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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

Note: These terms are in addition to those described in Chapter 1, General Information

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

- a) 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.
- 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 the 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. 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 EC 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-
- c) 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
- d) 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.

- e) 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.

6) INSPECTION OF SERVICES

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time and Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time and materials and labor-hour orders placed under this contract.

7) RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

8) RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

9) INDEPENDENT CONTRACTOR

All EC 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 EC 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 (OCT 2008) (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 (OCT 2008) (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) 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.

14) 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.

15) DESCRIPTION OF ELECTRONIC COMMERCE (EC) SERVICES AND PRICING

- a) The Contractor shall provide a description of each type of EC Service offered under Special Item Numbers 132-52 E-Commerce. Services and rates should be presented in the same manner as the Contractor sells to its commercial customers and other ordering activity

customers. Please submit a description of all corresponding commercial EC services to be provided.

- b) Pricing for all EC Services shall be in accordance with the Contractor's customary commercial practices; e.g., hourly rates, monthly rates, term rates, unit prices and/or fixed prices.

IBM OFFERINGS

1. IBM MOBILE ENTERPRISE SERVICE FOR THE BLACKBERRY ENTERPRISE SOLUTION

IBM's Mobile Enterprise Services for the BlackBerry offering (BES) provides the Government customer with services that can help effectively manage your Blackberry environment. This service is designed to help simplify the management of the Customer's Blackberry solution with a comprehensive managed service that helps optimize the availability and performance of your Blackberry environment, integrate it with your existing enterprise IT support model, and help enhance your return on your mobility investment. This service consolidates the technical, administrative, and licensing costs to your Blackberry Enterprise solution, on a per-user, per-month basis, allowing you to project and budget costs. A dedicated team of Blackberry certified professionals will handle all aspects of the implementation of your mobility strategy, including architecture, deployment, and steady-state operations.

IBM Mobile Enterprise Services for the BlackBerry® Enterprise Solution helps simplify the management of your BlackBerry solution with comprehensive managed services that optimize the availability and performance of your BlackBerry environment, integrating with your existing enterprise IT support model. These Services include:

- Reviewing Customer BlackBerry enterprise infrastructure and mobility strategy
- Management, monitoring, optimization, and maintenance of your BlackBerry solution within your IT environment
- BlackBerry Enterprise Server upgrades
- 24 x 7 Self Service Portal for Mobile User activation and self help
- Advanced Mobile Device Management functions, such as "remote wipe and kill"
- Assistance with device configuration, setup and troubleshooting
- The Government may choose the Service with or without Support and problem resolution for end users (Level Two and Level Three Support)
- Enhanced ability to reduce your data and voice roaming charges through the use of Real Time Cost Management
- Dynamic over the air application distribution

The Services include applicable Research in Motion Limited (RIM) BES Software license fees and eliminates the need for you to purchase a RIM technical support agreement to support the BES Software.



In order for IBM to provide the Services, Customer must have the prerequisite physical layer of the Blackberry Enterprise Solution in place as defined by RIM (i.e., the server(s) and operating system that meet the minimum specifications for the then current BES Software).

IBM will present a detailed Statement of Work at the opportunity level that will include such details as the scope of work, responsibilities, completion criteria and deliverables.

1) Service Period

The service period (“Service Period”) for these Services will begin the day after IBM receives a funded delivery order, or at a date otherwise agreed to by IBM and will continue in effect for a minimum of 12 months, unless terminated earlier in accordance with the terms herein. IBM will have fulfilled its obligations with regard to these Services upon the expiration of the Service Period or termination of this SOW.

The Government may continue service for a subsequent 12 month period by providing IBM with a funded delivery order or notification of their intent to renew prior to the end of the current Service Period. Pricing for the renewal will be provided to the customer at the then current GSA Schedule price. Should an agency notify IBM of their intent to renew, continue to use the service and then not provide a funded delivery order to IBM, the agency will be billed for the months the service was used.

2) Charges

The charges for this offering are outlined in the price table for this SIN 132-52.

Transition Charge

Customer is required to pay a one-time transition charge upon completion of Phase Two – Implementation and Transition.

Monthly Recurring Charges

The monthly recurring charges listed in each of the subsections below will be applied to all Registered Mobile Users.

Monthly Recurring Charge for Registered Mobile Users

Services are charged on a monthly basis. The first month of service will begin on the first day of the go-live month. Customer is required to pay a monthly recurring charge for each Registered Mobile User on the BlackBerry enterprise server at the beginning of each calendar month during the Service Period. The Services include all applicable Research in Motion Limited (RIM) BES Software license fees.

During the Service Period, when new Registered Mobile Users are added during a month, there will be no monthly recurring charge for those Registered Mobile Users added during the month. The monthly recurring charge for those Registered Mobile Users will begin the following month.

During the Service Period, when Registered Mobile Users are removed from service during a month, there will be a monthly recurring charge for those Registered Mobile Users for the month in which they are removed.

Please note: Charges based upon the number of Registered Mobile Users can never drop below the minimum level of 300 Registered Mobile Users.



Instant Messaging (IM) Monthly Recurring Charge

Customer is required to pay an IM monthly recurring charge for each MobileUser that is registered on the BlackBerry Enterprise server at the beginning of each calendar month during the Service Period.

Real Time Cost Management (RTCM) Monthly Recurring Charge

Customer is required to pay a RTCM monthly recurring charge for each Mobile User that is registered on the BlackBerry Enterprise server at the beginning of each calendar month during the Service Period.

Dynamic Application Management (DAM) Monthly Recurring Charge

Customer is required to pay a DAM monthly recurring charge for each Mobile User that is registered on the BlackBerry Enterprise server at the beginning of each calendar month during the Service Period.

Incremental Mobile User Activation Charge

Customer is required to pay a one-time charge per each new Mobile User activation which occurs during Phase 3 – Steady State Operations.

Other Expenses

Charges for actual travel and living expenses and any miscellaneous expenses necessary for IBM to perform the Services are due as incurred. IBM will invoice you for such expenses monthly in arrears. Travel charges will be billed in accordance with the Federal Travel Regulations.

4) Invoices

Customer will be invoiced at the end of each month for the above charges that became due or began in that month. Payment is due in accordance with the Prompt Payment Act.

5) Termination for Convenience

Customer may terminate this Service by giving the other not less than sixty (60) days written notice. Upon such termination, you will pay IBM for (i) all Services IBM provides you through termination; and (ii) other reasonable charges that may be incurred from such termination.

6) Warranty For IBM Services

For each IBM Service, IBM warrants that it will be performed:

- A. using reasonable care and skill; and
- B. according to a mutually agreeable Statement of Work or its current description, including any completion criteria.

Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

EXTENT OF WARRANTY/ITEMS NOT COVERED BY WARRANTY

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.



The warranties stated herein will not apply to the extent there has been misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by the Government, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of a Product or Service or warrant that all defects will be corrected.

Unless IBM specifies otherwise, it provides Materials, non-IBM Products, and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs (IBM Programs licensed under a separate IBM license agreement, e.g., IBM International Program Licensing Agreement) and Non-IBM Programs (Programs licensed under a separate third party License agreement) may be found in their license agreements.

7) Materials Ownership And License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as “Type I Materials,” “Type II Materials,” or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as “Type I Materials” and each such Material will constitute a “work made for hire” to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer’s Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM’s or its suppliers’ works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

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Any idea, concept, know-how, or technique which relates to the subject matter of a service and is developed or provided by either IBM or the Government, or jointly, in the performance of a service may (subject to applicable patents and copyrights) be freely used by either the Government or IBM.

2. LOTUSLIVE – SOFTWARE AS A SERVICE OFFERING

LotusLive is a portfolio of cloud-delivered collaboration and messaging services. The terms and conditions of this offering include the terms of the Fixed Term Use and the LotusLive Terms of Use.

Fixed Term Use

The terms for Fixed Term Use and the governing Terms of Use for each Fixed Term Use offering are in addition to those of Passport Advantage Agreement found in the Chapter 5 terms, and govern the transaction when IBM provides access to and use of software functionality to you as a Service. For orders subject to the IBM Passport Advantage Agreement, the Customer Originating Site accepts the terms herein without modification.

The Customer Originating Site agrees to comply with the Terms of Use and you are responsible for compliance with the Terms of Use by your Users.

Definitions

Content – information, software, and data that you provide, including, without limitation, any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets or servlets that you or your Users create, install, upload or transfer in connection with your use of the Service.

Software – Programs, enabling code, client software and plug-ins, and all associated documentation provided to you by IBM to facilitate access to and use of the Service. Your use of underlying Software is solely for the purpose of accessing and using the Service. If Software is to be licensed, it will be under a separate agreement, e.g. the International Program License Agreement (IPLA), see SIN 132-33.

Service – access to Software and infrastructure over the Internet, and technical support as described in Section 3, that is governed by the terms herein. Service includes your right to (i) access Software (in object code and executable code format only), and (ii) use such Software solely for the purpose of accessing and using the Service. The Service is governed by the Terms of Use.

Term – period specified in the PoE as the “Software Subscription and Support Coverage Dates”. The Term begins on the date that your funded delivery order is accepted by IBM; on the calendar day following the expiration of a prior Term; or on the calendar day following the Anniversary Date, as applicable.

Terms of Use – sets forth the terms under which IBM will provide you with access to and use of the Service, i.e. the “Fixed Term Use” offering. The Terms of Use combine with the terms specific to the Service Offering (i.e. LotusLive) govern your use of the Service (the “Fixed Term Use” offering).

Users – entities or individuals that access or use the Service.

1. Ownership

IBM and its suppliers own the Service and the underlying Software. You agree that title to, ownership of and all rights in and to patents, copyrights, trademarks, and all other intellectual property rights in the Service, and any copy or part of the Service will remain with IBM and its



suppliers. IBM may subcontract the Service, or any part thereof, including technical support, to subcontractors selected by IBM.

2. Technical Support

a. IBM may provide the following technical support during the Term:

- (1) assistance for your routine, short duration usage (how-to) questions. Technical support is available only for the currently supported versions of the Service, client operating systems, Internet browsers, and Software.
- (2) assistance for code, defect, Service delivery and performance related questions. Technical support is available during the normal business hours (published prime shift hours) of the IBM Software as a Service (“SaaS”) support center. Consult the Terms of Use for details applicable to the Service.

3. Renewal of Fixed Term Use

Should the Government wish to renew this service for a subsequent year, a funded delivery order is required for the 12 month period by the end of the service period.

3.1 Anniversary Coordination

For Passport Advantage customers entering into this agreement for Terms of six months or more, initial or subsequent Terms entered into on a date other than the Anniversary may be renewed at the next Anniversary for an additional period, at a pro-rated renewal charge, in order to extend the Term to the following Anniversary.

4. Content

You are solely responsible for:

- a. all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support, including any rights, licenses and/or consents necessary for IBM to perform its obligations under this Attachment;
- b. all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; and
- c. the selection of controls on the access to and use of Content.

5. Service Subscription Changes

You may increase but may not decrease your level of Service subscription during the Term. You may decrease your level of Service subscription by ordering a lower level for a subsequent Term.

6. Representations and Warranties

- a. You represent and warrant that your use of the Service and all Content will comply with the Acceptable Use Policy.
- b. IBM represents and warrants that it provides the Service using reasonable care and skill. IBM does not warrant uninterrupted or error-free operation of any Service or that IBM will correct all defects.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR

CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF TITLE AND NON-INFRINGEMENT. THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICITONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

7. Charges

Charges for this service is billed at a fixed monthly rate at the beginning of the month for which the charges accrue, payable at the end of the month.

8. Termination

The Government may terminate the service at any time after the first anniversary on one month's written notice. In such event, IBM will cease billing the monthly charge, or the Government may obtain a prorated refund if billed an annual charge.

IBM may terminate this Service if the Government does not comply with any of its terms. In such an event IBM will provide written notice and allow a reasonable time to comply. Notwithstanding anything to the contrary in the terms, if IBM terminates your access to the Service due to your breach of any of the applicable terms herein or of the Passport Advantage Agreement, IBM is not obligated to issue a refund or credit for any unused portion of the Service. IBM may withdraw the Service in its entirety on 12 months' written notice to all then current Users by letter or e-mail. Any terms of this Service which by their nature extend beyond the termination remain in effect until fulfilled.

The complete agreement between the parties consists of the Passport Advantage Agreement, these Fixed Term Use terms, and the applicable Terms of Use for the specific service offering. If there is a conflict among the terms for Fixed Term Use and the Terms of Use, the Terms of Use prevail. In entering into this agreement, neither party is relying on any representation not specified in this agreement, including without limitation any representations concerning: i) performance or function of the Service, other than as expressly warranted in Section 8, ii) the experiences or recommendations of other parties; or iii) results or savings you may achieve.

2.1 LOTUSLIVE TERMS OF USE

LotusLive Engage, LotusLive Meetings, LotusLive iNotes, and LotusLive Connections

The Government accepts these terms and conditions of this offer, including the Acceptable Use Policy by issuing a funded delivery order for the LotusLive Services

IF YOU DO NOT AGREE WITH THESE TERMS DO NOT IN ANY MANNER USE THE SERVICE OR SOFTWARE OR PARTICIPATE IN ANY OF THE FUNCTIONALITY OFFERED THEREIN.



PART I – GENERAL TERMS

1. Purpose

These LotusLive Terms of Use (“Terms of Use”) set forth the terms under which IBM will provide you with access to and use the Service.

2. Definitions

All capitalized terms defined in these Terms of Use have the meanings set forth below.

Acceptable Use Policy – the Acceptable Internet Use Policy for IBM Services, attached herein as Appendix A and located on the Internet at www.ibm.com/services/e-business/aup.html, and any subsequent modification.

Affiliate – any legal entity that, by more than 50% owns, is owned by, or is under common ownership with IBM.

Content – all data, software and information including, without limitation, any hypertext markup language files, email messages, scripts, programs, recordings, sound, video, music, graphics, images, applets or servlets that you create, install, upload, receive from a third party or transfer in connection with your use of the Service.

Evaluation Period – such period that begins when you agree to these Terms of Use and ends upon the earliest of (1) the end date specified by IBM when you were provided access to the Service or (2) the date on which your access to the Service is disabled by IBM. Should IBM provide you with an Evaluation Period, there is no charge for your use of the Service or Software, in accordance with these Terms of Use, during the Evaluation Period.

Site - "Site" means any location of a U.S. Government Agency issuing to IBM a Delivery Order hereunder for the Agency's own internal use.

The U.S. Government Agency Site issuing a Purchase Order to IBM is defined as the “Originating Site”.

Any Site, within the Agency that subsequently enrolls under Passport Advantage is defined as an “Additional Site”.

Service – the LotusLive software-as-a-service (“SaaS”) offering.

Software – the software and all associated documentation and other materials provided to you by IBM or its Affiliates to facilitate access to and use of the Service. If Software is to be licensed, it will be under a separate agreement, e.g. the IBM International Program License Agreement (terms included in Chapter 5).

3. Access to Service; Suspension and Cancellation

Subject to your compliance with these Terms of Use, IBM hereby grants you a revocable, non-exclusive, nontransferable right to access and use the Service. You agree that IBM is not providing you with access to the Internet in order to use the Service and that you remain responsible for Internet access. Certain Software that forms part of the Service may be licensed under separate terms and conditions which will be presented to you at the time of download. In the event of a conflict between such additional terms and conditions and these Terms of Use, these Terms of Use will prevail. Separately licensed Software provided with the Service can only be used in conjunction with the Service. The Service is provided with Restricted Rights for U.S. Government users. IBM reserves the right to suspend or discontinue the Service, revoke your

access to the Service or delete your Content if IBM believes that you are in breach of these Terms of Use or the Acceptable Use Policy. Upon any cancellation of these Terms of Use, your access and other rights to the Service will be cancelled and cease. In such event you must cease any further use of the Service and destroy any copies of the associated Software within your possession or control.

4. Inviting users to participate in LotusLive

The entity that has purchased the Service may share documents with, or otherwise invite, individuals or entities, to participate in LotusLive for the purpose of collaboration (“Permitted Invitees”). Permitted Invitees may have access to certain aspects of the Service and must agree to these Terms of Use. For Permitted Invitees, IBM may revoke access to the Service for any reason in its sole discretion.

5. Restrictions

The Service is to be used by individuals and entities solely for messaging, Web conferencing, collaboration and related activities in which you are an active participant with others, and only as permitted under these Terms of Use and Acceptable Use Policy. Under no circumstances may you resell, redistribute, or sublicense the Services, or use the Services on a timeshare or service bureau basis, or to operate a Website or host an online business unless expressly permitted under another written agreement between you and IBM. You may not use the Services for the development, production or marketing of a service or product substantially similar to the Services.

5.1 Restricted Use for LotusLive Engage for Enterprise Deployment

If you are an entity that has acquired a PoE for LotusLive Engage for Enterprise Deployment, then you may not allow any employee within your Site to utilize any of the functions of LotusLive Engage in any capacity, including as a Permitted Invitee, unless you have acquired a LotusLive Engage for Enterprise Deployment PoE for such employee. This restriction shall not affect Permitted Invitees who are not employees of your Site.

6. Scheduled Downtime; No Training or Technical Support

The regularly scheduled maintenance window for each LotusLive service is posted on the LotusLive support page at <https://www.lotuslive.com/support/>. Other scheduled and non-scheduled down times may occur. During such times the Service will not be available for use. IBM has no obligation under these Terms of Use to provide support or maintenance services in connection with the Software or Service (“Technical Support”). IBM may elect to provide you with Technical Support at its sole discretion. Any enhancements, updates and other materials provided by IBM as part of any such Technical Support are considered to be part of the Service or Software, as applicable, and therefore governed by these Terms of Use.

7. Updates; Applicable Terms and Authorization for Auto Updates

These Terms of Use apply to all updates, supplements, add-on components, features, or other functionality or messages related thereto, including without limitation alterations of functionality, features, storage, security, availability, content, and other information relating to the Software or Service (collectively, “Updates”) that IBM may provide or make available generally to its customers after the date that the Service commences, subject to any additional terms provided by IBM applicable to such Updates. You hereby authorize IBM to, and agree that



IBM may, in accordance with IBM's standard operating procedures, automatically and in good faith transmit, access, install, and otherwise provide Updates to the Software or Service without further notice or need for consent. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates.

8. NOTICE REGARDING RECORDING

THE SOFTWARE AND/OR SERVICE MAY ALLOW YOU TO RECORD MEETINGS. THE LAWS OF SOME JURISDICTIONS MAY REQUIRE THE CONSENT OF INDIVIDUALS PRIOR TO RECORDING THEIR COMMUNICATIONS. You agree to comply with all applicable laws and to obtain all necessary consents and make all necessary disclosures before using the Software and/or Service.

9. Notice Regarding Spam, Content Blocking and Filtering

IBM administrators monitor the Service, investigate spam attacks and apply proprietary as well as industry standard technology measures in order to block or filter messages that appear to be unsolicited and bulk, and/or malicious in nature. IBM reserves the right (but shall have no obligation) to block electronic communications from other entities on the Internet. You should be aware that such blocking or filtering may take place if deemed necessary by IBM. IBM reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content.

10. Privacy

- a. IBM's Privacy Policy is in accordance with the Privacy Policy at <http://www.ibm.com/privacy/>. In connection with your use of the Service, you acknowledge and agree that: (i) your name, title, company name and photograph posted by you ("Profile") can be viewed by other users of the Service, and (ii) at any time you may request that your Profile information be removed from the Service and such Profile information will be removed.
- b. Personal Information included in your Content. THE SOFTWARE AND/OR SERVICES MAY ALLOW YOU TO INCLUDE IN YOUR CONTENT PERSONAL INFORMATION ABOUT OTHERS, THE LAWS OF SOME JURISDICTIONS MAY REQUIRE THE CONSENT OF INDIVIDUALS PRIOR TO INCLUDING THEIR PERSONAL INFORMATION IN YOUR CONTENT. You agree to comply with all applicable laws to obtain all necessary consents and make all necessary disclosures before including personal information in your Content and using the Software and Service. You confirm that you are solely responsible for any personal information that may be contained in your Content, including any information which you share with third parties, and that you are in compliance with applicable data protection laws. In connection with your use of the Service, certain features of the Service may permit you to interact or share your Content with third party websites or services. If you choose to transmit your Content or provide any other information to such third parties, you agree to be bound by any applicable third party terms of use, and IBM accepts no responsibility or liability for any such third party services.

11. Ownership of Content

By virtue of your agreeing to these terms, IBM does not claim ownership of any Content. You confirm that you have all necessary authorities to allow IBM to host, cache, record, copy, and display Content solely for the purpose of providing the Service to you. Except as set forth in this

Section 11, you retain your right, title, and interest in and to the Content, and to display and transfer Content. If you choose to transmit your Content to a third party site which may be linked to or accessible by the Service, you are providing IBM with the consent to enable such transmission of Content, and you remain liable for such transmission.

12. Representations and Warranties About Content

You represent and warrant that you: (i) are the owner or authorized licensee of any and all Content; and (ii) will not publish, post, upload, record, or otherwise distribute or transmit Content that violates the Acceptable Use Policy or applicable law, and (iii) that you have all required permissions and consents from any third party whose personal information you may have posted or uploaded to the Service.

13. Confidentiality

You agree not to disclose to others your account number and/or password for the Service. You remain responsible for all uses of your account in accordance with these Terms of Use, whether or not actually or expressly authorized by you. All information exchanged is non-confidential. If either of us requires the exchange of confidential information, it will be made under a signed confidentiality agreement.

14. Compliance with Applicable Law

Regardless of your location when you access the Service, you agree to comply with all applicable export control and sanctions laws and regulations, including but not limited to those of the United States. You may not export, re-export, divert, transfer, disclose or permit access to any portion of the Service, Software or technical information, directly or indirectly, in violation of any applicable export control or sanctions law or regulation. You are also responsible for complying with all other laws, rules, and regulations that may be applicable to your use of the Service and Software. You agree that the Services shall not be used in support of any prohibited end uses, including but not limited to, nuclear facilities, space or missile, and weapons systems (including chemical and biological) or by any prohibited end users, including but not limited to, nationals of Country Group E, identified in Supplement No. 1 to Section 740 of the U.S. Export Administration Regulations, wherever they may be located.

15. DISCLAIMER OF WARRANTIES

THE SERVICE AND SOFTWARE (INCLUDING ANY ASSOCIATED DOCUMENTATION, INFORMATION AND MATERIALS) ARE PROVIDED TO YOU "AS IS" AND IBM, ITS AFFILIATES AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN



IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Miscellaneous

If any part of these Terms of Use is determined to be invalid or unenforceable, the remainder of the Terms of Use will continue in effect. If any provision(s) is found to be invalid, unenforceable, or contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. IBM's failure to exercise or enforce any right or provision of these Terms of Use will not constitute a waiver of such right or provision unless agreed to by IBM in a writing signed by a duly authorized representative of IBM. IBM reserves the right to modify these Terms of Use, and related Acceptable Use Policy at any time by providing such revised terms to you. Your continued use of the Software or Service constitutes your acceptance to be bound by any such revised terms

16. Entire Agreement

The Government agrees that these Terms of Use for the LotusLive offering, the Passport Advantage terms, the Fixed Term Use Attachment constitutes the entire agreement between IBM and You with respect to the Service and supersede all other (prior or contemporaneous) communications and proposals, whether electronic, oral, or non-electronic, between IBM and You regarding the Service. In the event of a conflict between these Terms of Use and the Passport Advantage terms, the Fixed Term Use Attachment or the IPLA, the Terms of Use shall prevail. Any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgement, email, or other document that You may now or later provide to IBM, will have no effect. These Terms of Use may only be amended as set forth herein.

2.3 APPENDIX A

ACCEPTABLE INTERNET USE POLICY FOR IBM SERVICES

This Acceptable Use Policy ("Policy") outlines unacceptable use of IBM services which interact with, or access, the Internet (the "Services"). This Policy is in addition to any other terms and conditions under which IBM provides the Services to you.

IBM may make reasonable modifications to this Policy from time to time by posting a new version of this document on the IBM Web site at <http://www.ibm.com/services/aup.html> (or any successor URL(s)). Revisions are effective immediately upon posting. Accordingly, we recommend that you visit the IBM Web site regularly to ensure that your activities conform to the most recent version.

Questions about this Policy (e.g., whether any contemplated use is permitted) and reports of violations of this Policy should be directed to aup@us.ibm.com.

The examples listed in this Policy are not exhaustive. Prohibited uses and activities include, without limitation, any use of the Services in a manner that, in IBM's reasonable judgment, involves, facilitates, or attempts any of the following:

- a. violating any law of, or committing conduct that is tortious or unlawful in, any applicable jurisdiction;
- b. gambling activities;
- c. displaying, performing, sending, receiving or storing any content that is obscene, pornographic, lewd, lascivious, or excessively violent, regardless of whether the material or its dissemination is unlawful;
- d. advocating or encouraging violence against any government, organization, group, individual or property, or providing instruction, information, or assistance in causing or carrying out such violence, regardless of whether such activity is unlawful;
- e. accessing, sending, receiving, displaying, performing, disclosing, storing, or executing any content
 - (1) in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right,
 - (2) in violation of any applicable agreement, or
 - (3) without authorization;
- f. deleting or altering author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by the owner;
- g. obtaining unauthorized access to any system, network, service, or account;
- h. interfering with service to any user, site, account, system, or network by use of any program, script, command, or otherwise;



-
- i. introducing or activating any viruses, worms, harmful code and/or Trojan horses;
 - j. sending or posting unsolicited messages or e-mail, whether commercial or not, a) to any recipients who have requested that messages not be sent to them, or b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;
 - k. evading spam filters, or sending or posting a message or e-mail with deceptive, absent, or forged header or sender identification information;
 - l. propagating chain letters or pyramid schemes, whether or not the recipient wishes to receive such mailings;
 - m. holding IBM, its Affiliates, officers, employees and/or shareholders up to public scorn or ridicule; and/or
 - n. reselling IBM's services, in whole or in part, to any entity or individual, without IBM's prior written consent, or misrepresenting your relationship with IBM.

3. IBM'S FEDERAL COMMUNITY CLOUD OFFERING

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

3.1 GENERAL

3.1.1 – GENERAL TERMS

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

The Federal Community Cloud 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 Federal Community Cloud and associated Cloud services ("Services") that Customer orders and IBM provides from IBM's Federal Community Cloud.

Agreement Structure and Overview:

This "Agreement" incorporates each of the following Attachments and the Acceptable Use Policy:

- a. "Attachments" means the following Attachments which provide additional terms and details for each of the Services:
 - IBM's Federal Community Cloud (FCC) Services Description – describes the Services available from IBM's Federal Community Cloud, 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
- b. The Acceptable Use Policy for IBM Services is also part of this Agreement and can be found at www.ibm.com/services/e-business/aup.html or any successor urls.

In the event of a conflict, the terms of Attachments prevail over this Agreement, and the latest dated Attachment will prevail over an earlier version of an Attachment, except as may be expressly specified otherwise.

Throughout this Agreement, the term "Agreement" includes applicable Attachments and the Acceptable Use Policy. Attachments are part of this Agreement only for those Services to which they apply.

3.1.2 ON-LINE TERMS AND TRANSLATIONS

Attachments and other referenced documents, Acceptable Use Policy, information, and resources may be presented electronically, including on-line, within the Federal Community Cloud Web Interface or other IBM Web sites identified by IBM. Printed copies of all such documents are



available upon request. Customer affirms that it has reviewed the Acceptable Use Policy, all electronically-presented Attachments that are part of this Agreement, and other referenced documents.

3.2 DEFINITIONS

Account – the Customer account profile and usage information regarding the Services selected and enabled, including End User activities.

Account Administrator – a person(s) Customer assigns who has administrator access to the Federal Community Cloud Web Interface for managing End Users access to and overseeing the use of the Services for the Account, has the authority to act on Customer's behalf regarding the Services including ordering Services, enabling and disabling Services; and is responsible for communications with IBM and receiving communications from IBM by email or by monitoring postings to the Federal Community Cloud Web Interface.

Cloud Services Focal Point – the IBM contact point(s) as specified by IBM to which Customer directs communications relative to the Services.

Federal Community Cloud (FCC) Web Interface – an IBM Web site designed to enable Customer to use the Services.

Content – all data, software, solutions, and information, including, without limitation, any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets, or servlets that are created, installed, uploaded, or transferred in connection with the Services by Customer or End Users. Content also includes information provided by Customer for Account management including End User id's and contact information.

Customer – the U.S. Federal Government Agency identified in the Customer information section of this Agreement and its End Users. The term Customer is a broad term and includes not only the reference to a U.S. Federal Government Agency but all the specific employees from that Agency involved in use of IBM's FCC (i.e., Account Administrator, End Users).

Enabling Software – any software (such as programs, enabling code, utilities, client software, and plug-ins) and documentation IBM provides to Customer to facilitate Customer's access to and use of the Services.

End User – those who access or use the Services using user account identification to access the Federal Cloud Services.

Federal Cloud Services – the cloud specific Infrastructure as a Service (IaaS) offerings that IBM provides to Federal agencies.

IBM Federal Data Center – the IBM managed facility where Services Components are located and delivered.

Instance – a virtual machine instance that IBM makes available to Customer as part of the Services. An Instance consists of virtual computer processing unit(s) i.e., virtual CPUs, virtual memory, virtual local storage and a selected Operating System.

Services Components – the hardware, software, images, tools, and any documentation (electronic or otherwise) IBM utilizes to provide the infrastructure and functionality of the Services and any images that IBM makes available to Customer as part of the Services.

3.3 SERVICES

Federal Community Cloud Services are provided on a private, multi tenant cloud infrastructure environment using Services Components located at an IBM Federal Data Center. IBM will provide selected Services as described in the applicable Attachments 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, including the actions of any End User and for ensuring that each End User complies with this Agreement, including Attachments, Acceptable Use Policy, and other referenced documents.

3.3.1 SERVICES ACCEPTANCE, RIGHTS, ACCESS, AND USE

IBM will provide Customer access to and use of the Services upon receipt of a fully funded order. Optional upgrades may be added to the baseline Instance offering. IBM will enable the upgrade upon receipt of a funded order or modification to the Government's existing order.

Customer's acceptance of the services is the date IBM provides the Customer with access to the IBM Federal Community Cloud Interface.

IBM or its suppliers retain all rights, title, and interest in the Services Components. Customer agrees to not i) use, copy, modify, make derivative works based upon, link to, or distribute any portion of the Services or Services Components except as expressly provided in this Agreement; or ii) reverse assemble, reverse compile, or otherwise translate any of the Services or Services Components except as specifically permitted by law without the possibility of contractual waiver.

Customer agrees to use the Services Components only as part of the Services. Customer agrees not to resell any Services or Services Components, in whole or in part, as part of a service Customer provides to others without IBM's prior written consent, and any attempt to do so is void.

3.3.2 THIRD PARTY SOFTWARE

Third party software, including open source software, may be provided as part of the Services. Any such third party software will be licensed in accordance with the applicable third party license agreement (Third Party Agreement) described in the Services Description Operating System Image section or otherwise provided to Customer and is for use only within the Services. The Third Party Agreement is an agreement between Customer and the third party only. IBM is not a party to any such Third Party Agreement. Customer receives no warranties, indemnities or express or implied patent or other license from IBM with respect to any third party software. IBM's provision of Services hereunder does not constitute a distribution of the third party software by IBM.



3.3.3 ENABLING SOFTWARE

If Customer is permitted or required to download or install any Enabling Software, Customer agrees not to use such Enabling Software for any purpose other than to enable Customer's access and use of the Services. The Services Description may include terms applicable to Enabling Software. Some Enabling Software may be subject to a separate license agreement (for example, the IBM Program License Agreement (IPLA) or other IBM or third party license agreements). The terms of the IPLA are included in Chapter 5 of this GSA IT Schedule Contract. Customer agrees that Customer accepts such terms by issuing IBM a delivery order incorporating this Agreement, or downloading, installing, or using the Enabling Software.

3.4 CONTENT

3.4.1 OWNERSHIP

Customer (or End Users, or Customer's third party suppliers) retain all right, title, and interest in Content. By any party using Customer's Account and adding, creating, installing, uploading, or transferring Content to use in conjunction with the Services, Customer grants IBM and its subcontractors a non-exclusive, worldwide, royalty-free, paid-up, transferable license and approval to host, cache, copy, and display Content for the purpose of and in conjunction with providing the Services. Customer represents that Customer has and will keep in effect during Customer's use of the Services, all such licenses and approvals necessary to grant IBM and its subcontractors these rights and that they will be provided at no charge to IBM. Customer is responsible for complying with the terms of any such license agreements including entitlements and permitted uses. Customer represents that by adding, creating, installing, uploading, or transferring Content for use in conjunction with the Services, Customer is not exceeding any specified entitlement or permitted use or violating applicable license agreements or applicable laws.

Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

3.4.2 CONTENT RESPONSIBILITIES

Customer is responsible for all Content, including selection, creation, design, usage, licensing, maintenance, testing, backup, and support. Customer is also responsible for any individual's personal information or any information Customer considers confidential that is included in the Content. The Services may allow Customer to include within the Content personal information about others. The laws of some jurisdictions may require the consent of individuals prior to including their personal information in the Content or require compliance with laws, rules, and regulations (such as personal health information). Customer agrees to comply with all applicable laws, to obtain all necessary consents, and make all necessary disclosures before including personal information in the Content and using the Services. Customer acknowledges that this Agreement and its Attachments describe the Services and available options Customer may order and that Services Customer orders meet Customer requirements, including requirements for Customer to meet its responsibility for processing any personal information.

The Customer confirms that Customer is solely responsible for any personal information that may be contained in the Content, including any information which Customer shares with third parties, and that Customer is and remains in compliance with applicable data protection laws. Customer acknowledges that IBM does not control the transfer of data over telecommunications facilities, including the Internet. IBM complies with National Institute of Standards (NIST) Special Publication (SP) 800-53 revision 3 based on an impact categorization of NIST Federal Information Processing Standards (FIPS) Publication 199 Moderate. IBM does not warrant secure operation of the Services or that IBM will be able to prevent third party disruptions of the Services. Customer agrees that IBM shall have no liability for any security-related services or advice that IBM may voluntarily provide.

IBM cannot commit to particular confidentiality obligations regarding any Content or Customer confidential information Customer uses in connection with the Services. IBM assumes no confidentiality obligations regarding Content, regardless of the terms in the Agreement or any separate confidentiality agreement between Customer and IBM.

Customer will have sole root access to Customer's Instances and is responsible for managing Content and access to Content. IBM does not have access to Customer's Instances nor to directly disclose Content except i) when Customer expressly authorizes IBM to do so in connection with use of Services; ii) as necessary to provide Services; or iii) to the extent required by law or as necessary to comply with the request of a governmental or regulatory body or order from a court of competent jurisdiction. To the extent that IBM is reasonably able, IBM will try to provide notice to Customer to enable Customer opportunity to obtain a protective order to prevent such legally required disclosures.

Customer agrees that IBM has no responsibility for Content, including if Content is modified or lost. Customer acknowledges that Customer has reviewed the security features and responsibilities as described in the Services Description and determined that they meet Customer's security needs. Customer is solely responsible for determining the appropriate procedures and controls regarding security of Customer's Instances (such as encryption, monitoring or scanning, and backup of all Content) and for the implementation of any such procedures and controls.

3.5 CHARGES & PAYMENT

3.5.1 CHARGES

IBM's FCC pricing is published on IBM's GSA website www.ibm.com/easyaccess/gsa, under Special Item 132-52, Electronic Commerce Services. Specified charges for Services are offered on a monthly subscription basis.

Commitments and options selected by Customer will affect the total charges IBM will invoice. IBM's invoices will be based upon the following:

- a. Charges are fixed price monthly charges ("MRC") are for a full month usage per virtual machine Instance and selected options, IBM does not provide partial month billing. IBM will invoice the Customer at the end of each month.



- b. Any applicable non-recurring charges (“NRC”) will be billed when such Services are ordered.

3.5.2 PAYMENT

Amounts are due upon receipt of invoice in accordance with the Prompt Payment Act. IBM does not give credits or refunds for any charges already due or paid.

3.6 CHANGES

3.6.1 AGREEMENT AND SERVICES CHANGES

IBM may from time to time add new Services or options, or in its reasonable discretion, change Agreement terms or withdraw existing Services or options, in whole or in part. IBM will notify Customer of any such new or changed Services, terms or Services withdrawals and the effective date of such by providing notice directly to Account Administrator using current information in Customer’s Account control page. For any withdrawal of Services or for any change in Agreement terms that affects existing Services, IBM will provide at least one months’ notice prior to the effective date of a change. Changes will be effective upon the effective date specified in the notice, unless otherwise specified in an Attachment (for example for automatic renewal Services).

3.6.2 ACCEPTANCE OF SERVICE OR IBM POLICY CHANGES

Customer may elect to discontinue use of Services or not renew Services affected by a change. If Customer does not accept a change, Customer is responsible to discontinue use of affected Services prior to the effective date of the change by providing IBM with written notice.

3.6.3 CHANGES TO IBM ON-LINE POLICIES

Changes to IBM’s Acceptable Use Policy will be made by posting a new version at the applicable Web site. Customer agrees to periodically review the Web sites for changes to the Acceptable Use Policy.

Customer agrees and accepts any modified terms by continuing to use the Services after the changes are posted and effective. A change will take effect upon the effective date specified in such notice or posting.

3.7 WARRANTIES AND DISCLAIMERS

IBM warrants that it provides the Services using reasonable care and skill and according to the current description in the Agreement.

3.7.1 ITEMS NOT COVERED BY WARRANTY

IBM DOES NOT WARRANT UNINTERRUPTED, SECURE, OR ERROR-FREE OPERATION OF THE SERVICES, SERVICES COMPONENTS, THIRD PARTY SOFTWARE, OR ENABLING SOFTWARE OR THAT IBM WILL BE ABLE TO PREVENT THIRD PARTY DISRUPTIONS OF THE SERVICES OR THAT IBM WILL CORRECT ALL DEFECTS. SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, IBM MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE SERVICES, SERVICES COMPONENTS, OR ENABLING SOFTWARE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

THE DISCLAIMERS AND EXCLUSIONS IN THIS SECTION 7 ALSO APPLY TO ANY OF IBM'S PROGRAM DEVELOPERS AND SUPPLIERS.

3.8 TERM, TERMINATION AND SUSPENSION

The term of this Agreement is effective upon the day IBM receives a fully funded order, or as otherwise specified in the delivery order. IBM will automatically terminate the service on the term expiration date as specified in the delivery order unless IBM receives a modification or a new funded delivery order prior to the expiration date.

Customer understands that when a Service is terminated all Customer Content will be lost unless it has been previously backed up by the Customer outside the Federal Cloud environment. Customer is responsible for managing and implementing backup of all Customer Content.

3.8.1 CUSTOMER TERMINATION AND CLOSING ACCOUNT

Customer may terminate the Service or any of the optional upgrades by providing IBM written notice. The effective date of termination will be the first of the month following IBM's receipt of the Government's written notice. Upon such termination request, IBM will disable the specific Service upgrade or close Customer's Account. Customer agrees to discontinue access and use of the Service. Customer remains responsible for the full monthly charge through the effective date of termination.

3.8.2 SUSPENSION OR TERMINATION OF THE SERVICES BY IBM

IBM may suspend Customer's access to Services, in whole or in part or any option, or prevent access to any new Services if: (i) in IBM's sole discretion there is an emergency situation, including but not limited to breach of security; (ii) continued provision of Services, in whole or in part or Customer's use of Services in whole or in part may cause IBM to violate any law, rule, regulation, governmental policy, or court order; (iii) use of Services in whole or in part, is inconsistent with a contractual commitment or intellectual property right of a third party; (iv)



Customer materially violates the terms of this Agreement; or (v) there is a violation of the Acceptable Use Policy.

IBM will provide Customer written notice of a suspension and the reason for such and if the cause of the suspension is reasonably capable of being remedied, IBM will inform Customer of what actions Customer must take to reinstate the Services or Customer's eligibility to request new Services. If Customer fails to take such actions within a reasonable time, IBM may terminate suspended Services or the Agreement upon written notice.

Charges will continue to accrue for Services provided during any such suspension and Customer is responsible for paying all charges due and payable up to the date of termination including applicable termination charges.

3.8.3 SUSPECTED VIOLATIONS

IBM reserves the right to investigate complaints relating to use of the Services by Customer, Customer End Users, or someone using Customer's Account, or any potential violation of the terms of this Agreement (including but not limited to the Acceptable Use Policy, image terms or other separate license agreement). Notwithstanding any other terms, policies, or other rights available, IBM may take any action it deems appropriate, including without limitation, disclosing information to enforcement agencies. In addition to any other remedies available to it, IBM reserves the right to:

- a. suspend or restrict Customer's access to or terminate any of the Services, as described above;
- b. remove or require the removal of offending Content; or
- c. exercise other rights and remedies available at law or in equity.

Except for an emergency or as may otherwise be required by law, before undertaking the remedies described in this section or 7.2 (Suspension or Termination of Services by IBM), IBM will attempt to notify the Account Administrator by email or any reasonable practical means under the circumstances.

3.8.4 SURVIVAL

Any terms of this Agreement that by their nature extend beyond the termination of Services remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

3.9 GENERAL PRINCIPLES OF OUR RELATIONSHIP

3.9.1 NOTICES

IBM will provide any notice required or permitted under this Agreement to the Account Administrator. Unless stated otherwise in this Agreement, notices are effective upon the date they are emailed. Customer is responsible to have the Account Administrator review any notices or other information posted to it regarding Customer's Account.

Notices required or permitted under this Agreement by Customer are to be provided to the Cloud Services Focal Point. Subject to the foregoing, Customer and IBM consent to the use of electronic means, email, and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing.

Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology services. IBM is not performing Customer's regulatory or management obligations and is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Services hereunder.

Regardless of where Customer or End Users are located when accessing the Services, Customer agrees to comply with all applicable export and import laws and regulations. Customer represents that no Content accessible to IBM for the Services will require an export license or is restricted from export to any IBM global resource or personnel under applicable export control laws.

Customer is also responsible for complying with all other laws, rules, and regulations that may be applicable to Customer's use of the Services.

3.9.2 OTHER PRINCIPLES OF OUR RELATIONSHIP

- a. Neither party grants the other the right to use its trademarks, trade names, or other designations in any promotion, publication, or Web site without prior written consent or as expressly provided in this Agreement.
- b. IBM may use information regarding Customer's usage of Services for internal purposes.
- c. Customer is responsible for selecting Services that meet Customer's needs and the results obtained from Customer's use of the Services.
- d. Neither party is relying on any representation that is not specified in this Agreement including without limitation any representations concerning: i) total charges for the Services or ii) the experiences or recommendations of other parties; or iii) results or savings you may achieve.

