

## CHAPTER 12. HEALTH IT SIN 54151HEAL TERMS OF CONDITIONS

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### TERMS AND CONDITIONS APPLICABLE TO HEALTH INFORMATION TECHNOLOGY (IT) SERVICES (SPECIAL ITEM NUMBER 54151HEAL)

Vendor suitability for offering services through the new Health IT SIN must be in accordance with the following laws and standards when applicable to the specific task orders, including but not limited to:

- Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH)
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- National Institute of Standards and Technology (NIST) Federal Information Processing Standards (FIPS) and Special Publications
- Federal Information Security Management Act (FISMA) of 2002

**\*\*\*\*NOTE: All non-professional labor categories must be incidental to, and used solely to support Health IT services, and cannot be purchased separately.**

**\*\*\*\*NOTE: All labor categories under the Special Item Number 541515 Information Technology Professional Services may remain under SIN 541515 unless the labor categories are specific to the Health IT SIN.**

#### 1. SCOPE

- a. The labor categories, prices, terms and conditions stated under Special Item Number 54151HEAL Health Information Technology Services apply exclusively to Health IT Services within the scope of this Information Technology Schedule.
- b. This SIN is limited to Health IT Services only. Software and hardware products are out of scope. Hardware and software can be acquired through different Special Item Numbers.
- c. This SIN provides ordering activities with access to Health IT services.
- d. Health IT Services provided under this SIN shall comply with all Healthcare certifications and industry standards as applicable at the task order level.
- e. 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.

#### 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 Health 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.

## **2. ORDER**

a. Agencies may use written orders, Electronic Data Interchange (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.

## **3. PERFORMANCE OF SERVICES**

a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity. All Contracts will be fully funded.

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. Since the IBM services performed under this contract are commercial item services, they will be performed in accordance with IBM's standard warranty provision and acceptance criteria.

d. Any Contractor travel required in the performance of Health 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. All travel will be agreed upon with the client prior to the Contractor's travel.

## **4. 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. Since the IBM services performed under this contract are commercial item services, they will be performed in accordance with IBM's standard warranty provision and acceptance criteria.

## **5. 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 (Dec 2007) Rights in Data – General, may apply.

## **6. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

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

## **7. INDEPENDENT CONTRACTOR**

All Health IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

## **8. 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.

## **9. INVOICES**

The Contractor, upon completion of the work ordered, shall submit invoices for Health 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.

## **10. RESUMES**

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

## **11. INCIDENTAL SUPPORT COSTS**

Incidental support costs are not considered part of 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.

## **12. 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.

**ADDITIONAL TERMS FOR IBM SERVICES****STATEMENT OF WORK**

A separate Statement of Work will be signed by both IBM and the Government for services provided other than hourly assist services. Upon acceptance by IBM, IBM agrees to provide the Services described in the Statement of Work.

The Statement of Work includes, for example:

- A. IBM's responsibilities
- B. The Government's responsibilities
- C. The specific conditions (Completion Criteria), if any, that IBM is required to meet to fulfill its obligations
- D. A performance period for Services and an estimated schedule for planning purposes, and
- E. Applicable charges (not including taxes) and any other terms.
- F. Resumes shall be provided by IBM upon request.

If a Statement of Work contains an estimated schedule, both IBM and the Government agree to make reasonable efforts to carry out our respective responsibilities according to that Schedule. If the Statement of Work contains Completion Criteria, IBM will inform the Government when each criteria is met. The Government then has 10 days to inform IBM if the Government believes that IBM has not met the criteria. The project is complete when IBM meets the Completion Criteria.

**Changes to Statements of Work**

When both IBM and the Government agree to change a Statement of Work, IBM will prepare a written description of the agreed change which must be signed by both IBM and the Government. Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the extent and complexity of the requested changes, additional charges may be required for analysis of the changes. Additional work will not commence until funded authorization is received from the Government.

**Required Consents**

The Government is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in a Statement of Work. A Required Consent means any consents or approvals required to give IBM or our subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products, to enable IBM and our subcontractors to perform the Services set forth in the Statement of Work without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such product. IBM will be relieved of the performance of any obligations that may be affected by your failure to promptly provide any Required Consents to IBM.

**Control And Supervision**

IBM and the Government is each responsible for the supervision, direction, control, and compensation of their respective personnel.

The tasks on which assigned personnel assist shall remain the responsibility of the Government. Therefore, IBM does not guarantee that the Government's task will be accomplished under this contract, only that assistance shall be provided. No estimate made by IBM of the assistance to be provided to the Government is guaranteed to any extent or in any way.

**Personnel**

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

**Government Resources**

If Government is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Government agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop project Materials. IBM will be relieved of its obligations that are adversely affected by Government's failure to promptly obtain such licenses or approvals. Government 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.

Unless otherwise agreed in an Attachment or Transaction Document, Government is responsible for i) any data and the content of any database Government makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM's responsibilities regarding such data or databases, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services transaction.

**Materials Ownership and License**

An Attachment or Transaction Document will specify Materials to be delivered to the Government 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.

The Government 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 the Government. The Government 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.

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**Acceptance**

- A. For items having Completion Criteria (in the statement of work), when IBM meets the Completion Criteria.
- B. For hourly service, upon completion of the service hours.

**Warranty For IBM Services**

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, Attachment, or a Transaction Document. Government 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.

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**European Union General Data Protection Regulation (GDPR)**

The European Union passed the General Data Protection Regulation (EU/2016/679) (GDPR), effective 25 May 2018. The GDPR is designed to ensure a consistent level of protection of the rights and freedoms of natural persons with regard to the processing of their data and to establish one set of data protection rules for Personal Data. IBM is committed to GDPR readiness.

Regarding GDPR, you represent as follows:

- a. Either you do not require IBM to process Personal Data within the meaning of GDPR (e.g., because no processing of Personal Data occurs in the European Union (EU); no monitoring of Personal behavior takes place in EU; or your activities are otherwise exempt from GDPR); and you will communicate to IBM in writing, without undue delay, any anticipated change affecting this representation, or



b. You agree to IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and applicable DPA Exhibit, which apply and supplement the contract. Please contact your IBM representative for the applicable Data Processing Exhibit.