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CHAPTER 9. SPECIAL ITEM NUMBER 132-52: ELECTRONIC COMMERCE

******NOTE: If offering IT Professional Services with E-Commerce use SIN 132-51 and include the Terms and Conditions applicable to the IT Professional Services offered.**

TERMS AND CONDITIONS

During the contract period, International Business Machines Corporation (IBM) and the Government agree that the following terms and conditions will apply to any order for IBM IT Professional Services that is placed by the Government under this Special Item. The term "Government" shall mean all Federal agencies (as defined in Paragraph (b) of 40 USC 472) the Senate, the House of Representatives, the Architect of the Capitol, and the Government of the District of Columbia, all of which are hereinafter referred to as the Government. The materials and services under this Special Item will be available to the Government within the United States, the District of Columbia and Puerto Rico. Such sales will be made to the Government within the United States, the District of Columbia and Puerto Rico. On a case-by-case basis IBM will deliver products and perform Services to overseas U.S. Government locations which are in support of national defense operations (including U.S. Embassies), and to locations which support the national interest of the United States.

1. SCOPE

The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.

2. ELECTRONIC COMMERCE CAPACITY AND COVERAGE

The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.

3. INFORMATION ASSURANCE

- a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA)
- b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, "*Standards for Security Categorization of Federal Information and Information Systems*") (FIPS 200, "*Minimum Security Requirements for Federal Information and Information Systems*") prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN 132-52 is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).
- c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the ordering activity.

4. INTEROPERABILITY.

When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

5. ORDER

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all electronic 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.

6. PERFORMANCE OF ELECTRONIC SERVICES

The Contractor shall provide electronic services on the date agreed to by the Contractor and the ordering activity.

7. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with laws, rules, and regulations (Federal, State, City, or otherwise) applicable to its business, use of a Cloud Service, and content, including applicable export and import laws..

IBM OFFERINGS

1. IBM'S SOFTWARE AS A SERVICE OFFERING (SAAS)

The terms stated herein are in addition to the terms of Appendix S Section 7, and the Terms of Use for the Specific SaaS Offering -

1.1 SAAS GENERAL TERMS OF USE

Carefully read these IBM SaaS Terms of Use (“Terms of Use” or “ToU”) before using the IBM SaaS and any associated Enabling Software. Customer may use the IBM SaaS and Enabling Software only if Customer first accepts these Terms of Use.

The Government accepts these terms and conditions by issuing a funded delivery order to IBM for the SaaS offer.

These Terms of Use (“TOU”) for a SaaS Offering is composed of this General SaaS Terms of Use, and the SaaS Specific Offering Terms of Use which are available at <http://www-03.ibm.com/software/sla/slabd.nsf/sla/usg>.

Customer may use the IBM SaaS only during a valid Subscription Period.

1.2 DEFINITIONS

Capitalized terms not defined in these Terms of Use are defined in the IBM International Passport Advantage Agreement (see Appendix S).

2.2.2 NON-DISCLOSURE OF CONTENT

IBM will not disclose or use Content made available to the IBM SaaS except to operate, maintain, and perform the IBM SaaS or to comply with laws. IBM SaaS is operated within an IBM data center that meets the security requirements of FISMA with an impact level of moderate.

1.3 CHARGES AND BILLING

The amount payable for each IBM SaaS is specified in the GSA pricelist. The Specific SaaS TOU and IBM's proposal transaction document specifies the charge metric and billing options available for each SaaS

1.4 OVERAGE CHARGES

If Customer's actual usage of the IBM SaaS exceeds the entitlement specified in a PoE or Transaction Document, then Customer will be invoiced for the overage in accordance with the overage rates specified in the applicable PoE or Transaction Document.

During the IBM SaaS Subscription Period, the Government may increase or decrease the subscribed level of an IBM SaaS offering. The Government is responsible for monitoring the funding allocated on their current order and issue a modification whenever the result of increases and /or decreases in charges exceed the allocated funding. Notwithstanding the requirement for a modification to increase funding, the Government remains responsible for paying invoices for monthly provisioning and usage.

1.5 ENABLING SOFTWARE

Enabling Software is any program or associated material made available to the Government as part of the IBM SaaS. It may only be used for accessing or using the IBM SaaS, and will be subject to an applicable license agreement.

Should the Government's access to the IBM SaaS be terminated, Government's use of the Enabling Software will also be terminated. Government must remove all Enabling Software from their systems and destroy all copies.

1.6 SUSPENSION OF IBM SAAS AND CANCELLATION

Suspension

In the event of a breach of the Terms of Use, Acceptable Use Policy, misappropriation of IBM intellectual property or violation of applicable law by an IBM SaaS User, IBM reserves the right to suspend or revoke the offending IBM SaaS User's access to the IBM SaaS, and/or delete the

offending IBM SaaS User's Content subject to the Contract Disputes Act and FAR 52.233-1 (Disputes), and IBM will notify Customer of any suspension or revocation action.

Termination

The Government Customer may terminate the service at any time on one month's written notice. In such event, IBM will cease billing the monthly charge.

Subject to the Contract Disputes Act and FAR 52.233-1 (Disputes), IBM may terminate Government Customer's access to the IBM SaaS for cause if Government Customer does not comply with the SaaS Terms of Use and such noncompliance is not remedied within a reasonable time after receiving notice from IBM. Upon termination, the Government Customer's access and other rights to the IBM SaaS will be cancelled and cease. In such event the Government Customer and its IBM SaaS Users must cease any further use of the IBM SaaS and destroy any copies of the associated Enabling Software within your possession or control.

Withdrawal

IBM may withdraw the IBM SaaS in its entirety on 12 months' written notice by letter or e-mail.

1.7 RENEWAL OF A SUBSCRIPTION PERIOD

Should the Government Customer wish to renew this service for a subsequent service period, a funded delivery order is required by the end of the current service period to avoid termination of service.

1.8 EMERGENCY MAINTENANCE & SCHEDULED MAINTENANCE

IBM may perform regularly scheduled maintenance during maintenance windows defined by IBM. Other scheduled and non-scheduled down times may occur. IBM SaaS will not be available during these times.

1.9 UPDATES

These Terms of Use apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the IBM SaaS (collectively, "Updates") that IBM may provide or make available for the IBM SaaS, subject to any additional terms provided by IBM applicable to such Updates, which the Government has a right to review before acceptance. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates.

1.10 UPDATES TO TERMS OF USE

IBM reserves the right to prospectively modify the ToU to the extent necessary to account for any Updates that IBM may make available during the Subscription Period or as required by applicable law, by providing at least thirty (30) days notice of such modified terms to Customer. The Customer has the right to review any additional terms applicable to such Updates. Subscription renewals will be governed by the ToU in effect at the time of renewal

1.11 DATA PRIVACY AND DATA SECURITY

Personal Data

Government Customer 1) will obtain all legally required consents before making any Personal Data available to the IBM SaaS, and maintain those consents throughout the Subscription Period; and 2) will not use the IBM SaaS in conjunction with Personal Data to the extent that doing so would violate applicable data protection laws.

Unless expressly stated in the applicable SaaS Specifications, the IBM SaaS is not intended for the storage or receipt of any: 1) Personal Data and other data, the loss of which would trigger a data breach notification requirement, or 2) health information, including without limitation individually identifiable health information as defined under the Health Information Portability and Accountability Act of 1996 ("HIPAA"), as amended. Customer will be responsible for reasonable costs and other amounts IBM may incur relating to any such information made available by Government Customer to the IBM SaaS, including those arising out of any third party claims.

Upon Government Customer's written request, following termination or expiry of the IBM SaaS service, IBM will destroy or return to Customer all Personal Data made available to the IBM SaaS.

1.12 COMPLIANCE WITH APPLICABLE EXPORT LAW

Each party agrees to comply with all applicable import and export laws and regulations, including those of the United States regarding embargo and sanctions regulations and prohibitions on export by certain end users or for any prohibited end uses (including nuclear, space or missile, and chemical and biological weapons). Government Customer represents that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). Government Customer acknowledges that IBM may use global resources (non-permanent residents used locally and personnel in locations worldwide) to remotely support the delivery of IBM SaaS, unless specified otherwise per the specific IBM SaaS offering. Government Customer represents that no Content accessible to IBM for the IBM SaaS will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws.

1.13 WARRANTY

IBM warrants that the IBM SaaS will conform to the specifications set forth in the SaaS Specific Offering Terms ("IBM SaaS Specification"). If the IBM SaaS does not function as warranted, and IBM is unable to make it do so, upon Customer's request, IBM will give Customer a prorated refund of amounts prepaid by Customer, and Customer's right to use the IBM SaaS will terminate. This limited warranty remains in effect throughout the Subscription Period for the IBM SaaS offering.

1.14 SECURITY PRACTICES

IBM implements and maintains practices and procedures, which may be revised periodically, regarding the systems used to host and operate the IBM SaaS. These practices and procedures

are designed to reduce the vulnerability of our systems to accidental loss, unlawful intrusions unauthorized access, disclosure or alteration or wrongful conduct that may interfere with, misappropriate, or otherwise damage the Content or Customer's use of the IBM SaaS. A description of the practices and procedures applicable to the IBM SaaS, including applicable technical and operational measures, is available to Customer upon request. Customer is responsible for determining whether these practices and procedures are appropriate to meet Customer's requirements. By using the IBM SaaS, Customer acknowledges its acceptance of the IBM practices and procedures and their adequacy for Customer's purposes

1.15 ENTIRE AGREEMENT

The complete agreement between the parties, replacing any prior oral or written communications between Government Customer and IBM, consists of these General Terms of Use, the Specific SaaS Offering Terms of Use, and the IBM International Passport Advantage terms (see Appendix S). If there is a conflict among the terms of these General Terms of Use and the Specific SaaS Offering Terms of Use, the Specific SaaS Offering Terms of Use will prevail.

Additional or different terms in any written communication from Government Customer (such as a purchase order, acknowledgement or e-mail) are void. These Terms of Use may only be amended as mutually agreed to by IBM and the Government.

2. IBM SMARTCLOUD FOR GOVERNMENT OFFER

The following terms and conditions of the Federal Cloud Services Agreement apply to IBM SmartCloud for Government Offering. A Statement of Work detailing our services will be provided on a transaction basis to the Government agency.

2.1 GENERAL TERMS

The IBM SmartCloud for Government is an Infrastructure as a Service (IaaS) offering that is a private multi-tenant cloud specific for Federal Government users.

The SmartCloud for Government terms and conditions are incorporated into this IBM GSA IT Schedule Contract, herein after referred to as the "Agreement", and govern the Customer's access to and use of the SmartCloud for Government and associated Cloud services ("Services") that Customer orders and IBM provides from IBM SmartCloud for Government.

Agreement Structure and Overview:

The Order Document, the Service Description(s) for the selected Cloud Service(s) and the Federal Cloud Services Agreement will constitute the complete agreement for the Cloud Services and will supersede any prior discussions or representations regarding the Cloud Services. Any reproduction of this Agreement made by reliable means is considered an original. This "Agreement" incorporates each of the following Attachments:

- a. "Attachments" means the following Attachments which provide additional terms and details for each of the Services:

- IBM SmartCloud for Government Services Description – describes the Services available from SmartCloud for Government, or as may be described within a specific Statement of Work provided with an IBM proposal;
- Services Charges Schedule – describes the charges applicable to each Services offering, or as may be described within a specific IBM proposal. See IBM’s pricelist available on www.ibm.com/easyaccess/gsa.

In the event of a conflict, the terms of Attachments prevail over this Agreement.

2.2 SMARTCLOUD FOR GOVERNMENT SERVICES

SmartCloud for Government Services are provided on a private, multi tenant cloud infrastructure environment using Services Components located at an IBM Data Center. IBM will provide selected Services as described in the applicable Attachments (e.g. Statement of Work) which include IBM and Customer responsibilities. IBM’s ability to provide the Services is dependent upon Customer managing and performing of its responsibilities, at no charge to IBM. Customer is responsible for the use of the Services by End Users and the access and use of any Service Components, including the actions of any End User and for ensuring that each End User complies with this Agreement, including Attachments. The terms and conditions of Appendix T, IBM’s Cloud Services Agreement For IBM Federal Data Centers apply to this offering .