can be no guarantee that support engineers will be able to solve each and every problem or issue.

NO OTHER WARRANTIES. CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS NOT EXPRESSLY CONTAINED HEREIN, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS. ORDERING ACTIVITY MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

ORDERING ACTIVITY'S REMEDIES. CONTRACTOR'S AND ITS SUPPLIERS' ENTIRE LIABILITY AND ORDERING ACTIVITY'S EXCLUSIVE REMEDY SHALL BE TO RETURN THE MAINTENANCE FEES PAID WITH RESPECT TO THE JUST-PRIOR THREE (3) MONTH PERIOD OR \$5,000, WHICHEVER IS GREATER PLUS ANY PREPAID MAINTENANCE FEES.

LIMITATION OF LIABILITY. IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE MAINTENANCE SERVICES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF
CLOUD AND CLOUD-RELATED IT PROFESSIONAL SERVICES
(SPECIAL ITEM NUMBER 518210C)

Questionmark OnDemand for Government Software as a Service Terms and Conditions (“Agreement”)

Questionmark provides assessment management technology that enables trainers, educators and testing professionals to author, schedule, deliver and report on surveys, quizzes, tests and exams. This Agreement shall be applicable to Questionmark’s provision of its “Questionmark OnDemand for Government” Software as a Service for online assessments and related support to ordering activity or Customer (“Customer”) and shall govern all Orders entered into between the parties with respect to such Services.

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

1. **Definitions**

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

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

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

Assessment means surveys, quizzes, exams, tests or other systematic ways of collecting data produced using Questionmark Technology whether by Questionmark on behalf of Customer or by Customer.

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

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

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

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

Commencement Date means the date set out in the Order.

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

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

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

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

Enterprise Support means the support and maintenance of the OnDemand Service as more particularly described in Section 10.3.

Fees means the sums payable by the Customer to Questionmark in consideration of the OnDemand Service and Standard Support, including, without limitation, any applicable Set Up Fees, together with sums payable in consideration of Enterprise Support and Consulting Services, if order and such other services as more particularly described in the Order and any applicable SOW.

Force Majeure Event means any act, event, omission or accident beyond the reasonable control of either party including, but not limited to, acts of God, war, threat of or preparation for war, terrorist attack, civil commotion, nuclear, chemical or biological contamination, acts of any Government agency after the Effective Date (including restrictions on open internet access), fire, flood, earthquake, explosion or accidental damage, pandemic or epidemic, labor dispute, denial of service attacks, non-performance by suppliers (that is itself caused by a force majeure event), interruption or failure of utility or transport service and the unavailability of labor or materials to the extent beyond the reasonable control of the party affected.

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

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

Order means the written quotation for Services provided by Questionmark.

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

Permitted Use means the use of the OnDemand Service that is agreed on the Order.

Questionmark Technology means all and any part of Questionmark's proprietary services, software, hardware, products, processes, algorithms, user interfaces, know how, techniques, designs and other tangible and intangible material or information provided by Questionmark to the Customer (and, at the Customer's request, Users) as part of the Services.

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

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

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

Service Configuration means options and application program interfaces ("APIs") that have been enabled for the OnDemand Service and the limitations on the number/volume of Assessments and Users as more particularly described in the Order.

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

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

Set Up Fees means the sum set out in the Order and described as a set-up fee.

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

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

Standard Support means the support and maintenance of the OnDemand Service as more particularly described in Section 10.2.

Term means the Initial Term together with any Renewal Term.

Training means the training services provided by Questionmark to Customer which shall form part of the Services if purchased by the Customer pursuant to an applicable SOW.

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

Users means Admin Users, Authors and Participants.

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

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

2. Questionmark's Obligations

2.1 OnDemand License and Authorization. In consideration of, and subject to, payment of the Fees, Questionmark grants to the Customer a non-exclusive, royalty-free, non-transferable, non-sublicensable license and authorization to access and use the OnDemand Service for the Term. This license shall be subject to the Service Configuration detailed on the Order and the terms of this Agreement. All rights not expressly granted to Customer hereunder are reserved by Questionmark, its suppliers, and licensors. On or before the Commencement Date, Questionmark shall provide the Customer with an individual password, identity code or other security code by which Customer may access the OnDemand Service via the internet.

2.2 Consulting Services. Following a request for Consulting Services, Questionmark shall produce a proposal and the parties shall agree on a final form for the applicable Order or SOW which, when signed by both Parties, shall be the Order for Consulting Services.

Customer shall be solely responsible to confirm that the Order satisfies the Customer's operational needs and requirements. The Consulting Services shall be performed and delivered at the times and places listed in the applicable Order. Questionmark shall use commercially reasonable efforts to meet the timelines set in the Order.

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

3. Customer Obligations

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

3.2 Access Control and Usernames. Customer shall not allow any persons to be registered in, to access or use the OnDemand Service in excess of the number of Users authorized in the Service Configuration, measured on a rolling twelve (12) month basis. In the event that a Participant is removed from or no longer uses the OnDemand Service his or her allocated username may not be reassigned to another individual, unless otherwise expressly agreed in the Order. Notwithstanding the foregoing, Customer shall be permitted to exceed the number of Participants authorized in the Service Configuration by no more than ten percent (10%) at any one time (measured on a rolling twelve (12) month basis) where Participants are

removed from the OnDemand Service because (i) their participation in Assessments is no longer required or due to associated errors or mistakes and the Customer adds new Participants or (ii) they cease to be employed or engaged by or attend the Customer or otherwise change roles with the Customer and the Customer adds new Participants. For clarity, Assessments taken by removed Participants shall continue to count against the Service Configuration and other limits in the Order. In the event that an Admin User or Author is removed from or no longer uses the OnDemand Service, his or her allocated username may be reassigned to another individual. Customer shall not allow more than one individual to use a User Account and shall not share any User Account credentials with more than one individual. Customer shall permit and provide all cooperation and information requested by Questionmark in any audit regarding compliance with the Service Configuration.

- 3.3 Password Security.** Customer shall keep confidential all usernames, passwords, identification and security codes provided by Questionmark and shall notify Questionmark promptly in the event that it suspects the loss or unauthorized use or disclosure of any such username, password or code. Except for any activity that occurs more than one (1) Business Day after notifying Questionmark of the suspected loss or disclosure or any unauthorized use of a username, password or code, the Customer shall be liable for any activity carried out by a User or under any username, password, identification or security code issued to it and shall take all reasonable efforts to prevent such breach and mitigate any losses.
- 3.4 Restrictions on Use.** Customer may not modify or make derivative works based upon the OnDemand Service, Services or any associated documentation or hide or attempt to hide copyright information or identification of Questionmark's ownership of the OnDemand Service or Services. Customer is prohibited from reverse engineering or accessing the OnDemand Service or Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics as the OnDemand Service or Services, or (c) copy any ideas, features, functions or graphics of the OnDemand Service or Services. Customer may monitor performance of the OnDemand Service but such information is Confidential Information of Questionmark under this Agreement.
- 3.5 License to Customer Data.** The Customer grants to Questionmark a non-exclusive, royalty-free licence to use the Customer Data in connection with the provision of the Services. Customer authorizes Questionmark and its Affiliates to use Assessment results and other Customer Data (including personal data) for analysis purposes as part of the Services and to produce aggregated data for Assessment validation, anti-cheating, security, statistical analysis and product improvement purposes, including creating or updating Benchmarks. Benchmarks and other aggregated data shall not contain any information on any identifiable individual or from which any individual is identifiable and are owned by Questionmark. Questionmark shall also not disclose to any other Questionmark customers Benchmarks or

other aggregated data that include (directly or by inference) any information identifying Customer or from which Customer is identifiable.

3.6 Use of Assessments. The OnDemand Service may be used to correspond with Participants and to assess a Participant's knowledge, skills and attitudes and allocate a score. Customer is responsible for all correspondence with Participants. Scores should be considered one piece of evidence about a Participant's knowledge, skill and/or attitude. When the OnDemand Service is being used to make decisions about a Participant (such as whether to hire, promote or fire the Participant), Customer is solely responsible for the fairness, quality and validation of the Assessment and should review and evaluate the Participant's score to ensure that the appropriate decision has been made. Customer is solely responsible for its use of the OnDemand Service and Assessments, including entering and maintaining the assessment material, validating the Assessment, checking this material, checking scores and checking reports.

3.7 Acceptable Use. Customer shall not use the OnDemand Service to store or transmit anything offensive, harassing, threatening, abusive, obscene, illegal, or defamatory, that breaches the rights of any third party, or contains viruses, worms, Trojan horses or other harmful computer code, spyware, adware, malware, files, scripts, agents or programs. Customer is prohibited from:

- (i) using the OnDemand Service to support criminal activity or illegal purpose;
- (ii) undertaking penetration testing of the OnDemand Service without at least ten (10) days' advance written permission of Questionmark obtained through completion of Questionmark's standard form, to Questionmark's reasonable satisfaction;
- (iii) undertaking large-scale performance testing of the OnDemand Service without advance written permission of Questionmark;
- (iv) impersonating another user of the OnDemand Service or a Questionmark employee;
- (v) attempting to violate the security of a network, service, or other systems, including but not limited to hacking, cracking into, monitoring, or using systems without authorization, scanning ports, and conducting denial of service attacks;
- (vi) interfering with or disrupting the integrity or performance of the OnDemand Service or the data contained therein;
- (vii) attempting to gain unauthorized access to the OnDemand Service or its related systems or networks;
- (viii) using the OnDemand Service to send unsolicited e-mails, charity requests, petitions for signatures, or chain mail related materials or communications in any form;
- (ix) sending e-mails that violate the U.S. CAN-SPAM Act, such as sending unsolicited email without identifying in the email a clear and easy means to be excluded from receiving additional email from the originator of the email or that do not accurately identify the sender, the sender's return address, and the email address of origin;

- (x) knowingly violating an internet service provider's acceptable use policy and/or terms of service;
- (xi) assisting or permitting any persons in engaging in any of the activities described above.

Questionmark may request that the Customer take appropriate actions necessary to stop any such activities. Questionmark may check system files, emails and other data for illegal content and materials, or for any other reasons deemed reasonably necessary.

Questionmark may take all reasonable necessary actions that it deems appropriate to address violations of this Section 3.7, subject to the requirements and restrictions of US federal laws. Refunds or credits are not issued in connection with actions taken for violation of this Section 3.7.

3.8 Export Laws. Questionmark complies with the Trade Agreements Act 1979. 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 the export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other U.S. governmental agencies. Customer shall not use the OnDemand Service in, and shall not transfer or otherwise export or re-export any of the underlying or associated information, software, or technology to, countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), and shall not permit such use by or transfer to a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of an Embargoed Country or a Designated National. Customer shall comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Customer shall provide any required assistance to Questionmark in complying with the export controls including, but not limited to, supplying a statement as to ultimate destination and complying with any import regulations. Questionmark warrants that at the Effective Date and as far as it is aware acting in good faith, the Export Control Classification Number (ECCN) for the OnDemand Service licensed by Questionmark hereunder in accordance with the Commerce Control List contained in the United States Export Administration Regulations or other relevant export regulations promulgated by a United States federal agency is EAR99. Questionmark, its suppliers, and its licensors make no representation that the OnDemand Service is appropriate or available for use in other locations.

3.9 Connections to OnDemand Service. Customer shall, at its own cost, provide all Internet connections, hardware, software and all other equipment necessary to use the Services.

Customer is responsible for ensuring prior to entering into this Agreement and during the Term that it is able to access and use the open internet in all jurisdictions in which it intends to use the Services. The inability of Customer or Participants to access and use the Services due to open internet restrictions shall not constitute a Service Incident, Unscheduled Downtime or failure by Questionmark to perform its obligations under this Agreement.

3.10 Application Program Interfaces. Where the Service Configuration permits access to the OnDemand Service through Questionmark Application Program Interfaces (“APIs”), Customer shall only access the OnDemand Service through the APIs listed in the Order and in accordance with the documentation and instructions provided by Questionmark.

3.11 System Requirements. The Services may only be used via compatible systems and/or compatible browsers. Questionmark maintains a list of compatible systems and/or browsers on its web site and reserves the right to update the system specifications at its reasonable discretion.

3.12 Cooperation. Customer shall provide Questionmark all access to information reasonably requested to enable Questionmark to provide the Services. Questionmark has no liability for any failure or delay to provide the Services to the extent such failure or delay is caused by Customer’s failure to provide such information.

3.13 Data Backup. The OnDemand Service includes a function for archiving and exporting Assessments, results and other data. Questionmark shall not be responsible or liable for Customer’s deletion, correction, destruction, damage, loss or failure to store any such information or Customer Data including, but not limited to, an event where Customer fails to make regular backups. Without limiting Customer’s responsibility to backup and Questionmark’s disclaimer of responsibility or liability as described in the immediately foregoing sentence, Questionmark shall make commercially reasonable efforts to make at least daily backups.

3.14 Code Upload. If Customer wants to upload any executable software code into the OnDemand Service, the Customer will pass such code to Questionmark prior to such upload, so that Questionmark can undertake an appropriate security vulnerability review and Customer shall pay Questionmark’s reasonable, pre-agreed associated service charge for this review. For clarity, such a review is undertaken by Questionmark for the purposes of security of the OnDemand Service without warranty to Customer.

4. Fees

4.1 Fees. In consideration of the Services, Customer shall pay all Fees in full and cleared funds and in the currency specified in the Order to the account or address designated by Questionmark from time to time. Where Customer has purchased Consulting Services,

Questionmark shall invoice, and Customer shall pay, the relevant Fee for such Consulting Services as set out in the applicable Order. All Fees for pre-paid Services are non-refundable except in the event of termination by Customer for cause under Section 5.2. Notwithstanding the immediately foregoing sentence, if FAR 52.249-2 (Termination for Convenience of the Government (Fixed-Price)) is applicable to an Order with a GSA Schedule Customer, that provision shall govern payment of Fees in the event of termination for convenience.

- 4.2 Payment Terms.** All invoices shall be due and payable by Customer within thirty (30) days of receipt of a valid and undisputed invoice, unless otherwise stated in the Order. Any invoices not disputed within forty-five (45) calendar days of receipt shall be deemed accepted.
- 4.3 Taxes.** All Fees are exclusive of any applicable sales, use or value added taxes, import duties or other taxes, fees or levies imposed on the Services, whether now in force or demanded by any governmental entity at any later time, which if applicable Questionmark may collect from Customer for remittance to an applicable governmental entity. Upon request, Questionmark shall provide Customer with a valid tax identification number on a U.S. Internal Revenue Service Form W-9. All payments to be made by Customer to Questionmark under this Agreement shall be without set-off and without any deduction or withholding for any taxes, duties, imports, fees or charges. Should any taxes be due or demanded outside the United States based on use of the Services by Customer, they will be wholly payable by Customer. Customer shall not be responsible for any taxes based on Questionmark's net income. No taxes shall be collected by Questionmark when Customer provides to Questionmark a valid relevant tax exemption certificate.
- 4.4 On-site Services.** On-site visits are not normally required. When on-site visits are requested by Customer, an Order or SOW will document the Consulting Services required and Customer shall pay Consulting Services Fees and Questionmark's reasonable out of pocket expenses incurred pursuant to such on-site visit including travel, lodging and subsistence, where applicable consistent with Customer's then current reasonable travel and expenses policy, provided that US federal government travel regulations shall always apply and take priority where Customer is a federal government agency or instrumentality.
- 4.5 Renewal Fees.** Questionmark may change the Renewal Fees by giving sixty (60) days written notice to Customer prior to the expiration of the Term then in effect and such changes shall become effective upon the commencement of such Renewal Term, provided that Renewal Fees for Customers transacting on the GSA Schedule may only be changed by modification to Questionmark's GSA Schedule contract.
- 4.6 Credit cards.** If the Order references payment by credit card or if the Customer uses a credit card to pay, Questionmark may deduct Renewal Fees or other Fees when due from Customer's credit card.

4.7 Other Services. The following are not included as part of the OnDemand Service but may be purchased as Consulting Services: troubleshooting integration issues and creating integration solutions with third party products, Assessment content development, Assessment content conversion, programming, configuration, assistance with template creation and Assessment style modification.

5. Term and Termination

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

5.2 Termination.

5.2.1 Termination for Cause. In addition to any other remedy that either party has pursuant to this Agreement, either party may terminate this Agreement for cause if: (i) the other party materially breaches any term or condition of this Agreement, including, but not limited to, the payment of Fees, and fails to cure such breach within thirty (30) days after written notice of the same; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within ninety (90) days of filing. Notwithstanding the foregoing, Questionmark may not terminate for cause any Order placed under the GSA Schedule for any reason without complying with the applicable procedures for termination governing its GSA Schedule contract.

5.2.2 Termination for Convenience. Customer may terminate this Agreement for convenience. Unless US federal law permits immediate termination for convenience, thirty (30) days written notice to Questionmark must be provided. Upon termination for convenience, Customer shall remain liable for all Fees paid and due for the entire then current Term, without refund or reduction. Notwithstanding the immediately foregoing sentence, if FAR 52.249-2 (Termination for Convenience of the Government

(Fixed-Price)) is applicable to an Order with a GSA Schedule Customer, that provision shall govern payment of Fees in the event of termination for convenience. .

5.3 Effect of Termination.

- 5.3.1** Upon termination of this Agreement, Questionmark will make available to Customer a file of the Customer Data stored within the OnDemand Service within thirty (30) days of the effective date of termination in a reasonable standard file format. If Customer Data is requested in a different media or format, Questionmark may charge Customer at its reasonable standard rates then in effect for such services.
- 5.3.2** Upon termination of this Agreement by Questionmark for cause, all undisputed fees or charges payable for the entire Term shall become due and payable by Customer to Questionmark, and Questionmark's obligations under this Agreement to provide the Services shall end.
- 5.3.3** Upon termination of this Agreement by Customer for cause without prejudice to any other remedies available to Customer but subject to applicable laws, all prepaid Fees applicable to the unused portion of the Services that were to be provided after the effective date of termination, if any, will become due and payable by Questionmark to Customer and Questionmark's obligations under this Agreement to provide the Services shall end.
- 5.3.4** If requested by Customer, Questionmark will provide Consulting Services at a reasonable price to assist Customer with termination or transition of the Services as the Parties may reasonably agree in a separate Order.

6. Confidential Information

- 6.1** Any prior non-disclosure agreements in force between the Parties remain valid and binding obligations in respect of disclosures made prior to the Effective Date, notwithstanding execution of this Agreement, unless otherwise provided for in those earlier non-disclosure agreements.
- 6.2** During the Term of this Agreement, each party (the "Disclosing Party") might disclose to the other party or its Affiliates (the "Receiving Party) written and/or oral information that the Disclosing Party considers to be Confidential Information (as defined herein). For the purpose of this Agreement, "Confidential Information" shall include, but not be limited to, Questionmark Technology, Documentation, Customer Data, user names, passwords, Questionmark's pricing, information of the Disclosing Party specifically marked or referenced as confidential, any information of public bodies or institutions that is defined or to be treated as such under federal or state laws and any and all other information which should

reasonably be understood to be confidential or proprietary by the Disclosing Party. The term "Confidential Information" does not include information that (i) becomes generally available in the public domain, except as a result of a breach or violation of this Agreement by the Receiving Party; (ii) is in the possession of the Receiving Party prior to disclosure by the Disclosing Party, provided that the Receiving Party did not receive the information from a third party bound by any confidentiality obligation(s) to the Disclosing Party; and/or (iii) is developed or created by the Receiving Party independent from and without reference to Confidential Information disclosed by the Disclosing Party.

- 6.3** The Receiving Party shall give the Confidential Information of the Disclosing Party confidential treatment during the Term and after termination of this Agreement. The Receiving Party shall use the Confidential Information only in connection with Receiving Party's performance under or in compliance with this Agreement and will not disclose Confidential Information to any third parties without the prior written consent of the Disclosing Party. The Receiving Party may disclose Confidential Information to each of its Representatives on a "need-to-know" basis only in connection with such Representatives' performance under, or compliance with, this Agreement; provided that the Receiving Party informs such Representative of the confidentiality obligations contained herein. The Receiving Party shall be liable for any breach or violation of this Agreement by its Representatives. "Representatives," with respect to any party, means its Affiliates and its and their respective directors, officers, employees, subcontractors, advisors and/or agents (including, without limitation, attorneys and accountants).
- 6.4** Receiving Party may disclose the Disclosing Party's Confidential Information pursuant to statutory or governmental regulations, requirements and/or subpoenas or other legal process; as long as the Receiving Party provides Disclosing Party with prompt written notice, as permitted by applicable law. The Receiving Party will reasonably cooperate with Disclosing Party in its attempts to seek a protective order or otherwise to limit or restrict disclosure of the Disclosing Party's Confidential Information. If the Disclosing Party is unable to obtain a protective order or otherwise limit or restrict disclosure of its Confidential Information, Receiving Party may disclose the Disclosing Party's Confidential Information, but only to the extent required.
- 6.5** Upon termination or expiration of this Agreement, and upon request from the Disclosing Party, the Receiving Party will return or delete all of the Disclosing Party's Confidential Information, including but not limited to copies and derivative works created therefrom, in whatever form, format or media, with no copies retained, except that any of Disclosing Party's Confidential Information stored in archive or back-up that is not reasonably capable of being deleted without undue burden or expense is not required to be deleted, destroyed or returned hereunder by the Receiving Party, subject to such Confidential Information not being used. Upon request, the Receiving Party shall confirm in writing to Disclosing Party its compliance with this paragraph. Any Confidential Information retained by the Receiving Party

pursuant to this paragraph shall be held in continued compliance with the terms and conditions of this Agreement.

- 6.6** The Receiving Party's breach of this Section 6 will cause irreparable injury and damage to the Disclosing Party that might not be susceptible to monetary calculation or have an adequate remedy at law. Accordingly, in the event of a breach or anticipated breach of this Section, in addition to any and all other rights and remedies available to the Disclosing Party at law and/or in equity, the Disclosing Party will be entitled to seek, and the Receiving Party hereby waives any objection to the Disclosing Party's receipt of, specific performance and injunctive relief (both temporary and permanent) without the posting of a bond.

7 Security.

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

8. Compliance with Laws and Data Protection

- 8.1 Customer Data.** Customer is responsible for the accuracy, quality, legality, reliability, appropriateness, intellectual property ownership and right of use of Customer Data, including ensuring that Customer Data is transmitted to and processed in the Services by Customer and provided to Questionmark in accordance with applicable laws, including for operation and maintenance of the Services, which Customer instructs Questionmark to undertake.
- 8.2 Data Protection.** Customer is responsible for ensuring that its use of the OnDemand Service and all information that the OnDemand Service receives and transmits pursuant to such use

complies with all applicable local, state, federal and foreign laws, treaties and regulations, including, without limitation, any applicable data protection and human rights laws regarding the transmission and processing of personal information.

8.3 Protected Health Information. The Customer warrants and represents that it will not upload to the OnDemand Service or otherwise provide Questionmark with access to Protected Health Information as defined at 45 C.F.R. § 160.103 (“PHI”) unless and until the Parties execute a separate HIPAA business associate agreement providing for the satisfactory assurances required by 45 CFR § 164.502(e)(2) (“HIPAA BAA”). The Parties agree that the HIPAA BAA shall be exclusively applicable to PHI subsequently used by Customer in a defined area within the OnDemand Service to which Questionmark has access. Questionmark disclaims all responsibility and liability in respect of PHI that Customer may upload to the OnDemand Service prior to execution of a HIPAA BAA, or provided to Questionmark otherwise than as agreed between the Parties in a HIPAA BAA.

8.4 FCPA Compliance. The Parties shall comply with all applicable U.S. anti-bribery and anti-corruption laws. In accordance with the Foreign Corrupt Practices Act, the Parties shall not, either directly or indirectly, in order to assist in obtaining or retaining business for or with, or directing any business to, any person, make or cause to be made, a payment of money or offer, gift, promise to give or authorize the giving of anything of value to any foreign official or to any foreign political party or official thereof for the purposes of influencing any act or decision of that person in his, her or its official capacity, inducing that person to do or omit to do any act in violation of his, her or its lawful duty, securing any improper advantage or inducing that person to use influence to affect or influence any official act or decision.

8.5 FERPA. If Customer is an educational agency or institution under the Family Educational Rights and Privacy Act and its implementing regulations (20 U.S.C. § 1232G; 34 Part 99) (“FERPA”), Questionmark acknowledges that for this Agreement, Customer Data may include personally identifiable information from education records that are subject to FERPA (“FERPA Data”). To the extent Questionmark receives FERPA Data when providing the Services, Questionmark will in respect of such FERPA Data be functioning as a “school official” with legitimate educational interests as defined in FERPA, and will comply with FERPA. Customer understands Questionmark may have no or limited contact information for Customer’s students and students’ parents and that Customer is responsible for obtaining any consent to use the OnDemand Service that may be required under applicable law, including from students’ parents.

9. Intellectual Property

9.1 Questionmark Intellectual Property. Customer acknowledges:

- 9.1.1** That any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and wheresoever enforceable, in Questionmark Technologies and any relevant Documentation or material provided by Questionmark will remain the sole property of Questionmark and its licensors.
- 9.1.2** Questionmark shall retain ownership of all proprietary rights to any Deliverables developed pursuant to any Configuration, including certain rights, if any, that Questionmark has pursuant to a license from any third party.
- 9.1.3** Upon full payment of the applicable Fees, Questionmark shall grant to Customer a license to use such Configuration in accordance with the Service Configuration.
- 9.1.4** Questionmark is the owner, licensee or sub-licensee of various pre-existing development tools, routines, subroutines and/or other programs, data, and materials that Questionmark may use or implement in the development of any Configuration ("Background Technology").
- 9.1.5** Questionmark and/or its licensors retain all right, title and interest in and to the Background Technology, and Questionmark hereby grants Customer a non-exclusive license to use the Background Technology only to the extent necessary to use the OnDemand Service and any Configuration during the Term consistent with the terms of this Agreement and the Permitted Use.

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

10. Warranties

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

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

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

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

Except as expressly provided herein, Questionmark, its suppliers, and licensors do not represent or warrant that use of the OnDemand Service will be secure, timely, uninterrupted, error-free or operate in combination with any other system or data. Questionmark shall not be responsible for any damage to, or loss of, Customer Data or any third party data provided by Customer, except to the extent caused by Questionmark. The Services might be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Although Questionmark will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events consistent with good industry practice and except as otherwise expressly provided in Section 13, Questionmark disclaims all responsibility resulting from or related to such events.

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

11. Limitation of Liability

Except to the extent otherwise contemplated in Section 13, if an Assessment does not perform properly due to the fault of Questionmark Technology, Questionmark shall allow the affected Participants to retake the Assessment at no additional charge to Customer as Customer's remedy for such non-performance by Questionmark.

THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THE BELOW PARAGRAPHS OF THIS SECTION 11 SHALL ONLY APPLY TO GSA SCHEDULE CUSTOMERS TO THE EXTENT PERMITTED BY US FEDERAL LAWS.

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

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

QUESTIONMARK SHALL HAVE NO LIABILITY WITH RESPECT TO CUSTOMER'S USE OF THE SERVICES WHERE QUESTIONMARK IS PROVIDING A FREE TRIAL. THE LIMITATIONS IN THIS SECTION 11 SHALL NOT APPLY TO CUSTOMER'S OBLIGATION TO PAY THE FEES.

12. Insurance

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

13. **Support**

13.1 Support Generally. Questionmark shall provide Standard Support in connection with provision of the OnDemand Service as described in Section 13.2 below. If Customer elects to purchase Enterprise Support, Questionmark shall provide additional support under the Enterprise Support Service Level Agreement as described in Section 13.3 below.

13.2 Standard Support.

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

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

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

13.2.4 Customer is requested to ensure that Customer’s Designated Contacts subscribe to Questionmark’s OnDemand Service news feed during the Term.

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

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

2nd Line Technical Support	Provide assistance by phone and email to Designated Contacts to answer questions and provide workarounds where answers could not be found in the manuals or knowledge base items.	Provided by Questionmark during Working Hours as standard and 24 x 7 for an additional fee.
3rd Line Technical Support	Resolve software issues with the OnDemand Service in a manner that does not consume support hours.	Provided by Questionmark and included as standard.
Chat Technical Support	Provide assistance to Designated Contacts using 24 x 7 browser text chat sessions and VoIP to help resolve issues.	Provided by Questionmark for an additional fee.
Participant Support	Provide assistance by phone, email, chat sessions, etc. to the Participant to assist them to use any part of the Service.	Provided by Questionmark for an additional fee.
Proctor/Invigilator Support	Provide assistance by phone, email, chat sessions, etc. to proctor/invigilators to assist them with the proctoring/invigilation process including but not limited to the use of the Service.	Provided by Questionmark for an additional fee.
Consulting Support	Provide assistance with template creation and modification to change look-and-feel of assessment, assessment content import, content transformations, custom development, support of custom development, consulting services, training services, data format changes, etc.	Defined within an Order and delivered for a fee that depends on the scale of the work required.

13.2.6 Questionmark will also provide free access to Designated Contacts to product and technical support information, online knowledge bases, manuals, best practice guides, white papers and news feeds.

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

13.3 Enterprise Support Service Level Agreement.

- 13.3.1** Customer will use commercially reasonable efforts to provide accurate and prompt notification of any Service Incident with the OnDemand Service so that Questionmark may promptly take any remedial action. Notwithstanding anything to the contrary contained in this Agreement, Questionmark is not obligated to remedy any Service Incident caused by User error or failure to access the OnDemand Service with a compatible system or web browser.
- 13.3.2** Questionmark will use commercially reasonable efforts to respond to and remedy each Service Incident based on the Severity Level set forth below.
- 13.3.3** Questionmark will respond to the Designated Contact within the Initial Response Time specified in the table below, based on the Service Incident’s Severity Level.

<p>Severity 1</p>	<p>An error isolated to the OnDemand Service that renders the service inoperative or causes the service to fail catastrophically, i.e. major system impact or system outage. This issue must be resolved before the Customer can use the OnDemand Service. All Severity 1 Issues have no workaround and Customer and Questionmark shall work closely together in order to resolve the error as soon as possible. Severity 1 issues are extremely rare and Questionmark escalates these issues to its highest priority.</p>	<p><u>Initial Response Time</u> (by email or callback) is within four (4) hours during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is four (4) hours during Working Hours.</p>
<p>Severity 2</p>	<p>An error isolated to the OnDemand Service which causes a serious impairment to a critical feature of the OnDemand Service, but where overall functionality is not interrupted. Usually a workaround is available for this type of issue, but not in all cases. Questionmark will resolve all Severity 2 issues as soon as possible.</p>	<p><u>Initial Response Time</u> (by email or callback) is within eight (8) hours during Working Hours. <u>Maximum Time Between Updates</u> (by email or callback or implementation in the OnDemand Service) is four (4) hours during Working Hours during the first three (3) Business Days and then updated as needed thereafter.</p>

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

13.3.4 Targeted Availability. The Assessment Delivery Service is targeted to be available to Customer twenty-four (24) hours a day, seven (7) days a week, at least 99.5% of the time measured on a monthly basis, excluding Scheduled Maintenance, Emergency Maintenance or due to a Force Majeure Event.

14. Notice

Any notice to Questionmark should be contemporaneously copied to john@questionmark.com and jamie.armstrong@questionmark.com. Questionmark may notify Customer of general announcements made to all users of the OnDemand Service regarding the operation of the Service, including by email.

15. Miscellaneous

- 15.1 Force Majeure.** Neither party shall be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (save for obligations on Customer to make payment) arising from or attributable to a Force Majeure Event provided that it promptly notifies the other Party in writing and uses all reasonable endeavors to mitigate the effect of the Force Majeure Event. Either Party shall be entitled to terminate this Agreement if a Force Majeure Event endures for sixty (60) days
- 15.2 No Waiver.** Failure by either 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 nor operate to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 15.3 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.
- 15.4 Entire Agreement.** This Agreement together with any Order (as defined herein) contains the entire understanding of the parties regarding the subject matter hereof and supersedes any prior discussions or agreements concerning such subject matter, except that if the Order is being placed under a GSA Schedule, the terms in the GSA Schedule Contract take precedence over this Agreement. If Customer has purchased the OnDemand Service from a Questionmark reseller and the terms of any agreement or documentation between Customer and such reseller conflict with the terms of this Agreement, (i) Questionmark shall be entitled to perform and enforce this Agreement in accordance with its terms, (ii) as between Questionmark and Customer, the terms of this Agreement shall govern, and (iii) Customer's sole recourse and remedy for any loss, damage, expense or other liability caused by such conflict shall be against such reseller.
- 15.5 Governing Law and Forum.** Unless this Agreement is with a GSA Schedule Customer, this Agreement shall be governed by Connecticut law (Connecticut being a state of the United States of America), without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the state and federal courts in Bridgeport, Connecticut. If this Agreement is with a GSA Schedule Customer, it is governed by applicable US federal laws.
- 15.6 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.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF
INFORMATION TECHNOLOGY TRAINING
(SPECIAL ITEM NUMBER 611420)**

1. SCOPE

- a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of the other products and services offered by Contractor. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3. TIME OF DELIVERY

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

4. CANCELLATION AND RESCHEDULING

- a. The ordering activity will notify the Contractor at least twenty one (21) days before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.
- b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course.
- c. The ordering activity reserves the right to substitute one student for another up to the first day of class.
- d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

5. FOLLOW-UP SUPPORT

The Contractor does not offer this option on a commercial basis and therefore cannot offer it in connection with this Contract.

6. PRICE FOR TRAINING

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324).

8. FORMAT AND CONTENT OF TRAINING

a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.

c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.

d. The Contractor shall provide the following information for each training course offered:

- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
- (2) The length of the course;
- (3) Mandatory and desirable prerequisites for student enrollment;
- (4) The minimum and maximum number of students per class;
- (5) The locations where the course is offered;
- (6) Class schedules; and
- (7) Price (per student, per class (if applicable)).

e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

9. "NO CHARGE" TRAINING

The Contractor shall describe any training provided with equipment and/or software provided under this contract, free of charge, in the space provided below.

Not applicable

10. WARRANTY

Warranty. Contractor warrants that the Deliverable at the time of delivery will not knowingly infringe any US Patent, or infringe any third party copyright, trade secret, or other intellectual property rights. This warranty will not apply to any infringement that would not be such except for ordering activity's contributed design, software or other elements. Ordering activity's exclusive remedy for the breach of the above warranty will be the re-performance of the Services within a commercially reasonable time.

NO OTHER WARRANTIES. CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS NOT EXPRESSLY CONTAINED HEREIN, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS. ORDERING ACTIVITY MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

ORDERING ACTIVITY'S REMEDIES. CONTRACTOR AND ITS SUPPLIERS' ENTIRE LIABILITY AND ORDERING ACTIVITY'S EXCLUSIVE REMEDY SHALL BE TO RETURN THE FEES PAID WITH RESPECT TO THE JUST-PRIOR THREE (3) MONTH PERIOD OR \$5,000, WHICHEVER IS GREATER.

LIMITATION OF LIABILITY. IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE MAINTENANCE SERVICES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 54151S)

1. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 54151S Information Technology Professional Services apply exclusively to IT Professional Services within the scope of this Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

2. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. 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 (Deviation - May 2003) 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

In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND CONDITIONS □COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I □OCT 2008) (DEVIATION I - FEB 2007) applies to Time-and-Materials and Labor-Hour Contracts 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.

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 Professional Services.

9. INDEPENDENT CONTRACTOR

All IT Professional 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 Professional 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 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) 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 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) 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.

16. DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING

a. The Contractor shall provide a description of each type of IT Service offered under Special Item Numbers 54151S Information Technology Professional Services should be presented in the same manner as the Contractor sells to its commercial and other ordering activity customers. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles (labor categories) for those individuals who will perform the service should be provided.

b. Pricing for all IT Professional Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, and/or fixed prices, minimum general experience and minimum education.

c. Please refer to the labor category description and pricing incorporated into this GSA Pricelist.

17. INTELLECTUAL PROPERTY

Contractor will retain ownership of all proprietary rights to the Deliverable developed pursuant to this Agreement, including certain rights, if any, that Contractor has pursuant to a license from another party. Upon full payment of the fees set forth in this Agreement, Contractor will grant to ordering activity a license to install and use the Deliverables in ordering activity's own business.

Contractor is the owner, licensee or sub-licensee of various pre-existing development tools, routines, subroutines and/or other programs, data, and materials that Contractor may use or implement in the development of the Deliverable ("Background Technology"). Contractor retains all right, title and interest in and to the Background Technology, and hereby grants ordering activity a non-exclusive license to use the Background Technology only to the extent necessary to use the Deliverable. Ordering activity is not authorized to sell or license any Background Technology or the Deliverable being produced under this Agreement.

18. WARRANTY

Warranty. Contractor warrants that the Deliverable at the time of delivery will not knowingly infringe any US Patent, or infringe any third party copyright, trade secret, or other intellectual property rights. This warranty will not apply to any infringement that would not be such except for ordering activity's contributed design, software or other elements. Ordering activity's exclusive remedy for the breach of the above warranty will be the re-performance of the Services within a commercially reasonable time.

NO OTHER WARRANTIES. CONTRACTOR AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES AND CONDITIONS NOT EXPRESSLY CONTAINED HEREIN, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS. ORDERING ACTIVITY MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

ORDERING ACTIVITY'S REMEDIES. CONTRACTOR AND ITS SUPPLIERS' ENTIRE LIABILITY AND ORDERING ACTIVITY'S EXCLUSIVE REMEDY SHALL BE TO RETURN THE FEES PAID WITH RESPECT TO THE JUST-PRIOR THREE (3) MONTH PERIOD OR \$5,000, WHICHEVER IS GREATER.

LIMITATION OF LIABILITY. IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE MAINTENANCE SERVICES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**BEST VALUE
BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE**

(Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (ordering activity) and (Questionmark Corporation) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s) _____.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

Ordering Activity Date

Questionmark Corporation Date

QUESTIONMARK CORPORATION BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s) _____, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (ordering activity):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

MODEL NUMBER/PART NUMBER	*SPECIAL BPA DISCOUNT/PRICE
--------------------------	-----------------------------

(2) Delivery:

DESTINATION	DELIVERY SCHEDULES / DATES
-------------	----------------------------

(3) The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be _____.

(4) This BPA does not obligate any funds.

(5) This BPA expires on _____ or at the end of the contract period, whichever is earlier.

(6) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
--------	------------------

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor;
- (b) Contract Number;
- (c) BPA Number;
- (d) Model Number or National Stock Number (NSN);
- (e) Purchase Order Number;
- (f) Date of Purchase;
- (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract.

Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

BASIC GUIDELINES FOR USING “CONTRACTOR TEAM ARRANGEMENTS”

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to a ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions of the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customers needs, or -
- Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
- Customers make a best value selection.

QUESTIONMARK CORPORATION GSA PRICE LIST

SIN	Product Description	GSA Price inc. IFF
54151	<p>SSP:</p> <p>Our goal is to provide the best possible support to our customers. Our experienced technical services representatives possess the in-depth product knowledge required to provide customers with superior technical services. Questionmark's Software Support Plan (SSP) supplements your purchase so that your deployment and upgrades can be planned and organized without undue stress.</p> <p>SSP includes:</p> <ul style="list-style-type: none"> • Version upgrades (major and minor) included • Access to knowledge bases • Access to online product manuals • Access to product best practice guides • Use of Questionmark Live SME (Subject Matter Expert) author accounts • Access to support RSS feeds • Email support for up to 3 individuals • Phone support for up to 3 individuals • Chat support for up to 3 individuals <p>The price for SSP is calculated as 25% of the total license fee for Questionmark Perception and any add-ons, payable annually for the year ahead.</p> <p>Here is an example of how to calculate the total price of a purchase including license and SSP. To purchase a single server Enterprise Pack 500, the license price is a one time charge of \$13,304.79 and the SSP price is \$3,326.20 per year. In this example the total purchase cost including license and first year Software Support would be \$16,630.99. Second year costs would be just the SSP price of \$3,326.20.</p> <p>To purchase a single server Enterprise Pack 10,000 with 5 additional Windows authors, the license price is a one time charge of 39,722.92 + 4,781.11 = \$44,504.03, and the SSP price is \$11,126.01 per year. In this example the total purchase cost including license and first year Software Support would be \$55,630.04. Second year costs would be just the SSP price of \$11,126.01.</p>	25% of Questionmark Perception license fee, payable annually.
54151	ESSP:	35% of Questionmark Perception

	<p>Questionmark's Enterprise Software Support Plan (ESSP) provides all the benefits of SSP above and in addition additional premium support capabilities as below:</p> <ul style="list-style-type: none"> • Dedicated technical support representative • Detailed customer/system profile on file • Response time per service level agreement • Regular Issue updates per service level agreement • Can Schedule Time with Technical Service Engineer • Dedicated Technical Services Rep available for consulting <p>The price for ESSP is calculated as 35% of the total license fee for Questionmark Perception and any add-ons, payable annually for the year ahead.</p> <p>Here is an example of how to calculate the total price of a purchase including license and ESSP. To purchase a single server Enterprise Pack 500, the license price is a one time charge of \$13,304.79 and the ESSP price is \$4,656.68 per year. In this example the total purchase cost including license and first year ESSP would be \$17,960.45. Second year costs would be just the ESSP price of \$4,656.41.</p> <p>To purchase a single server Enterprise Pack 10,000 with 5 additional Windows authors, the license price is a one time charge of 39,722.92 + 4,781.11 = \$44,504.03, and the ESSP price is \$15,576.41 per year. In this example the total purchase cost including license and first year ESSP would be \$60,080.44. Second year costs would be just the ESSP price of \$15,576.41.</p>	license fee, payable annually.
54151S	<p>Questionmark Consultant to provide installation and configuration service onsite.</p> <p>Usually a minimum of one day (8 hours) purchase is recommended.</p> <p>Travel and hotel costs is covered by the Joint Travel Regulations in addition.</p> <p>A Consultant providing installation and configuration service onsite will have:</p> <p>Minimum/General Experience: Three (3) years of IT experience applying to use of server computing technology. Requires competence in Windows, database technology, Questionmark and typical customer patterns of use.</p> <p>Functional Responsibility: Responsible for understanding a remote IT system and installing and configuring Questionmark software to work within the IT system.</p> <p>Minimum Education: Bachelor's Degree in IT or Computer Science related subject, or 5 years extra practical experience in place of degree.</p>	\$233.31 /hour

541515	<p>Questionmark Consultant to provide solutions consultancy, software development and/or project management.</p> <p>A Consultant providing this service will have:</p> <p style="padding-left: 40px;">Minimum/General Experience: Three (3) years of software development or assessment solutions experience.</p> <p style="padding-left: 40px;">Functional Responsibility: Responsible for specifying or developing or managing software development, or for reviewing needs for assessment software and identifying solutions.</p> <p style="padding-left: 40px;">Minimum Education: Bachelor's Degree in IT or Computer Science or Assessment related subject, or 5 years extra practical experience in place of degree.</p>	\$233.31 /hour
611420	<p>Open enrolment training:</p> <p>This is a 3-day, open enrolment course comprehensive, hands-on course held at designated training center locations that covers all four phases of the Questionmark assessment process. This course enables participants to effectively use the major components and features of the Questionmark Assessment Management System. Participants will learn to:</p> <ul style="list-style-type: none"> • Author assessments • Create participants and schedule those participants to take assessments • Specify assessment delivery mode and behaviour • Generate reports based on assessment results <p>We provide</p> <ul style="list-style-type: none"> • A Questionmark expert to teach the class • A PC for hands-on learning during the class • Training exercises • Advice about how to implement your computerized assessment program <p>You provide:</p> <ul style="list-style-type: none"> • Your travel and hotel expenses 	\$1,430.98 per participant
611420	<p>On-site training</p> <p>This is a comprehensive, 3-day hands-on course that covers all four phases of the Questionmark assessment process. This course enables participants to effectively use the major components and features of</p>	\$5,599.50 per course

	<p>the Questionmark Assessment Management System. Participants will learn to:</p> <ul style="list-style-type: none"> • Author assessments • Create participants and schedule those participants to take assessments • Specify assessment delivery mode and behaviour • Generate reports based on assessment results <p>The course outline is shown on the Questionmark web site. If you do not wish to follow our recommendation then the course and subjects for discussion must be agreed upon at least 10 days before the on-site training is due to start.</p> <p>We provide:</p> <ul style="list-style-type: none"> • A Questionmark expert to teach the class • Training exercises • Advice about how to implement your computerized assessment program <p>You provide:</p> <ul style="list-style-type: none"> • Questionmark travel and hotel expenses • The venue including PCs for each participant, internet access, and a projector for use by the trainer <p>Maximum 15 participants</p>	
611420	<p>Training course materials (on-site training)</p> <p>A materials fee is required for each person who will attend the on-site training class to cover Questionmark training materials. This must be ordered for on-site training, but is not required for open enrolment training.</p>	\$38.29 per participant
611420	<p>Web-based training:</p> <p>One hour (60 minutes) of 1:1 web-based training or coaching by a Questionmark expert. Covers use or application of Questionmark software, driven by the needs of the trainee. Instructor led web based training assists end-users learn about Questionmark products and services quickly.</p> <p>We provide</p> <ul style="list-style-type: none"> • A Questionmark expert • Software to allow screen-sharing over the Internet <p>You provide:</p> <ul style="list-style-type: none"> • A PC with a browser and Internet connection for the trainee 	\$287.15 per hour

611420	Eight (8) hours of pre-purchased web-based training or coaching. Must be used within 12 months of purchase. As above but 8 hours.	\$2,105.79
611420	Twenty four (24) hours of pre-purchased web-based training or coaching. Must be used within 12 months of purchase. As above but 24 hours.	\$5,743.07
611420	Forty eight (48) hours of pre-purchased web-based training or coaching. Must be used within 12 months of purchase. As above but 48 hours.	\$11,486.15
611420	<p>Tuition for Educational Sessions at Questionmark Users Meeting</p> <p>Questionmark runs a User Training and Education Meeting each year that provides professional and technical development sessions -- including product training sessions, best practice tips, peer discussions and case studies -- for users of Questionmark's assessment management technologies. The sessions help participants learn to use Questionmark technologies more effectively and explore best practices for developing and delivering assessments.</p> <p>The meeting is run in a different US city each year and runs for two full days and one half day. The tuition entitles a named individual to participate in the following sessions:</p> <ul style="list-style-type: none"> • General Sessions, including Keynote address • Sessions from any of the from the concurrent tracks which may vary slightly year to year: "Features and Functions"; "Case Studies;" "Best Practices;" "Peer Discussions;" and "Future Solutions" • The "Tech Central" track, facilitating one-on-one meetings with a Questionmark technical support representative • A special networking meeting for attendees and Questionmark staff • The purchase includes breakfast on three days and lunch on two days • Does not include optional workshops outside the main meeting days • Does not include lodging 	\$875
518210C	<p>Questionmark OnDemand for Government</p> <p>Questionmark OnDemand for Government is a software-as-a-service where United States Federal, State and Local government agencies and their contractors can safely and securely use a powerful tool for creating, delivering and reporting on assessments in the cloud. Questionmark OnDemand for Government is hosted in a US-based, Federal Risk and Authorization Management Program (FedRAMP) approved data center used by US government agencies and their service contractors, and OnDemand for Government has achieved FedRAMP Authorization. The Questionmark OnDemand for Government Security Package contains an agency recommend for FedRAMP Moderate and DoD Impact Level 4.</p>	

	<p>Questionmark operates the software-as-a-service, including provisioning, scaling and maintaining hardware, operating systems, software, ensuring sufficient bandwidth and performance, installing upgrades and managing backups securely. Questionmark monitor the security of the service in liaison with the ordering activity. The service also includes access to Questionmark’s knowledge base and email/phone technical support for up to 3 individuals.</p> <p>The price of this service varies by the number of participants (test-takers) licensed and is paid annually in advance as shown in the table below.</p> <table border="1" data-bbox="329 567 828 1543"> <thead> <tr> <th data-bbox="329 567 581 688">Number of named participants</th> <th data-bbox="581 567 828 688">GSA Price inc. IFF per annum</th> </tr> </thead> <tbody> <tr><td data-bbox="329 688 581 741">250</td><td data-bbox="581 688 828 741">\$ 6,102.02</td></tr> <tr><td data-bbox="329 741 581 793">500</td><td data-bbox="581 741 828 793">\$ 9,934.15</td></tr> <tr><td data-bbox="329 793 581 846">750</td><td data-bbox="581 793 828 846">\$ 12,909.53</td></tr> <tr><td data-bbox="329 846 581 898">1,000</td><td data-bbox="581 846 828 898">\$ 15,327.67</td></tr> <tr><td data-bbox="329 898 581 951">1,500</td><td data-bbox="581 898 828 951">\$ 22,022.90</td></tr> <tr><td data-bbox="329 951 581 1003">2,000</td><td data-bbox="581 951 828 1003">\$ 26,835.30</td></tr> <tr><td data-bbox="329 1003 581 1056">2,500</td><td data-bbox="581 1003 828 1056">\$ 30,871.78</td></tr> <tr><td data-bbox="329 1056 581 1108">3,000</td><td data-bbox="581 1056 828 1108">\$ 34,268.26</td></tr> <tr><td data-bbox="329 1108 581 1161">3,500</td><td data-bbox="581 1108 828 1161">\$ 37,121.01</td></tr> <tr><td data-bbox="329 1161 581 1213">4,000</td><td data-bbox="581 1161 828 1213">\$ 39,501.58</td></tr> <tr><td data-bbox="329 1213 581 1266">5,000</td><td data-bbox="581 1213 828 1266">\$ 46,072.40</td></tr> <tr><td data-bbox="329 1266 581 1318">6,000</td><td data-bbox="581 1266 828 1318">\$ 51,666.66</td></tr> <tr><td data-bbox="329 1318 581 1371">7,000</td><td data-bbox="581 1318 828 1371">\$ 56,392.46</td></tr> <tr><td data-bbox="329 1371 581 1423">8,000</td><td data-bbox="581 1371 828 1423">\$ 60,337.38</td></tr> <tr><td data-bbox="329 1423 581 1476">9,000</td><td data-bbox="581 1423 828 1476">\$ 63,573.75</td></tr> <tr><td data-bbox="329 1476 581 1543">10,000</td><td data-bbox="581 1476 828 1543">\$ 66,162.17</td></tr> </tbody> </table>	Number of named participants	GSA Price inc. IFF per annum	250	\$ 6,102.02	500	\$ 9,934.15	750	\$ 12,909.53	1,000	\$ 15,327.67	1,500	\$ 22,022.90	2,000	\$ 26,835.30	2,500	\$ 30,871.78	3,000	\$ 34,268.26	3,500	\$ 37,121.01	4,000	\$ 39,501.58	5,000	\$ 46,072.40	6,000	\$ 51,666.66	7,000	\$ 56,392.46	8,000	\$ 60,337.38	9,000	\$ 63,573.75	10,000	\$ 66,162.17	
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518210C	<p>Questionmark Consultant to provide solutions consultancy, software development and/or project management with respect to Cloud Services.</p> <p>A Consultant providing this service will have:</p> <p>Minimum/General Experience: Three (3) years of software development or assessment solutions experience.</p> <p>Functional Responsibility: Responsible for specifying or developing or managing software development, or for</p>	\$233.31/hour																																		

	<p>reviewing needs for assessment software and identifying solutions.</p> <p>Minimum Education: Bachelor's Degree in IT or Computer Science or Assessment related subject, or 5 years extra practical experience in place of degree.</p>	
518210C	<p>Startup Package for new customers only. Questionmark Consultant to provide consulting services to guide new customers in efficient and effective rollout of Cloud Services, covering structured, decision-making processes, configuration options and implementation acceleration with dedicated implementation team. This service will further include:</p> <ul style="list-style-type: none"> • Implementation plan <ul style="list-style-type: none"> ○ Users, groups, roles and permissions ○ Authentication and authorization ○ Types of assessments administered ○ Assessment creation, administration and reporting process ○ Security requirements ○ Content migration ○ Integration with 3rd parties ○ Reporting needs and access to raw data for 3rd party reporting • Branded portal • Up to two branded assessment delivery templates • Up to one configured login screen • Basic configuration of the dashboard • Up to one coaching report template • Changes to necessary server settings • End-user training <ul style="list-style-type: none"> ○ Up to 2 hours of online training <p>A Consultant providing this service will have:</p> <p>Minimum/General Experience: Three (3) years of software development or assessment solutions experience.</p> <p>Functional Responsibility: Responsible for specifying or developing or managing software development, or for</p>	\$4,785.89

	<p>reviewing needs for assessment software and identifying solutions.</p> <p>Minimum Education: Bachelor's Degree in IT or Computer Science or Assessment related subject, or 5 years extra practical experience in place of degree.</p>	
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