



CHAPTER 9 TABLE OF CONTENTS

CHAPTER 9. SPECIAL ITEM NUMBER 132-52: ELECTRONIC COMMERCE	1
TERMS AND CONDITIONS	1
IBM OFFERINGS	22
1. <i>IBM SmartCloud for Government Offer</i>	22
2.1 General Terms.....	33
2.2 SmartCloud for Government Services	33
2.3 European Union General Data Protection Regulation (GDPR).....	44

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 Electronic Commerce 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 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 .



2.3 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.

