**DFARS Case 2019-D043**

**Small Business Innovation Research Data Rights**

**Final Rule**

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**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

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**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.**

**\* \* \* \* \***

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at *https://www.sam.gov*, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation. The contracting officer shall not use other FAR or DFARS provisions and clauses unless required by the FAR or DFARS or consistent with customary commercial practices (section 874(b)(1)(A), Pub. L. 114–328).

\* \* \* \* \*

(xii) *Part 227—Patents, Data, and Copyrights*.

(A) Use the clause at 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, as prescribed in **[227.7102-4(b) and]** 227.7103-6(a). Use the clause with its Alternate I as prescribed in 227.7103-6(b)(1). Use the clause with its Alternate II as prescribed in 227.7103-6(b)(2), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq*.

(B) Use the clause at 252.227-7015, Technical Data—Commercial Products and Commercial Services, as prescribed in 227.7102-4(a)(1), to comply with 10 U.S.C. 3772(a). Use the clause with its Alternate I as prescribed in 227.7102-4(a)(2), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq*.

(C) **[Use the clause at 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, as prescribed in 227.7104-4(a)(1).**

**(D)]** Use the clause at 252.227-7037, Validation of Restrictive Markings on Technical Data, as prescribed in 227.7102-4(c).

**[(E) Use the provision at 252.227-7040, Additional Preaward Requirements for Small Business Technology Transfer Program, as prescribed in 227.7104-4(c)(1).**

**(F) Use the clause at 252.227-7041, Additional Postaward Requirements for Small Business Technology Transfer Program, as prescribed in 227.7104-4(c)(2).]**

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**PART 227—PATENTS, DATA, AND COPYRIGHTS**

**\* \* \* \* \***

**SUBPART 227.71—TECHNICAL DATA AND ASSOCIATED RIGHTS**

**\* \* \* \* \***

**227.7103 Other than commercial products, commercial services, or commercial processes.**

**\* \* \* \* \***

**227.7103-5 Government rights.**

**\* \* \* \* \***

(b) *Government purpose rights.*

**\* \* \* \* \***

(4) During the government purpose rights period, the ~~g~~**[G]**overnment may not use, or authorize other persons to use, technical data marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose data in which it has government purpose rights to any person, or authorize others to do so, unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and ~~non-disclosure~~**[nondisclosure]** agreement at 227.7103-7; or

(ii) The intended recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When technical data marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at ~~252-227-7025~~**[252.227-7025]**, the contract may be modified, prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and ~~non-disclosure~~**[nondisclosure]** agreement.

(6) Contracting activities shall establish procedures to assure that technical data marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and ~~non-disclosure~~**[nondisclosure]** restrictions. Public announcements in the ~~Commerce Business Daily~~**[System for Award Management]** or other publications must provide notice of the use and ~~non-disclosure~~ **[nondisclosure]** requirements. Class use and ~~non-disclosure~~**[nondisclosure]** agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights data. Documents transmitting government purpose rights data to persons under class agreements shall identify the technical data subject to government purpose rights and the class agreement under which such data are provided.

(c) *Limited rights.*

**\* \* \* \* \***

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under [paragraph (c)(2)(i)](https://www.ecfr.gov/current/title-48/section-227.7103-5#p-227.7103-5(c)(2)(i)), [(ii)](https://www.ecfr.gov/current/title-48/section-227.7103-5#p-227.7103-5(c)(2)(ii)), or [(iii)](https://www.ecfr.gov/current/title-48/section-227.7103-5#p-227.7103-5(c)(2)(iii)) of this ~~sub~~section, the intended recipient must complete the use and ~~non-disclosure~~ **[nondisclosure]** agreement at 227.7103–7, or receive the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, prior to release or disclosure of the limited rights data.

**\* \* \* \* \***

**227.7103-6 Contract clauses.**

(a) Use the clause at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when the successful offeror(s) will be required to deliver to the Government technical data pertaining to other than commercial products or commercial services, or pertaining to commercial products or commercial services for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense). Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial products or commercial services developed exclusively at private expense (see 227.7102–4), existing works (see 227.7105), **[or]** special works (see 227.7106)**[.]**~~, or when~~ **[When]** contracting under the Small Business Innovation Research **[(SBIR)]** Program**[ or the Small Business Technology Transfer (STTR) Program,]** ~~(~~see 227.7104**[-4(a)]**~~)~~. Except as provided in 227.7107-2, do not use the clause in architect-engineer and construction contracts.

**\* \* \* \* \***

(c) Use the clause at 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor (other than a litigation support contractor covered by 252.204-7014), for performance of its contract, technical data marked with another contractor's restrictive legend(s).

**\* \* \* \* \***

**227.7103-7 Use and ~~non-disclosure~~[nondisclosure] agreement.**

(a) Except as provided in paragraph (b) of this ~~sub~~section, technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties**[,]** unless the intended recipient completes and signs the use and ~~non-disclosure~~**[nondisclosure]** agreement at paragraph (c) of this ~~sub~~section prior to release~~,~~ or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data subject to limited rights **[or SBIR/STTR data rights,]** or computer software subject to restricted rights **[or SBIR/STTR data rights]** must be stipulated in an attachment to the use and ~~non-disclosure~~**[nondisclosure]** agreement.

(2) For an intended release, disclosure, or authorized use of technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and ~~non-disclosure~~**[nondisclosure]** agreement **[in paragraph (c) of this section]** to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display**[,]** or disclosure of the data or software.

(b) The requirement for use and ~~non-disclosure~~**[nondisclosure]** agreements does not apply to Government contractors which require access to a third party's data or software for the performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(c) The prescribed use and ~~non-disclosure~~**[nondisclosure]** agreement is:

Use and ~~Non-Disclosure~~**[Nondisclosure]** Agreement

**\* \* \* \* \***

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR**[/STTR]** data rights legends**[ (after expiration of the SBIR/STTR data protection period provided in the SBIR/STTR data rights legend)]** only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the “Contractor”), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and ~~non-disclosure~~**[nondisclosure]** agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights ~~legends~~**[ or SBIR/STTR data rights legends]** only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor's Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights ~~legends~~**[ or SBIR/STTR data rights legends]** only in performance of Contract Number ~~(~~**[*[Insert contract number(s)]*]**~~)~~. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend. The Recipient shall promptly notify the software licensor of the execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends**[.]** ~~(~~**[*[*]***To be completed by the contracting officer. See 227.7103-7(a)(2). Omit if none of the ~~D~~****[d]****ata requested is marked with special license rights legends***[.*]*]**~~).~~

**\* \* \* \* \***

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys**[’]** fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

**\* \* \* \* \***

(End of use and ~~non-disclosure~~**[nondisclosure]** agreement)

**\* \* \* \* \***

**227.7103-9 Copyright.**

(a) *Copyright license*.

(1) The clause**[s]** at 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, **[****and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, require]**~~requires~~ a contractor to grant or obtain for the Government license rights which permit the Government to reproduce data, distribute copies of the data, publicly perform or display the data or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause**[s]**. When non-standard license rights in technical data will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data.

(2) The clause**[s]** at 252.227-7013 **[and 252.227-7018 do]**~~does~~ not permit a contractor to incorporate a third party's copyrighted data into a deliverable data item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third**[-]**party copyrighted data in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third**[-]**party material or when the use of the third**[-]**party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—acquisition of existing and special works.* See 227.7105 or 227.7106 for copyright considerations when acquiring existing or special works **[that are not SBIR/STTR data]**.

**227.7103-10 Contractor identification and marking of technical data to be furnished with restrictive markings.**

(a) Identification requirements.

(1) The solicitation provision at 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify to the contracting officer, prior to contract award, any technical data that the offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.306. An offeror's failure to correct the informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7103-13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7103-13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the technical data, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227-7017. Subsequent to contract award, the clause**[s]** at 252.227-7013, Rights in Technical Data— Other Than Commercial Products and Commercial Services, **[and** **252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, permit]**~~permits~~ the contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor, nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7103-13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose technical data. **[However, contracting officers shall not—**

**(i) Prohibit offerors from offering products for which the offeror is entitled to provide the technical data with restrictions; or**

**(ii) Require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish rights in technical data except for the standard rights specified in the applicable clauses.]**~~However, offerors shall not be prohibited from offering products for which the offeror is entitled to provide the Government limited rights in the technical data pertaining to such products and offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish any greater rights in technical data when the offeror is entitled to provide the technical data with limited rights.~~

(b) Contractor marking requirements. The clause**[s]** at 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services**[****, and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program]**—

(1) **[Require]**~~Requires~~ a contractor that desires to restrict the Government's rights in technical data to place restrictive markings on the data, **[provide]**~~provides~~ instructions for the placement of the restrictive markings, and **[authorize]**~~authorizes~~ the use of certain restrictive markings; and

(2) **[Require]**~~Requires~~ a contractor to deliver, furnish, or otherwise provide to the Government any technical data in which the Government has previously obtained rights with the Government's ~~pre-existing~~ **[preexisting]** in that data unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired. When restrictions are still applicable, the contractor is permitted to mark the data with the appropriate restrictive legend for which the data qualified.

(c) Unmarked technical data.

(1) Technical data delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this ~~sub~~section) to correct an inadvertent omission of markings, do not release or disclose the technical data pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked technical data at its expense. The request must be received by the contracting officer within ~~six~~**[6]** months following the furnishing or delivery of such data, or any extension of that time approved by the contracting officer. The person making the request must:

(i) Identify the technical data that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in the clause**[s]** at 252.227-7013 **[and 252.227-7018]**; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the technical data were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

**227.7103-11 Contractor procedures and records.**

(a) The clause**[s]** at 252.227-7013, Rights in Technical Data— Other Than Commercial Products and Commercial Services, **[****and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, require]**~~requires~~ a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data.

(b) The clause at 252.227-7037, Validation of Restrictive Markings on Technical Data**[,]** requires contractors and their subcontractors at any tier to maintain records sufficient to justify the validity of restrictive markings on technical data delivered or to be delivered under a Government contract.

**227.7103-12 Government right to establish conformity of markings.**

(a) Nonconforming markings.

(1) Authorized markings are identified in the clause**[s]** at 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services**[,** **and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program]**. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause**[s]** at 252.227-7013 **[and 252.227-7018]** is also a nonconforming marking.

(2) The correction of nonconforming markings on technical data is not subject to 252.227-7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return technical data bearing nonconforming markings to the person who has placed the nonconforming markings on such data to provide that person an opportunity to correct or strike the nonconforming marking at that person's expense. If that person fails to correct the nonconformity and return the corrected data within 60 days following the person's receipt of the data, the contracting officer may correct or strike the nonconformity at that person's expense. When it is impracticable to return technical data for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the data may be used in accordance with the proper restrictive marking.

(b) Unjustified markings.

(1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, performance, display, or disclosure of the marked technical data. For example, a limited rights legend placed on technical data pertaining to items, components, or processes that were developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either—

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the technical data to the person asserting the restriction for correction at that person's expense. If the data are returned and that person fails to correct or strike the unjustified restriction and return the corrected data to the contracting officer within 60 days following receipt of the data, the unjustified marking shall be corrected or stricken at that person's expense.

\* \* \* \* \*

**227.7103-15 Subcontractor rights in technical data.**

**\* \* \* \* \***

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers, at all tiers, who will be furnishing technical data for other than commercial products or commercial services in response to a Government requirement:

**\* \* \* \* \***

(2) 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

**\* \* \* \* \***

**227.7103-16 Providing technical data to foreign governments, foreign contractors, or international organizations.**

**\* \* \* \* \***

(b) Shall not release or disclose technical data for which restrictions on use, release, or disclosure have been asserted to foreign entities, or authorize the use of technical data by those entities, unless the intended recipient is subject to the same provisions as included in the use and ~~non-disclosure~~**[nondisclosure]** agreement at 227.7103–7 and the requirements of the clause at 252.227–7103, Rights in Technical Data—Other Than Commercial Products and Commercial Services, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

\* \* \* \* \*

**227.7104** **Contracts under the Small Business Innovation Research ~~(SBIR)~~ Program[ and** **Small Business Technology Transfer Program].**

~~(a) Use the clause at 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.~~

~~(b) Under the clause at 252.227–7018, the Government obtains SBIR data rights in technical data and computer software generated under the contract and marked with the SBIR data rights legend. SBIR data rights provide the Government limited rights in such technical data and restricted rights in such computer software during the SBIR data protection period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR technical data and computer software.~~

~~(c) During the SBIR data protection period, the Government may not release or disclose SBIR technical data or computer software to any person except as authorized for limited rights technical data or restricted rights computer software, respectively.~~

~~(d) Use the clause at 252.227–7018 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—~~

~~(1) In the interest of the Government; and~~

~~(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.~~

~~(e) Use the following provision and clauses in SBIR solicitations and contracts that include the clause at 252.227–7018:~~

~~(1) 252.227–7016, Rights in Bid or Proposal Information;~~

~~(2) 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions;~~

~~(3) 252.227–7019, Validation of Asserted Restrictions—Computer Software;~~

~~(4) 252.227–7030, Technical Data—Withholding of Payment; and~~

~~(5) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).~~

~~(f) Use the following clauses and provision in SBIR solicitations and contracts in accordance with the guidance at 227.7103–6 (c) and (d):~~

~~(1) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and~~

~~(2) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government.~~

**[227.7104-1 Policy.**

**(a)** **Do not require an offeror, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components, or processes developed under a SBIR/STTR contract or any rights in computer software generated under a SBIR/STTR contract except for the standard rights** **identified at 227.7104-2.**

**(b)** **Do not prohibit contractors and offerors** **from furnishing or offering to furnish items, components, or processes developed under a SBIR/STTR contract or computer software generated under a SBIR/STTR contract solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose such computer software or technical data pertaining to those items, components, or processes may be restricted.**

**(c)** **Consistent with the guidance in this** **section, 227.7103-10(a)(5),** **227.7203-10(a)(5), and other acquisition** **guidance applicable to SBIR/STTR solicitations,** **the Government may use information provided by offerors in response to a solicitation in the source selection process to evaluate the impact of proposed restrictions on the Government's ability to use or disclose technical data or computer software.**

**(d)** **SBIR/STTR data rights apply to SBIR/STTR data that are delivered, developed, or generated in the performance of a contract or agreement that is covered by SBIR/STTR policies, including contracts and subcontracts that include phase III work. Phase III work refers to work that derives from, extends, or completes an effort made under prior SBIR/STTR** **contracts or agreements, and is funded by sources other than SBIR/STTR programs (see PGI 227.7104-1).**

**(e)** **For SBIR/STTR data that is other than commercial technical data, and other than commercial computer software and computer software documentation, see—**

**(1) 227.7103-9 and 227.7203-9 for guidance on copyright licenses;**

**(2) 227.7103-10 and 227.7203-10 for guidance on contractor identification and marking of technical data and computer software to be furnished with restrictive markings;**

**(3) 227.7103-11 and 227.7203-11 for guidance on maintenance of contractor records; and**

**(4) 227.7103-12 and 227.7203-12 for guidance on nonconforming and unjustified markings.**

**227.7104-2 Rights in SBIR or STTR data.**

**(a) Under the clause at** [**252.227-7018**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7018)**, Rights in** **Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, the Government obtains the following standard license rights:**

**(1) Unlimited rights in the technical data and computer software listed in paragraph (c)(1) of the clause.**

**(2)** **SBIR/STTR data rights in all other technical data and computer software developed or generated under the phase I, II, or III SBIR/STTR contract or subcontract and marked with the SBIR/STTR data rights marking. SBIR/STTR data rights provide the Government limited rights in such technical data and restricted rights in such computer software during the SBIR/STTR data protection period commencing on the date of contract award and ending 20 years after that date unless, after award,** **the agency and the contractor negotiate for some other protection period for the SBIR/STTR data. Upon expiration of the SBIR/STTR data protection period, the Government has government purpose rights in the SBIR/STTR data. These government purpose rights do not expire. See 252.227-7018 for the definition of the SBIR/STTR data protection period and PGI 227.7104-2 for additional guidance on the SBIR/STTR data protection period.**

**(b)** **During the SBIR/STTR data protection period, the Government may not release or disclose technical data or computer software that is subject to SBIR/STTR data rights to any person except as authorized for limited rights technical data or restricted rights computer software, respectively.**

**(c) The Government and contractor or subcontractor may negotiate special license rights only after contract award. The Government shall not make contract award conditional on the contractor or subcontractor negotiating or consenting to negotiate special license rights. Negotiation of special license rights is authorized only after contract award by mutual agreement of the parties.**

**(d)** **The Small Business Administration’s SBIR and STTR Program Policy Directive (effective May 3, 2023)** **provides for special consideration regarding the handling (e.g., disclosure, reverse engineering) of prototypes generated under SBIR and STTR awards, to avoid effects that may appear to be inconsistent with the SBIR and STTR program objectives and to allow the SBIR/STTR awardee to retain rights in SBIR/STTR data during the SBIR/STTR data protection period.**

**(e)** **The clause at 252.227-7018 governs the Government’s license rights in SBIR/STTR data. However, the following clauses or guidance governs the Government’s license rights in any data that are not SBIR/STTR data:**

**(1)** **For technical data pertaining to other than commercial products or commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense, the clause at 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, governs such technical data** **in accordance with 227.7102-4(b).**

**(2)** **For technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense, the clause at** [**252.227-7015**](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015)**, Technical Data—Commercial Products and Commercial Services, governs such technical data, in accordance with 227.7102-4(b).**

**(3)** **For other than commercial computer software or computer software documentation, the clause at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, governs such software and computer software documentation, in accordance with 227.7203-6(a)(1).**

**(4)** **For commercial computer software and computer software documentation, the license customarily provided to the public governs such software and documentation, in accordance with 227.7202-3.**

**227.7104-3 STTR program requirements.**

**(a)** **Before award of a contract under the STTR program requirements only, the provision at 252.227-7040, Additional Preaward Requirements for Small Business Technology Transfer Program, requires offerors to submit, as part of their proposal, a written agreement between the offeror and a** **research institution that allocates any rights in intellectual property and the offeror’s written representation that** **the offeror is satisfied with the agreement. The contracting officer shall review the agreement to ensure it does not conflict with the requirements of the solicitation or any right to carry out follow-on research. If such conflicts exist and cannot be resolved, the submitted proposal is not eligible for award.**

**(b)** **At contract award for STTR program requirements, in accordance with the clause at 252.227-7041, Additional Postaward Requirements for Small Business Technology Transfer Program, the contracting officer shall attach to the contract the accepted written agreement and representation provided by the contractor pursuant to the provision at 252.227-7040.**

**(c)** **After contract award, for any modification to the written agreement between the contractor and** **research institution, the contracting officer shall review the agreement and representation to ensure the modified agreement adheres to the requirements of 252.227-7041. If acceptable, the contracting officer shall attach the modified agreement to the contract.**

**227.7104-4 Solicitation provisions and contract clauses.**

**(a)(1)** **Use the clause at** [**252.227-7018**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7018)**, Rights in** **Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products** **and commercial services, when SBIR/STTR data are delivered, developed, or generated during contract performance, and when any portion of contract performance is governed by SBIR or STTR policies (e.g., performance of one or more subcontracts qualifies as a phase III SBIR or STTR award). See 227.7104-1(d) for guidance on contracts or subcontracts governed by SBIR or STTR policies.**

**(2)** **For the remainder of the technical data or computer software that is delivered, developed, or generated under the contract, use the following clauses as applicable, in accordance with the prescriptions for those clauses:**

**(i)** **252.227-7013, Rights in Technical Data–****Other Than Commercial Products and Commercial Services.**

**(ii)** **252.227-7014, Rights in** **Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.**

**(iii)** **252.227-7015, Technical Data–Commercial** **Products and Commercial Services.**

**(b)** **Use the following provision in solicitations and the following clauses in solicitations and contracts that include the clause at** [**252.227-7018**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7018)**, in accordance with the prescriptions for the provision and clauses:**

**(1)** [**252.227-7016**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7016)**, Rights in Bid or Proposal Information.**

**(2)** [**252.227-7017**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7017)**, Identification and Assertion of Use, Release, or Disclosure Restrictions.**

**(3)** [**252.227-7019**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7019)**, Validation of Asserted Restrictions–Computer Software.**

**(4)** [**252.227-7025**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7025)**, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.**

**(5)** [**252.227-7028**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7028)**, Technical Data or Computer Software Previously Delivered to the Government.**

**(6)** [**252.227-7030**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7030)**, Technical Data–Withholding of Payment.**

**(7)** [**252.227-7037**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7037)**, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).**

**(c)(1) Use the provision at 252.227-7040, Additional Preaward Requirements for Small Business Technology Transfer Program, in solicitations that contain the clause at 252.227-7041.**

**(2)** **Use the clause at 252.227-7041, Additional Postaward Requirements for Small Business Technology Transfer Program, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and** **commercial services, for acquisitions under the STTR program.]**

**\* \* \* \* \***

**227.7108 Contractor data repositories.**

(a) \* \* \*

(5) Obtain use and ~~non-disclosure~~**[nondisclosure]** agreements (see 227.7103-7) from all persons to whom government purpose rights data is released or disclosed; and

**\* \* \* \* \***

(c) If the contractor is not and will not be the data repository manager, do not require a contractor or subcontractor to deliver technical data marked with limited rights legends to a data repository managed by another contractor unless the contractor or subcontractor who has asserted limited rights agrees to release the data to the repository or has authorized, in writing, the Government to do so.

(d) Repository procedures may provide for the acceptance, delivery, and subsequent distribution of technical data in storage media other than paper, including direct electronic exchange of data between two computers. The procedures must provide for the identification of any portions of the data provided with restrictive legends, when appropriate. The acceptance criteria must be consistent with the authorized delivery format.

**Subpart 227.72—Computer Software, Computer Software Documentation, and Associated Rights**

**\* \* \* \* \***

**227.7203 Other than commercial computer software and other than commercial computer software documentation.**

**\* \* \* \* \***

**227.7203-5 Government rights.**

**\* \* \* \* \***

(b) *Government purpose rights*.

**\* \* \* \* \***

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, computer software marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose, or authorize others to release or disclose, computer software in which it has government purpose rights to any person unless—

**\* \* \* \* \***

(ii) The intended recipient is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When computer software marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227–7025, the contract may be modified, prior to release or disclosure, to include such clause in lieu of requiring the contractor to complete a use and ~~non-disclosure~~**[nondisclosure]** agreement.

(6) Contracting activities shall establish procedures to assure that computer software or computer software documentation marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and ~~non-disclosure~~ **[nondisclosure]** restrictions. Public announcements in the ~~Commerce Business Daily~~**[System for Award Management]** or other publications must provide notice of the use and ~~non-disclosure~~ **[nondisclosure]** requirements. Class use and ~~non-disclosure~~**[nondisclosure]** agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights software or documentation. Documents transmitting government purpose rights software or documentation to persons under class agreements shall identify the specific software or documentation subject to government purpose rights and the class agreement under which such software or documentation are provided.

**\* \* \* \* \***

**227.7203-6 [Solicitation provisions and c]~~C~~ontract clauses.**

**\* \* \* \* \***

(d) Use the provision at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor (other than a litigation support contractor covered by 252.204-7014), for performance of its contract, computer software or computer software documentation marked with another contractor's restrictive legend(s).

**\* \* \* \* \***

**227.7203-9 Copyright.**

(a) Copyright license.

(1) The clause**[s]** at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, **[and** **252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, require]**~~requires~~ a contractor to grant, or obtain for the Government license rights which permit the Government to reproduce the software or documentation, distribute copies, perform or display the software or documentation and, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in computer software or computer software documentation will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate copyright licenses for computer software that provide less rights than the standard restricted rights in computer software license. For computer software documentation, do not negotiate a copyright license that provides less rights than the standard limited rights in technical data license.

(2) The clause**[s]** at 252.227-7013, Rights in Technical Data— Other Than Commercial Products and Commercial Services, **[****and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, do]**~~does~~ not permit a contractor to incorporate a third party's copyrighted software into a deliverable software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third**[-]**party copyrighted software in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third**[-]**party material or when the use of the third**[-]**party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) Copyright considerations—special works. See 227.7205 for copyright considerations when acquiring special works **[****that are not SBIR/STTR data]**.

**227.7203-10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.**

(a) Identification requirements.

(1) The solicitation provision at 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify, prior to contract award, any computer software or computer software documentation that an offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release, or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.306(a). An offeror's failure to correct an informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7203-13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7203-13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the computer software or computer software documentation, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227-7017. Subsequent to contract award, the clause**[s]** at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, **[****and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, permit]**~~permits~~ a contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7203-13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision at 252.227-7017 may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose computer software or computer software documentation. **[****However, contracting officers shall not—**

**(i)** **Prohibit offerors from offering products for which the offeror is entitled to provide the computer software with restrictions; or**

**(ii)** **Require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish rights in computer software except for the standard rights specified in the applicable clauses.]**

(b) Contractor marking requirements. The clause**[s]** at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation**[,** **and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program]**—

(1) **[Require]**~~Requires~~ a contractor who desires to restrict the Government's rights in computer software or computer software documentation to place restrictive markings on the software or documentation, **[provide]**~~provides~~ instructions for the placement of the restrictive markings, and **[authorize]**~~authorizes~~ the use of certain restrictive markings. When it is anticipated that the software will or may be used in combat or situations which simulate combat conditions, do not permit contractors to insert instructions into computer programs that interfere with or delay operation of the software to display a restrictive rights legend or other license notice; and

(2) **[Require]**~~Requires~~ a contractor to deliver, furnish, or otherwise provide to the Government any computer software or computer software documentation in which the Government has previously obtained rights with the Government's ~~pre-existing~~ **[preexisting]** rights in that software or documentation unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, produce, release, or disclose the software or documentation have expired. When restrictions are still applicable, the contractor is permitted to mark the software or documentation with the appropriate restrictive legend.

(c) Unmarked computer software or computer software documentation.

(1) Computer software or computer software documentation delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this ~~sub~~section) to correct an inadvertent omission of markings, do not release or disclose the software or documentation pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked computer software or computer software documentation at its expense. The request must be received by the contracting officer within ~~six~~**[6]** months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the contracting officer. The person making the request must—

(i) Identify the software or documentation that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in the clause**[s]** at 252.227-7014 **[and 252.227-7018]**; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the software or documentation were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

**227.7203-11 Contractor procedures and records.**

(a) The clause**[s]** at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, **[****and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, require]**~~requires~~ a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

(b) The clause at 252.227-7019, Validation of Asserted Restrictions—Computer Software, requires contractors and their subcontractors or suppliers at any tier to maintain records sufficient to justify the validity of markings that assert restrictions on the use, modification, reproduction, release, performance, display, or disclosure of computer software.

**227.7203-12 Government right to establish conformity of markings.**

(a) Nonconforming markings.

(1) Authorized markings are identified in the clause**[s]** at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation**[,** **and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program]**. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause**[s]** at 252.227-7014 **[and 252.227-7018]** is also a nonconforming marking.

(2) The correction of nonconforming markings on computer software is not subject to 252.227-7019, Validation of Asserted Restrictions—Computer Software, and the correction of nonconforming markings on computer software documentation (technical data) is not subject to 252.227-7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return computer software or computer software documentation bearing nonconforming markings to the person who has placed the nonconforming markings on the software or documentation to provide that person an opportunity to correct or strike the nonconforming markings at that person's expense. If that person fails to correct the nonconformity and return the corrected software or documentation within 60 days following the person's receipt of the software or documentation, the contracting officer may correct or strike the nonconformity at the person's expense. When it is impracticable to return computer software or computer software documentation for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the software or documentation may be used in accordance with the proper restrictive marking.

(b) Unjustified markings.

(1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, or disclosure of the marked computer software or computer software documentation. For example, a restricted rights legend placed on computer software developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either—

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the computer software or computer software documentation to the person asserting the restriction for correction at that person's expense. If the software or documentation are returned and that person fails to correct or strike the unjustified restriction and return the corrected software or documentation to the contracting officer within 60 days following receipt of the software or documentation, the unjustified marking shall be corrected or stricken at that person's expense.

**\* \* \* \* \***

**227.7203-15 Subcontractor rights in computer software or computer software documentation.**

**\* \* \* \* \***

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers who will be furnishing computer software in response to a Government requirement (see 227.7103-15(c) for clauses required when subcontractors or suppliers will be furnishing computer software documentation (technical data)):

**\* \* \* \* \***

(3) 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

**\* \* \* \* \***

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**\* \* \* \* \***

**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

**\* \* \* \* \***

**252.227-7013 Rights in Technical Data--Other Than Commercial Products and Commercial Services.**

As prescribed in **[****227.7102-4(b) and]** 227.7103-6(a), use the following clause:

RIGHTS IN TECHNICAL DATA—OTHER THAN COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES (~~MAR 2023~~**[JAN 2025]**)

(a) *Definitions*. As used in this clause—

~~(1)~~ *Computer data base* means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

~~(2)~~ *Computer program* means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

~~(3)~~ *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

~~(4)~~ *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

~~(5)~~ *Covered Government support contractor* means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort**[,]** ~~(~~rather than to directly furnish an end item or service to accomplish a program or effort~~)~~, provided that the contractor—

(~~i~~**[1]**) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(~~ii~~**[2]**) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

~~(6)~~ *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

~~(7)~~ *Developed* means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

~~(8)~~ *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a ~~g~~**[G]**overnment contract, or any combination thereof.

(~~i~~**[1]**) Private expense determinations should be made at the lowest practicable level.

(~~ii~~**[2]**) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at ~~g~~**[G]**overnment, private, or mixed expense.

~~(9)~~ *Developed exclusively with ~~g~~****[G]****overnment funds* means development was not accomplished exclusively or partially at private expense.

~~(10)~~ *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

~~(11)~~ *Form, fit, and function data* means technical data that ~~describes~~**[describe]** the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

**[*****Generated* means, with regard to technical data or computer software, first created in the performance of this contract.]**

~~(12)~~  *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

~~(13)~~ *Government purpose rights* means the rights to—

(**[1]**~~i~~) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(**[2]**~~ii~~) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States ~~g~~**[G]**overnment purposes.

~~(14)~~  *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(~~i~~**[1]**) The reproduction, release, disclosure, or use is—

(~~A~~**[i]**) Necessary for emergency repair and overhaul; or

(~~B~~**[ii]**) A release or disclosure to—

(*~~1~~***[A]**) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(*~~2~~***[B]**) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(~~ii~~**[2]**) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(~~iii~~**[3]**) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

**[*****Small Business Innovation Research/Small Business Technology Transfer* (*SBIR/STTR*) *data* means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.]**

~~(15)~~ *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

~~(16)~~ *Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

**[(b) *Applicability*.**

**(1)** **Except as provided in paragraph (b)(2) of this clause—**

**(i)** **This clause governs all technical data pertaining to** **other than commercial products or commercial services or to any portion of a commercial** **product or commercial service** **that was developed in any part at Government expense; and**

**(ii)** **The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7015, Technical Data—Commercial** **Products and Commercial Services, governs the technical data pertaining to any portion of a commercial** **product or commercial service that was developed exclusively at private expense.**

**(2)** **The clause at DFARS 252.227-7018, Rights in** **Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are SBIR/STTR data.]**

(**[c]**~~b~~) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, worldwide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the **[DFARS 252.227-7014,]** Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation**[,]** clause of this contract for rights in computer software documentation):

**\* \* \* \* \***

(2) *Government purpose rights.*

(i) The Government shall have government purpose rights for a ~~five~~**[5]**-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (~~b~~**[c]**)(1)(ii) and (~~b~~**[c]**)(1)(iv) through (~~b~~**[c]**)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The ~~five~~**[5]**-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (~~b~~**[c]**)(2)(i)(B) of this clause. Upon expiration of the ~~five~~**[5]**-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the ~~non-disclosure~~**[nondisclosure]** agreement at **[DFARS]** 227.7103-7 ~~of the Defense Federal Acquisition Regulation Supplement (DFARS)~~; or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (~~f~~**[g]**)(~~2~~**[3]**) of this clause.

(3) *Limited rights.*

(i) Except as provided in paragraphs (~~b~~**[c]**)(1)(ii) and (~~b~~**[c]**)(1)(iv) through (~~b~~**[c]**)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (~~f~~**[g]**) of this clause; or

**\* \* \* \* \***

(iv) The Contractor acknowledges that–

(A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a ~~non-disclosure~~**[nondisclosure]** agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a ~~non-disclosure~~**[nondisclosure]** agreement; and

(D) Any such ~~non-disclosure~~**[nondisclosure]** agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at **[DFARS]** 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The ~~non-disclosure~~**[nondisclosure]** agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the ~~non-disclosure~~**[nondisclosure]** agreement.

(4) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (~~b~~**[c]**)(1) through (~~b~~**[c]**)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in ~~paragraph (a)(14)~~ **[the definition of “limited rights”]** of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the ~~pre-existing~~ **[preexisting]** rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.*  The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with ~~paragraph (a)(14)~~ **[the definition of “limited rights”]** or **[paragraph]** (~~b~~**[c]**)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (~~b~~**[c]**)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legend.

(**[d]**~~c~~) *Contractor rights in technical data.* All rights not granted to the Government are retained by the Contractor.

(**[e]**~~d~~) *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (~~b~~**[c]**) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(**[f]**~~e~~) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure*.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (~~e~~**[f]**)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: ~~Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.~~

**[IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT’S USE, RELEASE, OR DISCLOSURE OF TECHNICAL DATA]**

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

| Technical data to be furnished with restrictions1 | Basis for assertion2 | Asserted rights category3 | Name of person asserting restrictions4 |
| --- | --- | --- | --- |
| (LIST) | (LIST) | (LIST) | (LIST) |
|  |  |  |  |

1If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

2Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

3Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR**[/STTR]** data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

4Corporation, individual, or other person, as appropriate.

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures ~~of~~**[in]** the **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** clause of this contract.

(**[g]**~~f~~) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph ~~(f)(5)~~**[(g)(6)]** of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph ~~(f)(2)~~**[(g)(3)]** of this clause; the limited rights legend at paragraph ~~(f)(3)~~**[(g)(4)]** of this clause; ~~or~~ the special license rights legend at paragraph ~~(f)(4)~~**[(g)(5)]** of this clause; and~~/or~~ a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

**[(2) *Omitted markings.***

**(i) Technical data delivered or otherwise provided under this contract without restrictive markings will be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Contracting Officer will not release or disclose the technical data pending evaluation of the request.**

**(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data at its expense. The request must be received by the Contracting Officer within 6 months following the furnishing or delivery of such technical data, or any extension of that time approved by the Contracting Officer. The Contractor shall—**

**(A) Identify the technical data that should have been marked;**

**(B) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in this clause; and**

**(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.]**

~~(2)~~**[(3)]** *Government purpose rights markings.* Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

Government Purpose Rights

Contract ~~No.~~**[Number]** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Expiration Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (~~b~~**[c]**)(2) of the **[DFARS 252.227-7013,]** Rights in Technical Data—Other Than Commercial Products and Commercial Services**[,]** clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

~~(3)~~**[(4)]** *Limited rights markings.* Data delivered or otherwise furnished to the Government with limited rights shall be marked ~~with the following legend~~**[as follows]**:

Limited Rights

Contract ~~No.~~**[Number]** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (~~b~~**[c]**)(3) of the **[DFARS 252.227-7013,]** Rights in Technical Data—Other Than Commercial Products and Commercial Services**[,]** clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

~~(4)~~**[(5)]** *Special license rights markings.*

(i) Data in which the Government's rights stem from a specifically negotiated license shall be marked ~~with the following legend~~**[as follows]**:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract ~~No.~~**[Number]** \_\_\_\_\_\_\_\_ *~~(~~***[*[*]***Insert contract number***[*]*]**~~)~~ \_\_\_\_\_\_\_\_, License ~~No.~~**[Number]** \_\_\_\_\_\_\_\_ ~~(~~**[*[*]***Insert license identifier***[*]*]**~~)~~ \_\_\_\_\_\_\_\_. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (~~b~~**[c]**)(5) of this clause).

~~(5)~~**[(6) *Preexisting*]***~~Pre-existing~~ data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The **[Contractor shall follow the]** marking procedures in paragraph (~~f~~**[g]**)(1) of this clause ~~shall be followed~~.

(**[h]**~~g~~) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall–

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(**[i]**~~h~~) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified technical data markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data markings.* A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within ~~sixty (~~60~~)~~ days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(**[j]**~~i~~) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(**[k]**~~j~~) *Limitation on charges for rights in technical data.*

(1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (~~j~~**[k]**)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(**[l]**~~k~~) *~~Applicability to s~~****[S]****ubcontractors or suppliers*.

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C.3771–3775, 10 U.S.C. 3781-3786, **[15 U.S.C. 638(j)(1)(B)(iii) and (v), ]**and the identification, assertion, and delivery processes of paragraph (**[f]**~~e~~) of this clause are recognized and protected.

(2) Whenever any technical data for other than commercial products or commercial services, or for commercial products or commercial services developed in any part at Government expense, ~~is~~**[are]** to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use **[the following]**~~this same~~ clause**[(s)]** in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties~~.~~**[:**

**(i)(A) Except as provided in paragraph (l)(2)(ii) of this clause, use this]**~~This~~ clause **[to]**~~will~~ govern the technical data pertaining to ~~noncommercial items~~**[other than commercial products and commercial services]** or to any portion of a commercial product or commercial service that was developed in any part at Government expense~~, and~~**[.]**

**[(B) Use]**the clause at **[DFARS]** [252.227-7015](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015)**[, Technical Data—Commercial Products and Commercial Services,** **to]**~~will~~ govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]** that was developed exclusively at private expense.**[**

**(ii) Use the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern technical data that are SBIR/STTR data.**

**(3)]** No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(~~3~~**[4]**) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(~~4~~**[5]**) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(~~5~~**[6]**) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

*Alternate I* (~~JUN 1995~~**[****JAN 2025]**)

As prescribed in [227.7103-6](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-6)(b)(1), add the following paragraph (~~l~~**[m]**) to the basic clause:

(~~l~~**[m]**) *Publication for sale*.

(1) This paragraph only applies to technical data in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this contract as being subject to paragraph (~~l~~**[m]**) of this clause or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within ~~twenty-four (~~24~~)~~ months following the date specified in this contract for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

*Alternate II* (~~MAR 2022~~**[JAN 2025]**)

As prescribed in [227.7103-6](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-6)(b)(2), add the following **[definition of “Vessel design” in alphabetical order to paragraph]** ~~paragraphs~~ (a)~~(17)~~ and **[add paragraph]** (~~b~~**[c]**)(7) to the basic clause:

(a)~~(17)~~ *Vessel design* means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 8687, and designs protectable under 17 U.S.C. 1301, *et seq*.

(~~b~~**[c]**)(7) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

**252.227-7014 Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.**

As prescribed in 227.7203-6(a)(1), use the following clause:

RIGHTS IN OTHER THAN COMMERCIAL COMPUTER SOFTWARE AND OTHER THAN COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (~~MAR 2023~~**[JAN 2025]**)

(a) *Definitions*. As used in this clause—

~~(1)~~ Commercial computer software means software developed or regularly used for nongovernmental purposes which—

(~~i~~**[1]**) Has been sold, leased, or licensed to the public;

(~~ii~~**[2]**) Has been offered for sale, lease, or license to the public;

(~~iii~~**[3]**) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(~~iv~~**[4]**) Satisfies a criterion expressed in paragraph ~~(a)~~(1)~~(i)~~, (~~ii~~**[2]**), or (~~iii~~**[3]**) of this ~~clause~~**[definition]** and would require only minor modification to meet the requirements of this contract.

~~(2)~~ Computer database means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

~~(3)~~ Computer program means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

~~(4)~~ Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

~~(5)~~ Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

~~(6)~~ *Covered Government support contractor* means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor–

(~~i~~**[1]**) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(~~ii~~**[2]**) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

~~(7)~~  Developed means that—

(~~i~~**[1]**) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(~~ii~~**[2]**) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(~~iii~~**[3]**) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

~~(8)~~ Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(~~i~~**[1]**) Private expense determinations should be made at the lowest practicable level.

(~~ii~~**[2]**) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

~~(9)~~ Developed exclusively with government funds means development was not accomplished exclusively or partially at private expense.

~~(10)~~ Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

**[*Generated* means, with regard to technical data or computer software, first created in the performance of this contract.]**

~~(11)~~ Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

~~(12)~~ Government purpose rights means the rights to—

(~~i~~**[1]**) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(~~ii~~**[2]**) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

~~(13)~~ Minor modification means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

~~(14)~~ Other than commercial computer software means software that does not qualify as commercial computer software under the definition of “commercial computer software” of this clause.

~~(15)~~ *Restricted rights* apply only to other than commercial computer software and mean the Government's rights to–

(~~i~~**[1]**) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(~~ii~~**[2]**) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(~~iii~~**[3]**) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs ~~(a)(15)~~(~~i~~**[1]**), (~~ii~~**[2]**), and (~~iv~~**[4]**) through (~~vii~~**[7]**) of this ~~clause~~**[definition]**;

(~~iv~~**[4]**) Modify computer software provided that the Government may—

(~~A~~**[i]**) Use the modified software only as provided in paragraphs ~~(a)(15)~~(~~i~~**[1]**) and (~~iii~~**[3]**) of this ~~clause~~**[definition]**; and

(~~B~~**[ii]**) Not release or disclose the modified software except as provided in paragraphs ~~(a)(15)~~(~~ii~~**[2]**), (~~v~~**[5]**), (~~vi~~**[6]**)**[,]** and (~~vii~~**[7]**) of this ~~clause~~**[definition]**;

(~~v~~**[5]**) Use, and permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use, computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(~~A~~**[i]**) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(~~B~~**[ii]**) Such contractors or subcontractors are subject to the use and nondisclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(~~C~~**[iii]**) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph ~~(a)(15)~~(~~iv~~**[4]**) of this ~~clause~~**[definition]**, for any other purpose; and

(~~D~~**[iv]**) Such use is subject to the limitations in paragraphs ~~(a)(15)~~(~~i~~**[1]**) through (~~iii~~**[3]**) of this ~~clause~~**[definition]**;

(~~vi~~**[6]**) Use, and permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use, the computer software when necessary to perform or overhaul, or to modify the computer software to reflect the emergency repairs or overhaul made, provided that—

(~~A~~**[i]**) The intended recipient is subject to the use and ~~non-disclosure~~**[nondisclosure]** agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(~~B~~**[ii]**) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph ~~(a)(15)~~(~~iv~~**[4]**) of this ~~clause~~**[definition]**, for any other purpose; and

(~~C~~**[iii]**) Such use is subject to the limitations in paragraphs ~~(a)(15)~~(~~i~~**[1]**) through (~~iii~~**[3]**) of this ~~clause~~**[definition]**; and

(~~vii~~**[7]**) Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(~~A~~**[i]**) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph ~~(a)(15)~~(~~iv~~**[4]**) of this ~~clause~~**[definition]**, for any other purpose; and

(~~B~~**[ii]**) Such use is subject to the limitations in paragraphs ~~(a)(15)~~(~~i~~**[1]**) through (~~iv~~**[4]**) of this ~~clause~~**[definition]**.

**[*Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data* means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.]**

~~(16)~~ *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

**[(b) *Applicability*. This clause governs all other than commercial computer software or other than commercial computer software documentation, except that the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software--Small Business Innovation Research Program and Small Business Technology Transfer Program, governs any computer software or computer software documentation that is SBIR/STTR data.]**

(**[c]**~~b~~) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, worldwide, nonexclusive, irrevocable license rights in other than commercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) Unlimited rights. The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) *Government purpose rights.*

(i) Except as provided in paragraph (~~b~~**[c]**)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of ~~five~~**[5]** years unless a different period has been negotiated. Upon expiration of the ~~five~~**[5]**-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless–

(A) Prior to release or disclosure, the intended recipient is subject to the use and ~~non-disclosure~~**[nondisclosure]** agreement at DFARS 227.7103-7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) *Restricted rights.*

(i) The Government shall have restricted rights in other than commercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in other than commercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All **[other than commercial]**~~noncommercial~~ computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (~~b~~**[c]**)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a ~~non-disclosure~~**[nondisclosure]** agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a ~~non-disclosure~~**[nondisclosure]** agreement; and

(D) Any such ~~non-disclosure~~**[nondisclosure]** agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at **[DFARS]** 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The ~~non-disclosure~~**[nondisclosure]** agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the ~~non-disclosure~~**[nondisclosure]** agreement.

(4) Specifically negotiated license rights.

(i) The standard license rights granted to the Government under paragraphs (~~b~~**[c]**)(1) through (3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in the definition of “restricted rights” of this clause**[,]** or lesser rights in computer software documentation than are enumerated in the definition of “limited rights” of the **[****DFARS 252.227-7013,]** Rights in Technical Data—Other Than Commercial Products and Commercial Services**[,]** clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior Government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the ~~pre-existing~~**[preexisting]** rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.*  The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with **[the]** ~~paragraph (a)(15)~~ **[definition of “restricted rights”]** or **[paragraph]** (~~b~~**[c]**)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (~~b~~**[c]**)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(**[d]**~~c~~) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(**[e]**~~d~~) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (~~b~~**[c]**) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(**[f]**~~e~~) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure*.

(1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (~~e~~**[f]**)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled data for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor: ~~Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.~~

**[IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT’S USE, RELEASE, OR DISCLOSURE OF COMPUTER SOFTWARE]**

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

| Computer Software to be Furnished With Restrictions~~\*~~**[1]** | Basis for Assertion~~\*\*~~**[2]** | Asserted Rights Category~~\*\*\*~~**[3]** | Name of Person Asserting Restrictions~~\*\*\*\*~~**[4]** |
| --- | --- | --- | --- |
| (LIST) | (LIST) | (LIST) | (LIST) |

~~\*~~**[1]**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

~~\*\*~~**[2]**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

~~\*\*\*~~**[3]**Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR**[/STTR data]** ~~software~~ generated under another contract, or specifically negotiated licenses).

~~\*\*\*\*~~**[4]**Corporation, individual, or other person, as appropriate.

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name and Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures ~~of~~**[in]** the **[DFARS 252.227-7019,]** Validation of Asserted Restrictions—Computer Software**[,]** clause of this contract.

(**[g]**~~f~~) *Marking requirements***.** The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph ~~(f)(5)~~**[(g)(6)]** of this clause, only the following legends are authorized under this contract~~;~~**[:]** the government purpose rights legend at paragraph ~~(f)(2)~~**[(g)(3)]** of this clause; the restricted rights legend at paragraph ~~(f)(3)~~**[(g)(4)]** of this clause; ~~or~~ the special license rights legend at paragraph ~~(f)(4)~~**[(g)(5)]** of this clause; and~~/or~~ a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer’s written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software**[,]** or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

**[(2) *Omitted markings.***

**(i) Computer software or computer software documentation delivered or otherwise provided under this contract without restrictive markings will be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Contracting Officer will not release or disclose the software or documentation pending evaluation of the request.**

**(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked computer software or computer software documentation at its expense. The request must be received by the Contracting Officer within 6 months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the Contracting Officer. The Contractor shall—**

**(A) Identify the software or documentation that should have been marked;**

**(B) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in this clause; and**

**(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.]**

~~(2)~~**[(3)]** *Government purpose rights markings.* Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

**Government Purpose Rights**

Contract ~~No~~**~~.~~[Number]** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Expiration Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (~~b~~**[c]**)(2) of the **[DFARS 252.227-7014,]** Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation**[,]** clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

~~(3)~~**[(4)]** *Restricted rights markings.* Software delivered or otherwise furnished to the Government with restricted rights shall be marked ~~with the following legend~~**[as follows]**:

**Restricted Rights**

Contract ~~No.~~**[Number] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contractor Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contractor Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (~~b~~**[c]**)(3) of the **[DFARS 252.227-7014,]** Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation**[,]** clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

~~(4)~~**[(5)]** *Special license rights markings.*

(i) Computer software or computer documentation in which the Government’s rights stem from a specifically negotiated license shall be marked ~~with the following legend~~**[as follows]**:

**Special License Rights**

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract ~~No.~~**[Number]** ~~(~~**[*[*]***Insert contract number***[*]*]**~~)~~\_, License ~~No.~~**[Number]\_\_\_\_**~~(~~**[*[*]***Insert license identifier***[*]*]**~~)~~\_\_\_\_. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (~~b~~**[c]**)(5) of this clause).

~~(5)~~**[(6) *Preexisting*]***~~Pre-existing~~ markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government’s rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The **[Contractor shall follow the ]**marking procedures in paragraph ~~(f)(1)~~**[(g)(1)]** of this clause ~~shall be followed~~.

(**[h]**~~g~~) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(**[i]**~~h~~) *Removal of unjustified and nonconforming markings.*

(1) Unjustified computer software or computer software documentation markings. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the **[DFARS 252.227-7019,]** Validation of Asserted Restrictions—Computer Software**[,]** and the **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor’s expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the **[DFARS 252.227-7019,]** Validation of Asserted Restrictions—Computer Software**[,]** or the **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within ~~sixty (~~60~~)~~ days, the Government may ignore or, at the Contractor’s expense, remove or correct any nonconforming markings.

(**[j]**~~i~~) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(**[k]**~~j~~) *Limitation on charges for rights in computer software or computer software documentation.*

(1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (~~j~~**[k]**)(1) of this clause–

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(**[l]**~~k~~) *~~Applicability to s~~****[S]****ubcontractors or suppliers*.

(1)**[(i) Except as provided in paragraph (l)(1)(ii) of this clause, w]**~~W~~henever any other than commercial computer software or other than commercial computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this ~~same~~ clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.

**[(ii) The Contractor shall use the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern computer software or computer software documentation that is SBIR/STTR data.**

**(iii)]** No other clause shall be used to enlarge or diminish the Government’s, the Contractor’s, or a higher tier subcontractor’s or supplier’s rights in a subcontractor’s or supplier’s computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (**[f]**~~e~~) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

*Alternate I* (~~JUN 1995~~**[JAN 2025]**).

As prescribed in 227.7203-6(a)(2), add the following paragraph (~~l~~**[m]**) to the basic clause:

(~~l~~**[m]**) Publication for sale. (1) This paragraph only applies to computer software or computer software documentation in which the Government has obtained unlimited rights or a license to make an unrestricted release of the software or documentation.

(2) The Government shall not publish a deliverable item or items of computer software or computer software documentation identified in this contract as being subject to paragraph (~~l~~**[m]**) of this clause or authorize others to publish such software or documentation on its behalf if, prior to publication for sale by the Government and within ~~twenty-four (~~24~~)~~ months following the date specified in this contract for delivery of such software or documentation, or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government’s rights in the published software or documentation.

(3) This limitation on the Government’s rights to publish for sale shall continue as long as the software or documentation are reasonably available to the public for purchase.

**252.227-7015 Technical Data–Commercial Products and Commercial Services**.

As prescribed in [227.7102-4](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7102-4)(a)(1), use the following clause:

TECHNICAL DATA—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (~~MAR 2023~~**[JAN 2025]**)

(a) *Definitions.* As used in this clause—

~~(1)~~ *Commercial product and commercial service* includes commercial components and commercial processes but does not include commercial computer software.

~~(2)~~ *Covered Government support contractor* means a contractor (other than a litigation support contractor covered by 252.204-7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(~~i~~**[1]**) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(~~ii~~**[2]**) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

~~(3)~~ Form, fit, and function data means technical data that ~~describes~~**[describe]** the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

~~(4)~~ *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

**[(b) *Applicability*. This clause governs the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense. If the commercial product or commercial service was developed in any part at Government expense—**

**(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are generated during any portion of performance that is covered under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program; and**

**(2) The clause at DFARS 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, governs the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense and is not covered under the SBIR or STTR program.]**

(**[c]**~~b~~) *License.*

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (~~b~~**[c]**)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial products; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor’s written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial products furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (~~b~~**[c]**)(2) of this clause are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a ~~non-disclosure~~**[nondisclosure]** agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor’s use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for ~~an non-disclosure~~**[a nondisclosure]** agreement; and

(iv) Any such ~~non-disclosure~~**[nondisclosure]** agreement shall address the restrictions on the covered Government support contractor’s use of the data as set forth in the clause at **[DFARS]** 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The ~~non-disclosure~~**[nondisclosure]** agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the ~~non-disclosure~~**[nondisclosure]** agreement.

(**[d]**~~c~~) *Additional license rights.* The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(**[e]**~~d~~) *Release from liability.* The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(**[f]**~~e~~) *~~Applicability to s~~****[S]****ubcontractors or suppliers*.

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771–3775**[,]** ~~and~~ 10 U.S.C. 3781-3786**[, and 15 U.S.C. 638(j)(1)(B)(iii) and (v)]**.

(2) Whenever any technical data related to commercial ~~items~~**[products or commercial services]** developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this ~~same~~ clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense, and the **[Contractor shall use the following]** clause**[s to]** ~~at~~ [~~252.227-7013~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7013) ~~will~~ govern the technical data pertaining to any portion of a commercial ~~item~~**[product or commercial service]** that was developed in any part at Government expense~~.~~**[:**

**(i) Use the clause at DFARS 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, to govern any technical data that are not generated during any portion of performance that is covered under the SBIR or STTR program.**

**(ii) Use the clause at 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern technical data that are generated during any portion of performance that is covered under the SBIR or STTR program.]**

(End of clause)

Alternate I (~~MAR 2022~~**[JAN 2025]**)

As prescribed in 227.7102-4(a)(2), add the following **[definition of “Vessel design” in alphabetical order to paragraph]** ~~paragraphs~~ (a)~~(6)~~ and **[add paragraph]** (~~b~~**[c]**)(4) to the basic clause:

(a)~~(6)~~ Vessel design means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 8687, and designs protectable under 17 U.S.C. 1301, et seq.

(~~b~~**[c]**)(4) Vessel designs. For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

**252.227-7016 Rights in Bid or Proposal Information.**

As prescribed in [227.7103-6](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-6)(e)(1), [227.7104](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7104)**[-4(b)]**~~(e)~~(1), or [227.7203-6](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_72.htm#227.7203-6)(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (~~JAN 2023~~**[JAN 2025]**)

(a) *Definitions*. **[As used in this clause—**

***Computer software* is defined in—**

**(1) The 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this contract; or**

**(2) If this is a contract awarded under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.]**

~~(1)~~ **[*Technical data* is defined in*—*]**~~For contracts that require the delivery of technical data, the terms “technical data~~”

**[(1) ]** ~~and “computer software” are defined in the~~ **[The 252.227-7013, ]**Rights in Technical Data— Other Than Commercial Products and Commercial Service**[s,]** clause of this contract**[;]** or~~,~~

**[(2) I]**~~i~~f this is a contract awarded under the Small Business Innovation Research Program **[****or Small Business Technology Transfer Program]**, **[the 252.227-7018,]** ~~the~~ Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research ~~(SBIR)~~ Program **[****and Small Business Technology Transfer** **Program,]** clause of this contract.

~~(2) For~~~~contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in Other Than Commercial Computer and Other Than Commercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause of this contract.~~

**\* \* \* \* \***

(c) *Government rights subsequent to contract award*. The Contractor agrees—

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor’s bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor’s written permission.

(2) The Government’s right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the **[****Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7013,]** Rights in Technical Data—Other Than Commercial Products and Commercial Services~~,~~**[;** **DFARS 252.227-7014,]** Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation~~,~~**[;]** or **[****DFARS 252.227-7018,]** Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research ~~(SBIR)~~ **[****Program and Small Business Technology Transfer ]**Program**[,]** clause~~(s)~~ of this contract.

**\* \* \* \* \***

**252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions.**

As prescribed in [227.7103-3](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-3)(b), [227.7104](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7104)**[-4(b)]**~~(e)~~(2), or [227.7203-3](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_72.htm#227.7203-3)(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (~~JAN 2023~~**[JAN 2025]**)

(a) **[*Definitions.*]** ~~The terms~~**[As]** used in this provision~~are defined in following clause or clauses contained in this solicitation~~—

**[*Computer software* is defined in—**

**(1)** **The 252.227-7014, Rights in** **Other Than Commercial Computer Software and** **Other Than Commercial Computer Software Documentation, clause of this solicitation; or**

**(2)** **If this solicitation contemplates a contract under the Small Business Innovation Research Program or Small Business Technology Transfer Program,** **the 252.227-7018, Rights in** **Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.**

***SBIR/STTR data* is defined in the 252.227-7018, Rights in** **Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.]**

~~(1)~~ **[*Technical data* is defined in*—*]**~~If~~ ~~a successful offeror will be required to deliver technical data,~~

**[(1) The 252.227-7013,]** ~~the~~ Rights in Technical Data—Other Than Commercial Products and Commercial Services**[,]** clause~~,~~**[ of this solicitation;]** or~~,~~

**[(2) I]**~~i~~f this solicitation contemplates a contract under the Small Business Innovation Research Program**[** **or Small Business Technology Transfer Program]**, **[the 252.227-7018,]** ~~the~~ Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research ~~(SBIR)~~**[****Program and Small Business Technology Transfer]** Program**[,]** clause **[of this solicitation]**.

~~(2) If a successful offeror will not be required to deliver technical data, the Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation clause, or, i~~f ~~this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program clause.~~

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software ~~documents~~**[documentation]**, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovation Research **[(SBIR)]** Program**[** **or Small Business Technology Transfer (STTR) Program]**, the**[se]** ~~notification~~ requirements ~~do not~~ apply to ~~technical~~ **[SBIR/STTR]** data ~~or computer software~~ that will be generated under the resulting contract**[** **and will be delivered with SBIR/STTR data rights and to any other data that will be delivered with other than unlimited rights]**. Notification and identification ~~is~~**[are]** not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror’s assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers**[,]** shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government’s Use, Release, or Disclosure of Technical Data or Computer Software

The Offeror asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following technical data or computer software should be restricted:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Technical Data or |  |  | |  |
| Computer Software |  |  | | Name of Person |
| to be Furnished | Basis for | Asserted Rights | | Asserting |
| With Restrictions~~\*~~**[1]** | Assertion~~\*\*~~**[2]** | Category~~\*\*\*~~**[3]** | | Restrictions~~\*\*\*\*~~**[4]** |
| (LIST)~~\*\*\*\*\*~~**[5]** | (LIST) | | (LIST) | (LIST) |

~~\*~~**[1]**For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

~~\*\*~~**[2]**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government’s rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

~~\*\*\*~~**[3]**Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR**[/STTR]** data generated under **[****a contract resulting from this solicitation or under ]**another contract, limited, restricted, or government purpose rights under **[****a contract resulting from ]**this **[solicitation ]**or **[under ]**a prior contract, or specially negotiated licenses).

~~\*\*\*\*~~**[4]**Corporation, individual, or other person, as appropriate.

~~\*\*\*\*\*~~**[5]**Enter “none” when all data or software will be submitted without restrictions.

|  |  |
| --- | --- |
| Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Printed Name and Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

(End of identification and assertion)

(e) An offeror’s failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

(End of provision)

**252.227-7018 Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research ~~(SBIR)~~ Program[** **and Small Business Technology Transfer Program].**

As prescribed in [227.7104](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7104)**[-4]**(a)**[(1)]**, use the following clause:

RIGHTS IN OTHER THAN COMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATION RESEARCH ~~(SBIR)~~ PROGRAM **[****AND SMALL BUSINESS TECHNLOGY TRANSFER PROGRAM]**

(~~NOV 2023~~**[JAN 2025]**)

(a) *Definitions*. As used in this clause—

~~(1)~~ *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(~~i~~**[1]**) Has been sold, leased, or licensed to the public;

(~~ii~~**[2]**) Has been offered for sale, lease, or license to the public;

(~~iii~~**[3]**) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(~~iv~~**[4]**) Satisfies a criterion expressed in paragraph ~~(a)~~(1)~~(i)~~, (~~ii~~**[2]**), or (~~iii~~**[3]**) of this ~~clause~~**[definition]** and would require only minor modification to meet the requirements of this contract.

~~(2)~~ *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

~~(3)~~ *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

~~(4)~~ *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

~~(5)~~ *Computer software documentation* means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

~~(6)~~ *Covered Government support contractor* means a contractor (other than a litigation support contractor covered by [252.204-7014](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm#252.204-7014)) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(~~i~~**[1]**) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(~~ii~~**[2]**) Receives access to the technical data or computer software for performance of a Government contract that contains the clause at [252.227-7025](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7025), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

~~(7)~~ *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

~~(8)~~ *Developed* means—

(~~i~~**[1]**) (Applicable to technical data other than computer software documentation.) An item, component, or process~~,~~ exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(~~ii~~**[2]**) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(~~iii~~**[3]**) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(~~iv~~**[4]**) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

~~(9)~~ *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(~~i~~**[1]**) Private expense determinations should be made at the lowest practicable level.

(~~ii~~**[2]**) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

~~(10)~~ *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

~~(11)~~ *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

~~(12)~~ *Form, fit, and function data* means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

~~(13)~~ *Generated* means**[****, with respect to]** technical data or computer software**[,]** first created in the performance of this contract.

~~(14)~~ *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

**[*****Government purpose rights* means the rights to—**

**(1) Use, modify, reproduce, release, perform, display, or disclose technical data or computer software within the Government without restriction; and**

**(2)** **Release or disclose technical data or computer software outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.]**

~~(15)~~ *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(~~i~~**[1]**) The production, release, disclosure, or use is—

(~~A~~**[i]**) Necessary for emergency repair and overhaul; or

(~~B~~**[ii]**) A release or disclosure to—

(*~~1~~***[A]**) A covered Government support contractor in performance of its covered Government support contracts for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(*~~2~~***[B]**) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(~~ii~~**[2]**) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(~~iii~~**[3]**) The ~~c~~**[C]**ontractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

~~(16)~~ *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

~~(17)~~ *Other than commercial* *computer software* means software that does not qualify as commercial computer software under the definition of “commercial computer software” of this clause.

~~(18)~~ *Restricted rights* apply only to other than commercial computer software and mean the Government’s rights to—

(~~i~~**[1]**) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(~~ii~~**[2]**) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(~~iii~~**[3]**) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs ~~(a)(18)~~(~~i~~**[1]**), (~~ii~~**[2]**), and (~~iv~~**[4]**) through (~~vii~~**[7]**) of this ~~clause~~**[definition]**;

(~~iv~~**[4]**) Modify computer software provided that the Government may—

(~~A~~**[i]**) Use the modified software only as provided in paragraphs ~~(a)(18)~~(~~i~~**[1])** and (~~iii~~**[3])** of this ~~clause~~**[definition]**; and

(~~B~~**[ii]**) Not release or disclose the modified software except as provided in paragraphs ~~(a)(18)~~(~~ii~~**[2]**), **(**~~v~~**[5]**), (~~vi~~**[6]**), and (~~vii~~**[7]**) of this ~~clause~~**[definition]**;

(~~v~~**[5]**) Use, and permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use, computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(~~A~~**[i]**) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(~~B~~**[ii]**) Such contractors or subcontractors are subject to the nondisclosure agreement at [227.7103-7](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-7) of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at [252.227-7025](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7025), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(~~C~~**[iii]**) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph ~~(a)(18)(iv~~**[4]**) of this ~~clause~~**[definition]**, for any other purpose; and

(~~D~~**[iv]**) Such use is subject to the limitations in paragraphs ~~(a)(18)~~(~~i~~**[1]**) through (~~iii~~**[3]**) of this ~~clause~~**[definition]**;

(~~vi~~**[6]**) Use, and permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use, the computer software when necessary to perform the emergency repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(~~A~~**[i]**) The intended recipient is subject to the nondisclosure agreement at [227.7103-7](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-7) or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at [252.227-7025](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7025), Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(~~B~~**[ii]**) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph ~~(a)(18)~~(~~iv~~**[4]**) of this ~~clause~~**[definition]**, for any other purpose; and

(~~C~~**[iii]**) Such use is subject to the limitations in paragraphs ~~(a)(18)~~(~~i~~**[1]**) through (~~iii~~**[3]**) of this ~~clause~~**[definition]**; and

(~~vii~~**[7]**) Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(~~A~~**[i]**) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph ~~(a)(18)~~(~~iv~~**[4]**) of this ~~clause~~**[definition]**, for any other purpose; and

(~~B~~**[ii]**) Such use is subject to the limitations in paragraphs ~~(a)(18)~~(~~i~~**[1]**) through (~~iv~~**[4]**) of this ~~clause~~**[definition]**.

**[*****Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data* means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.**

***SBIR/STTR data protection period* means the time period** **during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR data protection period begins on the date of award of the contract under which the SBIR/STTR data are developed or generated and ends 20 years after that date unless,** **after the award, the agency and the Contractor negotiate for some other protection period for the SBIR/STTR data developed or generated under that contract.]**

~~(19)~~ *SBIR****[/STTR]*** *data rights* means the Government’s rights**[, during the SBIR/STTR data protection period,** **in SBIR/STTR data covered by paragraph (c)(5) of this clause,]** ~~during the SBIR data protection period (specified in paragraph (b)(4) of this clause) to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated a SBIR award~~ as follows:

(~~i~~**[1]**) Limited rights in such SBIR**[/STTR]** technical data; and

(~~ii~~**[2]**) Restricted rights in such SBIR**[/STTR]** computer software.

~~(20)~~ *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

~~(21)~~ *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

**[(b)*****Applicability*.** **This clause governs all SBIR/STTR data. For any data that are not SBIR/STTR data—**

**(1)** **The clause at Defense Federal Acquisition Regulation Supplement (DFARS)** **252.227-7013, Rights in Technical Data—****Other Than Commercial Products and Commercial Services, governs the technical data pertaining to** **other than commercial products and commercial services or to any portion of a commercial** **product or commercial service that was developed in any part at Government expense, and the** **clause at DFARS** [**252.227-7015**](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015)**, Technical Data—Commercial** **Products and Commercial Services, governs the technical data pertaining to any portion of a commercial** **product or commercial service that was developed exclusively at private expense;**

**(2) The clause** **at DFARS 252.227-7014, Rights in** **Other Than Commercial Computer Software and** **Other Than Commercial Computer Software Documentation, governs** **other than commercial computer software and** **other than commercial computer software documentation; and**

**(3)** **A license consistent with DFARS 227.7202 governs commercial computer software and commercial computer software documentation.]**

(**[c]**~~b~~) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, worldwide, nonexclusive, irrevocable license rights in technical data or other than commercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights*. The Government shall have unlimited rights in technical data~~, including computer software documentation,~~ or computer software**[, including such data]** generated under this contract**[,]** that are—

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release**[,]** or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) **[Technical data or computer software]**~~Data or software~~ in which the Government has acquired previously unlimited rights under another Government contract or ~~through a specific license; and~~**[as a result of negotiations;**

**(vi)** **Technical data or computer software furnished to the Government, under this or any other Government contract or subcontract thereunder, with license rights for which all restrictive conditions on the Government have expired; and]**

(vi**[i]**) **[Computer software documentation generated or required to be delivered under this contract]** ~~SBIR data upon expiration of the SBIR data rights period~~.

**[(2) *Government purpose rights*.**

**(i) The Government shall have government purpose rights for the period specified in paragraph (c)(2)(ii) of this clause in data that are—**

**(A) Not SBIR/STTR data, and are—**

**(*1*) Technical data pertaining to items, components, or processes developed with mixed funding, or are computer software developed with mixed funding, except when the Government is entitled to unlimited rights in such data as provided in paragraph (c)(1) of this clause;**

**(*2*) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes; or**

**(B) SBIR/STTR data, upon expiration of the SBIR/STTR data protection period.**

**(ii)(A) For the non-SBIR/STTR data described in paragraph (c)(2)(i)(A) of this clause, the Government shall have government purpose rights for a period of 5 years, or such other period as may be negotiated. This period shall commence upon award of the contract, subcontract, letter contract (or similar contractual instrument), or contract modification (including a modification to exercise an option) that required development of the items, components, or processes, or creation of the data described in paragraph (c)(2)(i)(A)(*2*) of this clause. Upon expiration of the 5-year or other negotiated period, the Government shall have unlimited rights in the data.**

**(B) For the SBIR/STTR data described in paragraph (c)(2)(i)(B) of this clause, the Government shall have government purpose rights perpetually. This Government purpose rights period commences upon the expiration of the SBIR/STTR data protection period.**

**(iii) The Government shall not release or disclose data in which it has government purpose rights unless—**

**(A) Prior to release or disclosure, the intended recipient is subject to the nondisclosure agreement at DFARS 227.7103-7; or**

**(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.**

**(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights marking prescribed in paragraph (g)(3) of this clause.]**

(**[3]**~~2~~) *Limited rights*. The Government shall have limited rights in technical data~~,~~ that were not generated under this contract, pertain to items, components**[,]** or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (**[g]**~~f~~)(1) of this clause, with the legend prescribed in paragraph (**[g]**~~f~~)(**[4]**~~2~~) of this clause.

(**[4]**~~3~~) *Restricted rights in computer software*. The Government shall have restricted rights in other than commercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

(**[5]**~~4~~) *SBIR****[/STTR]*** *data rights*. Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (**[c]**~~b~~)(1) of this clause, the Government shall have SBIR**[/STTR]** data rights**[, during the SBIR/STTR data protection period of this contract,]** in all **[SBIR/STTR data developed or generated]** ~~technical data or computer software generated~~ under this contract ~~during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated~~. **[****This protection period is not extended by any subsequent SBIR/STTR contracts under which any portion of that SBIR/STTR data is used or delivered. The SBIR/STTR data protection period of any such subsequent SBIR/STTR contract applies only to the SBIR/STTR data that are developed or generated under that subsequent contract. The SBIR/STTR data protection period is governed by the version of this clause that is incorporated in the contract under which the SBIR/STTR data are developed or generated. If the SBIR/STTR data were developed or generated under a contract that included a previous version of this clause, then the SBIR/STTR data protection period is governed by that previous version of this clause.]**

(**[6]**~~5~~) *Specifically negotiated license rights*. **[After contract award, t]**~~T~~he standard license rights granted to the Government under paragraphs (**[c]**~~b~~)(1) through ~~(b)~~(**[5]**~~4~~) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in ~~paragraph (a)(15~~) **[the definition of “limited rights” ]**of this clause or lesser rights in computer software than are enumerated ~~in paragraph (a)(18)~~ **[the definition of “restricted rights” ]**of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(**[7]**~~6~~) *Prior government rights*. Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the ~~pre-existing~~ **[preexisting]** rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government’s rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(**[8]**~~7~~) *Release from liability*. The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with ~~paragraph (a)(14), (a)(17)~~, **[the definitions of “Government purpose,” “other than commercial computer software,”]** or **[paragraph]** (**[c]**~~b~~)(**[5]**~~4~~) of this clause, or in accordance with the terms of a license negotiated under paragraph (**[c]**~~b~~)(**[6]**~~5~~) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

(**[9]**~~8~~) *Covered Government support contractors*. The Contractor acknowledges that—

(i) Limited rights technical data and restricted rights computer software are authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor may require each such covered Government support contractor to enter into a ~~non-disclosure~~**[nondisclosure]** agreement directly with the Contractor (or the party asserting restrictions as identified in a restrictive legend) regarding the covered Government support contractor’s use of such data or software, or alternatively that the Contractor (or party asserting restrictions) may waive in writing the requirement for a ~~non-disclosure~~**[nondisclosure]** agreement; and

(iv) Any such ~~non-disclosure~~**[nondisclosure]** agreement shall address the restrictions on the covered Government support contractor’s use of the data or software as set forth in the clause at **[DFARS]** [252.227-7025](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7025), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The ~~non-disclosure~~**[nondisclosure]** agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the ~~non-disclosure~~**[nondisclosure]** agreement.

(**[d]**~~c~~) *Rights in derivative computer software or computer software documentation*. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

(**[e]**~~d~~) *Third party copyrighted technical data and computer software*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (**[c]**~~b~~) of this clause and, prior to delivery of such—

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(**[f]**~~e~~) *Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure*.

(1) This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

(2) Except as provided in paragraph **[(f)]**~~(e)~~(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government’s Use, Release, or Disclosure of Technical Data or Computer Software

The Contractor asserts for itself, or the persons identified below, that the Government’s rights to use, release, or disclose the following technical data or computer software should be restricted:

|  |  |  |  |
| --- | --- | --- | --- |
| Technical ~~d~~**[D]**ata or |  |  |  |
| ~~c~~**[C]**omputer ~~s~~**[S]**oftware |  |  | Name of ~~p~~**[P]**erson |
| to be ~~f~~**[F]**urnished | Basis for | Asserted ~~r~~**[R]**ights | ~~a~~**[A]**sserting |
| ~~w~~**[W]**ith ~~r~~**[R]**estrictions1 | ~~a~~**[A]**ssertion2 | ~~c~~**[C]**ategory3 | ~~r~~**[R]**estrictions4 |
| (LIST) | (LIST) | (LIST) | (LIST) |

1If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

2Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government’s rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government’s rights should be restricted.

3Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR**[/STTR]** data rights under **[this or ]**another contract, or specifically negotiated licenses).

4Corporation, individual, or other person, as appropriate.

|  |  |
| --- | --- |
| Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Printed Name and Title | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor’s assertions. The Contracting Officer reserves the right to add the Contractor’s assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures ~~of~~**[in]** the **[DFARS 252.227-7019,]** Validation of Asserted Restrictions—Computer Software**[,]** and/or **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** clauses of this contract.

(**[g]**~~f~~) *Marking requirements*. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph ~~(f)(6)~~**[(g)(8)]** of this clause, only the following markings are authorized under this contract: **[the government purpose rights marking at paragraph (g)(3) of this clause; ]**the limited rights legend at paragraph ~~(f)(2)~~**[(g)(4)]** of this clause; the restricted rights legend at paragraph ~~(f)(3)~~**[(g)(5)]** of this clause~~,~~**[;]** the SBIR**[/STTR]** data rights legend at paragraph ~~(f)(4)~~**[(g)(6)]** of this clause~~, or~~**[;]** the special license rights legend at ~~paragraphs~~**[paragraph]** ~~(f)(5)~~**[(g)(7)]** of this clause; and~~/or~~ a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

**[(2) *Omitted markings.***

**(i)** **Technical data, computer software, or computer software documentation delivered or otherwise provided under this contract without restrictive markings shall be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause)** **to correct an inadvertent omission of markings, the Contracting Officer will not release or disclose the technical data, software, or documentation pending evaluation of the request.**

**(ii)** **The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data, computer software, or computer software documentation at its expense. The request must be received by the Contracting Officer within 6 months following the furnishing or delivery of such technical data, software, or documentation, or any extension of that time approved by the Contracting Officer. The Contractor shall—**

**(A)** **Identify the technical data, software, or documentation that should have been marked;**

**(B)** **Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data, computer software, or computer software documentation contained in this clause; and**

**(C)** **Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data, software, or documentation made prior to the addition of the marking or resulting from the omission of the marking.**

**(3) *Government purpose rights markings.*** **Technical data or computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:**

**GOVERNMENT PURPOSE RIGHTS**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Contract Number** | |  | |  | |
|  | **Contractor Name** |  | | |  | |
|  | **Contractor Address** | | |  |  | |
|  |  |  | | | |  |
|  | **Expiration Date** |  | | | |  |

**The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these technical data or computer software are restricted by paragraph (c)(2) of the DFARS 252.227-7018, Rights in** **Other Than Commercial Technical Data** **and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software or portions thereof marked with this restrictive marking must also reproduce the markings.**

**(End of legend)**

**(4)]**~~(2)~~ *Limited rights markings*. Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked ~~with the following legend~~**[as follows]**:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| LIMITED RIGHTS | | | | | |
|  | | | | | |
|  | Contract ~~No.~~**[Number]** |  | | |  |
|  | Contractor Name | |  | |  |
|  | Contractor Address | | |  |  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (**[c]**~~b~~)(**[3]**~~2~~) of the **[DFARS 252.227-7018,]** Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research ~~(SBIR)~~ Program**[** **and Small Business Technology Transfer Program,]** clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

**[(5)]**~~(3)~~ *Restricted rights markings*. Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked ~~with the following legend~~**[as follows]**:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| RESTRICTED RIGHTS | | | | | | | | |
|  | |  | |  | | |  | |
|  | | Contract ~~No.~~**[Number]** | |  | | |  | |
|  | | Contractor Name | | |  | |  | |
|  | | Contractor Address | | | |  |  | |
|  |  | |  | | | | |  |

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (**[c]**~~b~~)(**[4]**~~3~~) of the **[DFARS 252.227-7018,]** Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research ~~(SBIR)~~ Program**[** **and Small Business Technology Transfer Program,]** clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such ~~data~~**[software]** must promptly notify the above named Contractor.

(End of legend)

**[(6)]**~~(4)~~ *SBIR****[/STTR]*** *data rights markings*. Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (**[c]**~~b~~)(1) of this clause~~,~~ or negotiated special license rights as provided in paragraph (**[c]**~~b~~)(**[6]**~~5~~) of this clause, technical data or computer software generated under this contract shall be marked ~~with the following legend~~**[as follows]**. The Contractor shall enter the expiration date for the SBIR**[/STTR]** data ~~rights~~**[protection]** period on the legend:

SBIR**[/STTR]** DATA RIGHTS

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | |
|  | Contract ~~No.~~**[Number]** |  | | | |  |
|  | Contractor Name | |  | | |  |
|  | **[Contractor]** Address | | |  | |  |
|  | Expiration of SBIR**[/STTR]** Data ~~Rights~~**[Protection]** Period | | | |  |  |
|  | **[Expiration of the Government Purpose Rights Period]** | | | |  |  |

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (**[c]**~~b~~)(**[5]**~~4~~) of the **[DFARS 252.227-7018,]** Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research ~~(SBIR)~~ Program**[** **and Small Business Technology Transfer Program,]** clause contained in the above identified contract. ~~No restrictions apply a~~**[A]**fter the **[****SBIR/STTR data protection period]** expiration date shown above**[,** **the Government has perpetual government purpose rights as provided in paragraph (c)(4) of that clause, unless otherwise indicated by the government purpose rights expiration date shown above]**. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

**[(7)]**~~(5)~~ *Special license rights markings*.

(i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked ~~with the following legend~~**[as follows]**:

|  |
| --- |
| SPECIAL LICENSE RIGHTS |
|  |
| The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract ~~No.~~ **[Number]\_\_\_\_\_~~(~~[*[*]***Insert contract number***[*]*]**~~)~~\_\_\_\_, License ~~No.~~**[Number]** \_\_\_\_~~(~~**[*[*]***Insert license identifier***[*]*]**~~)~~\_\_\_\_. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings. |

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (**[c]**~~b~~)(**[7]**~~6~~) of this clause).

**[(8) *Preexisting*]**~~(6)~~ *~~Pre-existing~~ data markings*. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The **[Contractor shall follow the]** marking procedures in paragraph (**[g]**~~f~~)(1) of this clause ~~shall be followed~~.

(**[h]**~~g~~) *Contractor procedures and records*. Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(**[i]**~~h~~) *Removal of unjustified and nonconforming markings*.

(1) *Unjustified markings*. The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** and the **[DFARS 252.227-7019,]** Validation of Asserted Restrictions–Computer Software**[,]** clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings*. A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the **[DFARS 252.227-7037,]** Validation of Restrictive Markings on Technical Data**[,]** or the **[DFARS 252.227-7019,]** Validation of Asserted Restrictions—Computer Software**[,]** clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within ~~sixty~~**[60]** days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(**[j]**~~i~~) *Relation to patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(**[k]**~~j~~) *Limitation on charges for rights in technical data or computer software*.

(1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (**[k]**~~j~~)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(**[l]**~~k~~) *~~Applicability to s~~****[S]****ubcontractors or suppliers.*

(1) The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C.3771–3775, 10 U.S.C. 3781-3786, **[****15 U.S.C. 638(j)(1)(B)(iii) and (v), ]**and the identification, assertion, and delivery processes required by paragraph **[(f)]**~~(e)~~ of this clause are recognized and protected.

(2) Whenever any other than commercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use **[the following]**~~this same~~ clause**[(s)]** in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties~~.~~**[:**

**(i)** **Except as provided in paragraph (l)(2)(ii) of this clause, use this clause to govern SBIR/STTR data.**

**(ii)** **For data that are not SBIR/STTR data—**

**(A) Use the clause at** **DFARS 252.227-7013, Rights in Technical Data—Other** **Than Commercial Products and Commercial Services, to govern the technical data pertaining to** **other than commercial products or commercial services or to any portion of a commercial** **product or commercial service that was developed in any part at Government expense, and use the** **clause at DFARS** [**252.227-7015**](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm#252.227-7015)**, Technical Data—Commercial** **Products and Commercial Services, to govern the technical data pertaining to any portion of a commercial** **product or commercial service that was developed exclusively at private expense;**

**(B)** **Use the DFARS clause at 252.227-7014, Rights in** **Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, to govern** **other than commercial computer software and computer software documentation; and**

**(C) Use the license under which the data are customarily provided to the public, in accordance with DFARS 227.7202, for commercial computer software and commercial computer software documentation.**

**(iii)]** ~~The Contractor shall use the Technical Data—Commercial Products and Commercial Services clause of this contract to obtain technical data pertaining to commercial products, commercial components, commercial services, or commercial processes.~~ No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

~~ALTERNATE I (JUN 1995)~~

~~As prescribed in~~ [~~227.7104~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7104)~~(d), add the following paragraph (l) to the basic clause:~~

~~(l)~~ *~~Publication for sale~~*~~.~~

~~(1) This paragraph applies only to technical data or computer software delivered to the Government with SBIR data rights.~~

~~(2) Upon expiration of the SBIR data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor, prior to the expiration of the SBIR data rights period, or within two years following delivery of the data or software item, or within twenty-four months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government's rights in the published data.~~

~~(3) This limitation on the Government's right to publish for sale shall continue as long as the technical data or computer software are reasonably available to the public for purchase.~~

**252.227-7019 Validation of Asserted Restrictions—Computer Software.**

As prescribed in 227.7104**[-4(b)]**~~(e)~~(3) or 227.7203-6(c), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE (~~JAN 2023~~**[JAN 2025]**)

(a) *Definitions.* ~~(1)~~ As used in this clause**[—]**

**[*Contractor*]**, unless otherwise specifically indicated, ~~the term “Contractor”~~ means the Contractor and its subcontractors or suppliers.

~~(2)~~ Other terms ~~used in this clause~~ are defined in the **[252.227-7014,]** Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation**[,]** clause of this contract.

**\* \* \* \* \***

(d) *Requests for information.*

(1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the—

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor's expense; or

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restrictions and return the corrected software to the Contracting Officer within ~~sixty (~~60~~)~~ days following receipt of the software, the Contracting Officer may correct **[or]**~~the~~ strike the markings at the Contractor's expense~~.~~**[;]**

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) *Government right to challenge and validate asserted restrictions.*

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within ~~three~~**[3]** years after the date(s) the software is delivered or otherwise furnished to the Government, or ~~three~~**[3]** years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Challenge procedures.*

(1) A challenge must be in writing and shall–

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within ~~sixty (~~60~~)~~ days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the ~~three~~**[3]**-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

**\* \* \* \* \***

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officerwho initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the ~~c~~**[C]**ontractor a reasonable opportunity for responding to each challenge.

(g) *Contractor appeal - Government obligation.*

(1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ~~ninety (~~90~~)~~ days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of ~~one~~ **[1]** year from the date of the Contracting Officer's final decision if, within the first ~~ninety (~~90~~)~~ days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has~~:~~**[—]**

(A) ~~a~~**[A]**ppealed to the Board of Contract Appeals or filed suit **[in]** an appropriate court within ~~ninety (~~90~~)~~ days; or

(B) ~~s~~**[S]**ubmitted, within ~~ninety (~~90~~)~~ days, a notice of intent to file suit in an appropriate court and filed suit within ~~one~~**[1]** year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ~~ninety (~~90~~)~~ days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ~~ninety (~~90~~)~~ days from such date; or

(iii) File suit within ~~one~~**[1]** year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ~~ninety (~~90~~)~~ days following the date of the Contracting Officer's final decision.

(3)**[(i)]** The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with**[—]**

(~~i~~**[A]**) ~~g~~**[G]**overnment purpose legends for any purpose, and authorize others to do so; or

(~~ii~~**[B]**) ~~r~~**[R]**estricted or special license rights for government purposes only.

**[ii]**  The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and ~~non-disclosure~~**[nondisclosure]** agreement at **[Defense Federal Acquisition Regulation Supplement (DFARS)]** 227.7103-7 ~~of the Defense Federal Acquisition Regulation Supplement (DFARS)~~, or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head’s determination may be made at any time after the date of the Contracting Officer’s final decision and shall not affect the Contractor’s right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

**\* \* \* \* \***

**252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.**

As prescribed in 227.7103-6(c), 227.7104**[-4(b)(4)]**~~(f)(1)~~, or 227.7203-6(d), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVELEGENDS (~~JAN 2023~~**[JAN 2025]**)

(a)**[** ***Definitions*. As used in this clause—]**

(1) For contracts in which the Government will furnish the Contractor with technical data, the terms “covered Government support contractor,” “limited rights,” and “Government purpose rights” are defined in the clause at 252.227-7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services.

(2) For contracts in which the Government will furnish the Contractor with computer software or computer software documentation, the terms “covered Government support contractor,” “government purpose rights,” and “restricted rights” are defined in the clause at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.

(3) For Small Business Innovation Research **[(SBIR) Program]** ~~program~~ **[****and Small Business Technology Transfer (STTR) Program]** contracts, the terms “covered Government support contractor,” **[“government purpose rights,”]** “limited rights,” “restricted rights,” and “SBIR**[/STTR]** data rights” are defined in the clause at 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research ~~(SBIR)~~ Program **[and Small Business Technology Transfer Program]**.

(b) Technical data or computer software provided to the Contractor as Government-furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited rights, restricted rights, or SBIR****[/STTR]*** *data rights legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR**[/STTR]** technical data or computer software received with SBIR**[/STTR]** data rights legends (during the SBIR**[/STTR]** data protection period) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) *GFI marked with government purpose rights legends*. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the ~~non-disclosure~~**[nondisclosure]** agreement at 227.7103-7**[** **of the Defense Federal Acquisition Regulation Supplement (DFARS)]**.

(3) *GFI marked with specially negotiated license rights legends*.

(i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the ~~non-disclosure~~**[nondisclosure]** agreement at **[DFARS]** 227.7103-7. The Contractor shall modify paragraph (1)(c) of the ~~non-disclosure~~**[nondisclosure]** agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends*.

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that ~~is~~**[are]** or ~~pertains~~**[pertain]** to a commercial product or commercial service and ~~is~~**[are]** received from the Government with a commercial restrictive legend (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial products or commercial services, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause**[.]**

(5) *Covered Government support contractors*. If the Contractor is a covered Government support contractor receiving technical data or computer software marked with restrictive legends pursuant to paragraphs (b)(1)(ii), (b)(3)(ii), or (b)(4)(ii) of this clause, the Contractor further agrees and acknowledges that—

(i) The technical data or computer software will be accessed and used for the sole purpose of furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data or computer software relates, as stated in this contract, and shall not be used to compete for any Government or non~~-~~Government contract;

(ii) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor will ensure that the party whose name appears in the legend is notified of the access or use within ~~thirty (~~30~~)~~ days of the Contractor's access or use of such data or software;

(iv) The Contractor will enter into a ~~non-disclosure~~**[nondisclosure]** agreement with the party whose name appears in the legend, if required to do so by that party, and that any such ~~non-disclosure~~**[nondisclosure]** agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The ~~non-disclosure~~**[nondisclosure]** agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the ~~non-disclosure~~**[nondisclosure]** agreement; and

(v) That a breach of these obligations or restrictions may subject the Contractor to—

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(c) *Indemnification and creation of third party beneficiary rights*. The Contractor agrees–

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third**[-]**party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(d) The Contractor shall ensure that its employees are subject to use and ~~non-disclosure~~ **[nondisclosure]** obligations consistent with this clause prior to the employees being provided access to or use of any GFI covered by this clause.

**[(End of clause)]**

**\* \* \* \* \***

**252.227-7028 Technical ~~d~~[D]ata or ~~c~~[C]omputer ~~s~~[S]oftware ~~p~~[P]reviously ~~d~~[D]elivered to the ~~g~~[G]overnment.**

As prescribed in 227.7103-6(d), 227.7104**[-4(b)(5)]**~~(f)(2)~~, or 227.7203-6(e), use the following provision:

\* \* \* \* \*

**252.227-7030 Technical ~~d~~[D]ata – ~~w~~[W]ithholding of ~~p~~[P]ayment.**

As prescribed at 227.7103-6(e)(2) or 227.7104**[-4(b)(6)]**~~(e)(4)~~, use the following clause:

**\* \* \* \* \***

**252.227-7037 Validation of Restrictive Markings on Technical Data.**

As prescribed in 227.7102-4(c), 227.7103-6(e)(3)~~,227.7104(e)(5)~~**[, 227.7104-4(b)(7)]**, or 227.7203-6(f), use the following clause:

**\* \* \* \* \***

**[252.227-7040 Additional Preaward Requirements for Small Business Technology Transfer Program.**

**As prescribed in** [**227.7104**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7104)**-4(c)(1), use the following provision:**

**ADDITIONAL PREAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM (JAN 2025)**

**(a) *Definitions.* As used in this provision, the terms “research institution” and “United States” have the meaning given in the 252.227-7041, Additional Postaward Requirements for Small Business Technology Transfer Program, clause of this solicitation.**

**(b) Offers submitted in response to this solicitation shall include the following:**

**(1) The written agreement between the Offeror and a research institution, which shall contain—**

**(i) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from the Small Business Technology Transfer (STTR) Program award;**

**(ii) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a STTR award; and**

**(iii) No terms or conditions that conflict with the requirements of the clause at 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this provision, including the rights of the United States, the Offeror, and the research institution regarding intellectual property, and regarding any right to carry out follow-on research.**

**(2) The Offeror’s written representation that—**

**(i) The Offeror is satisfied with its written agreement with the research institution; and**

**(ii) The written agreement does not conflict with the requirements of this solicitation.**

**(c) The Offeror shall submit the written representation required by paragraph (b)(2) of this provision as an attachment to its offer, dated and signed by an official authorized to contractually obligate the Offeror.**

**(d) The Offeror’s failure to submit the written agreement or written representation required by paragraph (b) of this provision with its offer may render the offer ineligible for award.**

**(e) If the Offeror is awarded a contract, the Contracting Officer will include the written agreement and written representation required by paragraph (b) of this provision in an attachment to that contract.**

**(End of provision)**

**252.227-7041 Additional Postaward Requirements for Small Business Technology Transfer Program.**

**As prescribed in** [**227.7104**](http://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7104)**-4(c)(2), use the following clause:**

**ADDITIONAL POSTAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM (JAN 2025)**

**(a) *Definitions.* As used in this clause—**

***Research institution* means an institution or entity that—**

**(1) Has a place of business located in the United States;**

**(2) Operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; and**

**(3) Is either—**

**(i) A nonprofit institution that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual (section 4(3) of the Stevenson-Wydler Technology Innovation Act of 1980); or**

**(ii) A federally-funded research or research and development center as identified by the National Science Foundation (**[***https://www.nsf.gov/statistics/ffrdclist/***](https://www.nsf.gov/statistics/ffrdclist/)**) in accordance with the guidance atFederal Acquisition Regulation 35.017.**

***United States* means the 50 States and the District of Columbia, the territories and possessions of the Government, the Commonwealth of Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.**

**(b) *Preaward submissions*. Attached to this contract are the following documents, submitted by the Contractor pursuant to Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7040, Additional Preaward Requirements for Small Business Technology Transfer Program:**

**(1) The written agreement between the Contractor and a research institution.**

**(2) The Contractor’s written representation that the Contractor is satisfied with that written agreement, which does not conflict with the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause.**

**(c) *Postaward updates*. The Contractor shall not allow any modification to its written agreement with the research institution, unless the written agreement, as modified, contains—**

**(1) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from performance of this contract;**

**(2) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a Small Business Technology Transfer Program award;**

**(3) The Contractor’s written, dated, and signed representation that—**

**(i) The Contractor is satisfied with its written agreement with the research institution, as modified; and**

**(ii) The written agreement, as modified, does not conflict with the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause; and**

**(4) No terms and conditions that conflict with the clause at DFARS 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause, including the rights of the United States, the Contractor, and the research institution regarding intellectual property, and regarding any right to carry out follow-on research.**

**(d) *Submission of updated agreement.* Within 30 days of execution of the modified written agreement described in paragraph (b)(1) of this clause, the Contractor shall submit a copy of that updated written agreement and the updated written representation described in paragraph (b)(2) of this clause to the Contracting Officer for review and attachment to this contract.**

**(End of clause)]**

**\* \* \* \* \***