

## **Contract Clauses**

### **CBO 201-01 Terms and Conditions Limited (May 2003)**

This contract expressly limits acceptance to terms and conditions stated herein. Any additional or different terms and conditions proposed by the Contractor are rejected unless expressly agreed to by the Congressional Budget Office (CBO) in writing. If the Contractor commences shipment or performance pursuant to this contract, then the Contractor shall be deemed to have agreed to and accepted this contract in its entirety, including its terms and conditions as set forth herein.

### **CBO 201-02 Endorsements/News Releases/Advertising (May 2003)**

The Contractor agrees not to refer to this contract or CBO, in advertising, promotional or any other materials, in such a manner as to state or imply that the products or services provided are endorsed or preferred by CBO or are considered by CBO to be superior to other products or services. No news release, press conference, or advertisement pertaining to this contract will be distributed or broadcast without prior written approval by CBO.

### **CBO 203-170 Contractor Employee Whistleblower Rights (Dec 2014)**

The Contractor shall not require any employees or contractors of the Contractor seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

### **CBO 212-04 Compliance with Laws (Jan 2015)**

The Contractor shall comply with all applicable Federal, State, and local laws, rules and regulations applicable to its performance under this contract. The Contractor further agrees to hold CBO harmless from any and all liabilities, claims, fines, penalties, including reasonable costs and settlements, which may arise out of the delivery by the Contractor of goods or supplies or the furnishing of services that do not meet the requirements of any applicable laws or regulations.

### **CBO 225-01 Buy American Act (Jan 2015)**

All equipment and products delivered under this Contract shall be American-made. By submitting an offer or performing work under this Contract, the Contractor certifies that all items subject to this requirement, except those for which the Contractor has provided written notice to the Contracting Officer, are made in the United States within the meaning of the Buy American Act of 1933, as amended. In determining the content breakdown of a product, the Contractor should consider components of unknown origin to have been mined, produced, or manufactured outside the United States.

### **CBO 227-19 Commercial Software, Data, or Subscription Licenses & Agreements (April 2018)**

(a) The Contractor agrees that the contract terms entered into between CBO and the Contractor shall take precedence over any of the Contractor's standard commercial agreement language or any related license agreements.

(b) The terms and provisions governing this contract shall comply with Federal laws and CBO's Procurement Guidelines.

(c) If included in the Contractor's standard commercial agreement or any related license agreements, the following provisions are unenforceable against CBO and shall not apply to the contract:

- (1) Any language requiring indemnification by the U.S. Government (see FAR 52.232-39, Unenforceability of Unauthorized Obligations);
- (2) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation (see FAR 52.233-4, Applicable Law for Breach of Contract Claim);
- (3) Any language requiring resolution, hearing or arbitration in a specific forum or venue different from that prescribed by federal law;
- (4) Any language requiring binding arbitration;
- (5) Any language providing for automatic renewal of the contract or agreement; and
- (6) Any other provision that conflicts with federal law.

(d) This clause also applies to any related so-called "shrink-wrapped" license agreement or other end-user license agreement.

### **CBO 232-01 Payment (Oct 2012)**

(a) Upon submission of proper invoices or time statements to the designated office and at the time(s) provided for in this contract, CBO shall pay the Contractor –

- (1) The prices stipulated in this contract for supplies delivered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract; or
- (2) At the rates prescribed for the services performed by the Contractor and accepted as set forth in this contract. If provided for in this contract, CBO shall also pay the Contractor –
  - (i) A per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with CBO’s travel policy; and
  - (ii) Any other transportation expenses.

(b) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the electronic funds transfer was made by CBO.

(c) *Payment due date.* The payment due date shall be the 30th day after CBO’s Office of Financial Management has received a proper invoice from the Contractor. However, if that Office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor’s invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements. If the contract does not require submission of an invoice for payment, the due date will be, and CBO shall pay the Contractor, as specified in the contract. CBO, as an office of Congress, shall not be subject to late payment interest charges.

**CBO 232-02 Invoice (Oct 2005)**

(a) Unless this contract does not require submission of an invoice for payment, the Contractor’s invoices must be submitted before payment can be made. An invoice is the Contractor’s bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the Office of Financial Management by *one* of the following methods:

Option 1	Option 2	Option 3
<i>E-mail invoices to:</i> <a href="mailto:invoices@cbo.gov">invoices@cbo.gov</a>	<i>Fax invoices to:</i> (202) 226-3879	<i>Mail/deliver invoices to:</i> Office of Financial Management Congressional Budget Office 2 <sup>nd</sup> and D Streets SW Washington DC 20515 Tel: (202) 226-2609

**NOTICE:** Mailing invoices to CBO’s street address in lieu of electronic submission may delay payment. Due to the special mail handling procedures currently in effect, it can take up to 2 weeks for CBO to receive invoices through the mail. Electronic submission is the preferred invoice submission method.

(b) A proper invoice must include the items below. If the invoice does not comply with these requirements, the Contractor shall be notified of the defect within seven (7) days after receipt of the invoice by CBO’s Office of Financial Management.

- (1) Name and address of the Contractor;
- (2) Invoice number and date;
- (3) The Contractor’s Tax Identification Number;
- (4) Purchase Order or contract number or other authorization for supplies delivered or services performed;
- (5) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services rendered;
- (6) Name, title, phone number, and mailing address of person to be notified in the event of a defective invoice;
- (7) Any other information or documentation required by the contract.

If the contract is for a subscription, the invoice must also include the following items:

- (8) The starting and ending dates of the subscription delivery; and
- (9) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

**CBO 232-19 Obligations Contingent on Future Appropriation (May 2003)**

Unless otherwise provided in this contract, CBO’s obligation under this contract in any fiscal year beyond the fiscal year for which this contract is entered into is contingent on the availability of appropriated funds.

**CBO 232-23 Assignment (May 2003)**

- (a) Neither this contract nor the obligation of the Contractor to perform shall be assigned or delegated by the Contractor without CBO's consent.
- (b) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency.
- (c) If the Contractor assigns the proceeds of this contract, the Contractor shall require as a condition of any such assignment, that the assignee submit a completed Vendor Survey form and shall be paid by EFT in accordance with the terms of the Method of Payment clause of this contract. In all respects, the requirements of that clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the payment to be other than the Contractor, in the absence of a proper assignment of claims acceptable to CBO, is incorrect EFT information within the meaning of paragraph (b) of the Method of Payment clause.

**CBO 232-34 Method of Payment (July 2013)**

- (a) All payments by CBO under this contract shall be made by electronic funds transfer (EFT). CBO shall make payment to the Contractor using the EFT information—
  - (1) provided by the Contractor on the CBO Vendor Survey form; or
  - (2) obtained MANUALLY by CBO from the System for Award Management (SAM) database.
- (b) CBO need not make payment to the Contractor under this contract, and any invoice shall be deemed not to be a proper invoice for the purpose of the payment clause under this contract, unless and until CBO has been provided or has been able to obtain the Contractor's EFT information under paragraph (a).
- (c) The Contractor shall be responsible for notifying CBO when the Contractor's EFT information changes. The Contractor shall either:
  - (1) provide a revised CBO Vendor Survey form; or
  - (2) notify CBO Procurement Services that changes have been entered into the SAM database (CBO DOES NOT MAINTAIN AN AUTOMATED LINK TO SAM).
- (d)
  - (1) If an incomplete or erroneous transfer occurs because CBO used the Contractor's correct EFT information inaccurately, CBO remains responsible for making a correct payment and recovering any erroneously directed funds.
  - (2) If an incomplete or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of release of the EFT payment transaction instruction to the Federal Reserve System, then—
    - (a) if the funds are no longer under the control of the designated billing office, CBO is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
    - (b) if the funds remain under the control of the designated billing office, CBO shall not make payment until the Contractor provides CBO with the notification required in paragraph (b).
- (e) CBO shall forward to the Contractor available payment information at the request of the Contractor. CBO does not guarantee that any particular format or method of delivery is available and retains the latitude to use the format and delivery method most convenient to CBO.

**FAR 52.232-39 Unenforceability of Unauthorized Obligations (Jun 2013)**

- (a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:
  - (1) Any such clause is unenforceable against the Government.
  - (2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.
  - (3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

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

**CBO 233-01 Disputes (April 2015) Alternate I (Dec 1991)**

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. chapter 71), and as modified by Section 1501 of Title I of Division H of the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844 (2008).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$50,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals, within 90 days of receipt of a Contracting Officer's decision, to the following authority:

Government Accountability Office Contract Appeals Board  
441 G Street N.W., Room 7182  
Washington DC 20548  
Fax: (202) 512-9749  
E-mail: CAB@gao.gov

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**CBO 239-01 Security for Confidential Information (Dec 2014)**

(a) All CBO information must be appropriately protected by the Contractor. The Contractor acknowledges that, during the course of this contract, the Contractor may become acquainted with and have access to certain confidential information owned or licensed by CBO or used by CBO in the conduct of its business, which may include, but is not limited to: IT security measures; personnel data; trade secrets, commercial and financial information, and other proprietary business data; and personal information, including financial and medical records.

(b) Contractor who is maintaining CBO confidential information on the Contractor's computer system shall secure that information against loss (whether destruction or theft) and unauthorized access, use, modification, or disclosure. Unless measures are specified elsewhere in this contract, the Contractor shall use the same degree of care, but no less than a reasonable degree of care, as the Contractor uses to protect its own confidential information of a like nature to prevent loss, and unauthorized access, use, modification, or disclosure.

(c) The Contractor shall safeguard the security and confidentiality of all confidential information owned or licensed by CBO or used by CBO in the conduct of its business. The Contractor shall comply with all CBO security requirements and protocols and agrees not to disclose, directly or indirectly, any confidential information or to use it in any manner, during the term of this contract or thereafter, except for authorized purposes under this contract. Contractor employees, representatives or agents working on or with CBO systems, whether on- or off-site, will be required to execute individual non-disclosure agreements consistent with this clause.

(d) These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

**FAR 52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004)**

United States law will apply to resolve any claim of breach of this contract.

**CBO 242-101 Contracting Officer's Representative (COR) (Sept 2017)**

(a) The Contracting Officer's Representative (COR) is a representative of CBO with limited authority who has been designated in writing by the Contracting Officer to provide technical direction, clarification, and guidance with respect to existing specifications and performance work statement/statement of work/statement of objectives, as established in the contract. The COR also monitors the progress and quality of the Contractor's performance for payment purposes. The COR shall promptly report Contractor performance discrepancies and suggested corrective actions to the Contracting Officer for resolution.

(b) The COR is not authorized to take any direct or indirect actions or make any commitments that will result in changes to price, quantity, quality, schedule, place of performance, delivery or any other terms or conditions of the written contract.

(c) The Contractor is responsible for promptly providing written notification to the Contracting Officer if it believes the COR has requested or directed any change to the existing contract. No action shall be taken by the Contractor for any proposed change to the existing contract until the Contracting Officer has issued a written directive or a written

modification to the contract. CBO will not accept and is not liable for any alleged change to the contract unless the change is included in a written contract modification or directive signed or issued by the Contracting Officer.

- (d) COR authority is not delegable.
- (e) The COR for this contract is:

<b>Name:</b>	
<b>Job Title:</b>	
<b>Unit / Division:</b>	
<b>Telephone:</b>	
<b>E-mail:</b>	

**CBO 243-01 Changes (May 2003)**

(a) CBO may at any time, by written order, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed;
- (2) Time of performance;
- (3) Place of delivery or performance.
- (4) Drawings, designs, or specifications when supplies to be furnished are to be specially manufactured for CBO.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, CBO shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if CBO decides that the facts justify it, CBO may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**CBO 246-02 Inspection and Acceptance (May 2003)**

The Contractor shall only tender for acceptance those supplies or services that conform to the requirements of this contract. CBO reserves the right to inspect or test any supplies or services that have been tendered for acceptance. CBO may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. Payment for any supplies or services hereunder shall not be deemed an acceptance thereof and is without prejudice to any and all claims that CBO may have against the Contractor.

**CBO 246-16 Risk of Loss / Title (May 2003)**

(a) Unless specified elsewhere in this contract—

- (1) title to supplies furnished under this contract shall pass to CBO upon acceptance; and
- (2) risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until delivery of the supplies to CBO's place of business.

**CBO 246-17 Warranties (May 2003)**

(a) The Contractor warrants free and clear title to all delivered products and further warrants that the products shall be free from defects in workmanship, material or design and shall conform either to the description and specifications in this contract or consistent with the sample of said product provided to CBO.

(b) The Contractor warrants that the products, in the form delivered to CBO, are free from any valid claim for patent infringement and that any labels or trademarks affixed thereto by or on behalf of the Contractor are free from any valid claim for copyright or trademark infringement and agrees to save and hold harmless and indemnify CBO against such infringement liability based upon CBO's possession thereof without alteration.

(c) The goods and services provided shall be free from defects in materials and workmanship for a period of at least ninety (90) days after completion of performance (in the case of services) or after acceptance (in the case of goods or supplies) unless a longer warranty period is provided or is required by law. Should the Contractor's services or goods or

supplies prove to be defective within the warranty period, the Contractor agrees to promptly replace or repair the goods or supplies or correct such services to CBO's satisfaction without cost to CBO.

(d) Unless this contract specifies otherwise, the Contractor represents that all goods, supplies, and other materials provided are new and are not of such age or so deteriorated as to impair their usefulness or safety.

(e) Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to CBO for consequential damages resulting from any defect or deficiencies in accepted items.

**CBO 249-02 Termination for Convenience (May 2003)**

CBO reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor will be notified by the Contracting Officer, in writing, and shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of CBO have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

**CBO 249-08 Termination for Default (May 2003)**

CBO may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide CBO, upon request, with adequate assurances of future performance. In the event of termination for cause, the Contractor will be notified by the Contracting Officer in writing. CBO shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to CBO for any and all rights and remedies provided by law. If it is determined that CBO improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

**CBO 249-11 Waiver of Default (May 2003)**

Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any other, subsequent default.

**CBO 249-14 Excusable Delays (May 2003)**

The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, describing the matter in detail, shall remedy such occurrence expeditiously, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.