

552.232-72

48 CFR Ch. 5 (10-1-23 Edition)

“browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

(b) Paragraph (a) of this clause does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

[83 FR 7635, Feb. 22, 2018, as amended at 86 FR 55524, Oct. 6, 2021]

552.232-72 Final Payment Under Building Services Contracts.

As prescribed in 532.908(a), insert the following clause:

FINAL PAYMENT UNDER BUILDING SERVICES CONTRACTS (MAR 2012)

Before final payment is made, the Contractor shall complete and furnish the Contracting Officer with GSA Form 1142, Release of Claims, releasing all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor’s claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

[77 FR 6988, Feb. 10, 2012, as amended at 86 FR 55524, Oct. 6, 2021; 86 FR 57372, Oct. 15, 2021]

552.232-77 [Reserved]

552.232-78 Commercial Supplier Agreements—Unenforceable Clauses.

As prescribed in 532.706-3(b), insert the following clause:

COMMERCIAL SUPPLIER AGREEMENTS—UNENFORCEABLE CLAUSES (FEB 2018)

When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, “this agreement” means the commercial supplier agreement:

(a) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(1) *Applicability.* This agreement is part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (including all contracts, task orders, and delivery orders under FAR Parts 13, 14 or 15).

(2) *End user.* This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(3) *Law and disputes.* This agreement is governed by Federal law.

(i) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(ii) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(iii) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(4) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in FAR 52.233-1, Disputes.

(5) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(6) *Updating terms.* (i) After award, the contractor may unilaterally revise terms if they are not material. A material change is defined as:

(A) Terms that significantly change Government rights or obligations; and

(B) Terms that increase Government prices;

(C) Terms that decrease overall level of service; or

(D) Terms that limit any other Government right addressed elsewhere in this contract.

(ii) For revisions that will materially change the terms of the contract, the revised