

970.5227-2 Rights in data-technology transfer.

As prescribed in 970.2704-3(b), insert the following clause:

Rights In Data—Technology Transfer [December 2024]

(a) *Definitions—Assistant General Counsel for Technology Transfer and Intellectual Property* is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means:

(1) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (g) of this clause.

Open source software, as used in this clause, means computer software with its source code that is distributed under a license in which the user is granted the right to use, copy, modify, and prepare derivative works thereof, without having to make royalty payments.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is

published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (h) of this clause.

Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) Except as may be otherwise expressly provided or directed in writing by the Patent Counsel, the Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where, approved by Patent Counsel, appropriate instances of the DOE Strategic Partnership Projects Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. When delivering all Contractor-produced computer software to the DOE Office of Scientific and Technical Information (OSTI), the Contractor shall submit a complete package as prescribed in paragraph (e)(3) of this clause. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical works, and works produced by Contractor under 48 CFR 952.204-75 as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(4) In the performance of DOE contracted obligations, each Contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, OSTI. Requirements for all such reportable information to OSTI are in DOE Order 241.1B, or successor version, whether it is publicly releasable, controlled unclassified information, or classified.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraph (d), (e), or (f) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with paragraph (d), (e), or (f) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(3) If the Contractor has not been granted permission to copyright data or computer software first produced under the contract where such permission is necessary, *i.e.*, for works other than scientific and technical journal articles and data produced under a CRADA, and if the Government desires to obtain copyright in such data or computer software, the Patent Counsel may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) Copyrighted works (scientific and technical works).

(1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical works composed under this contract or based on or containing data first produced by the Contractor in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, contributions to chapters of book compilations or similar means of dissemination to make broadly available to the public or scientific community for the purpose of scientific, research, knowledge and education. Such scientific and technical works may be recorded or fixed in any medium including but not limited to print, online, web, audio, video or other medium, and released or disseminated through any communication or distribution channel including but not limited to articles, reports, books, non-architectural drawings, repositories, videos, websites, workshops, or social media. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) For each scientific or technical work first produced or composed under this contract and submitted for publication or similar means of dissemination, the contractor shall provide notice to the publisher of the Government's license in the copyright that is substantially similar to or otherwise references one of the following notices below:

A suitable notice (long version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright.

Notice: This work was produced by [insert the name of the Contractor] under contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the work for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the published form of this work, or allow others to do so, for United States Government purposes. The Department of Energy will provide public access to these results of federally sponsored research in accordance with the DOE Public Access Plan *[insert current link]*.

(End of notice)

A suitable notice (short version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows:

Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. Publisher acknowledges the U.S. Government license to provide public access under the DOE Public Access Plan *[insert current link]*.

(End of notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) *Copyrighted works (other than scientific and technical works and data produced under a CRADA).* The Contractor may obtain permission to assert copyright subsisting in technical data and

computer software first produced by the Contractor in performance of this Contract, when the Contractor needs to control distribution to advance the goals of the technology transfer mission and where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) *Contractor Request to Assert Copyright.*

(i) For data other than scientific and technical works under paragraph (d) of this clause and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes;

(B) The program under which it was funded;

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement;

(D) Whether the data is subject to export control; and if so, which jurisdiction;

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period; and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined exclusively by DOE will be expressly withheld. Such excepted categories include data whose release:

(A) Would be detrimental to national security, i.e., involve classified information or data or sensitive information under section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes;

(B) Would not enhance the appropriate transfer or dissemination and commercialization of such data;

(C) Would have a negative impact on U.S. industrial competitiveness;

(D) Would prevent DOE from meeting its obligations under treaties and international agreements; or

(E) Would be detrimental to one or more of DOE's programs.

(iv) The Contractor will obtain the advanced written approval of the Patent Counsel to assert copyright where data are determined to be in the following excepted categories:

(A) Under export control restrictions;

(B) Developed with Naval Reactors' funding;

(C) Subject to disposition of data rights under treaties and international agreements. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified at DOE's Office of International Affairs (International Commitments—IEC).

(2) *Patent Counsel Review and Response to Contractor's Request.* The Patent Counsel shall use its best efforts to respond in writing within 60 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor. If Patent Counsel grants permission for the Contractor to assert copyright in computer software, the permission automatically extends to subsequent minor versions (*e.g.*, minor revisions, patches and bug fixes) having the same funding source, same name and substantially same functionality as the original computer software, and may be extended to subsequent major versions representing significant modifications of the program with the approval of Patent Counsel.

(3) *Permission for Contractor to Assert Copyright.*

(i) For computer software, the Contractor shall furnish, or make available to the DOE Office of Scientific and Technical Information (OSTI) in accordance with OSTI guidelines at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) Announcement information/metadata contained in the Software Announcement Notice 241.4;

(B) the source code and/or executable file for each software program; and

(C) Documentation, if any, which may consist of a user manual, sample test cases, or similar information, needed by a technically competent user to understand and use the software (whether included on the software media itself or provided in a separate file or in paper format).

(ii) The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(iii) Unless otherwise directed by the Patent Counsel, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause, the Contractor shall within sixty (60) days of obtaining such permission furnish, or make available to OSTI in accordance with OSTI guidelines, a copy of such data as well as an abstract of

the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iv) Once the Contractor is given permission to assert copyright in data, the Contractor may begin to commercialize the copyrighted data by making copyrighted data available for licensing to third parties and by offering other types of distribution to third parties. During the period in which commercialization activities pertaining to the copyrighted data are continuing, or for a specified period of time prescribed by Patent Counsel in paragraph (e)(2) of this clause, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. For all previously approved and current copyrighted data that the Contractor is actively commercializing, the Contractor may continue to commercialize in accordance with this paragraph.

(v) When the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright or at the end of the specified period as prescribed by Patent Counsel, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(vi) At any time the Contractor abandons commercialization activities for copyrighted data, the Contractor shall advise OSTI and Patent Counsel and, upon request, assign the copyright to the Government so that the Government can distribute the copyrighted data to the public. When the Contractor abandons commercialization activities, the Contractor will provide to OSTI the latest version of the copyrighted data (for example, source code, object code, minimal support documentation, drawings or updated manuals.) In addition, the Contractor will provide annually to Patent Counsel, if requested, a list of all copyrighted data that the Contractor has abandoned commercial licensing activity during that year.

(vii) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3)(iv) and (v) of this clause. Such action shall be taken when the data are delivered to the Government, licensed or deposited for registration as a published work in the U.S. Copyright Office, or when submitted for publication. The acknowledgment of Government sponsorship and license rights shall be substantially similar to the following:

Notice: These data were produced by (insert name of Contractor) under Contract No. ____ with the Department of Energy. During the period of commercialization or such other time period specified by the Department of Energy, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. Subsequent to that period the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of notice)

(viii) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the period that Contractor is commercializing the data as provided for in paragraph (e)(3)(iv) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in paragraph (e)(1)(i) of this clause. Before licensing under this paragraph, DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—"Appeals."

(ix) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(4) The following notice may be included in computer software prior to any publication or release and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this clause.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of notice)

(5) A similar notice can be used for data, other than computer software, prior to any publication or release and prior to Contractor's obtaining permission of DOE Patent Counsel to assert copyright.

(f) *Open software source.* The Contractor may release computer software first produced by the Contractor in the performance of this contract under an open source software license. Such software shall hereinafter be referred to as open source software or OSS, subject to the following:

(1) *DOE Program notice for copyright assertion for OSS.*

(i) The Contractor shall provide written notice (including relevant data such as, for example, the software disclosure form) to each DOE Program or Programs that have provided a substantial portion of the funding (funding source(s)) to develop the software that the Contractor intends to release as OSS unless the funding Program(s) has previously provided blanket approval for all software developed with funding from that Program or a specific DOE project stipulates the software to be released as OSS. If Program has neither consented nor objected to the assertion of copyright

within two weeks of such written notification, the Contractor may assert copyright in the software. If notification of a funding DOE Program(s) is not practicable or DOE Program(s) has objected, the Contractor shall consult with Patent Counsel, which may provide approval. For software developed under a CRADA, Strategic Partnership Projects (SPP), User Facility Agreement, or Agreement for Commercializing Technology (ACT), authorization from the partner of such agreement shall be additionally obtained for OSS release unless such agreement has a provision providing for such copyright assertion.

(ii) If the software is developed with funding from a federal government agency or agencies (funding source(s)) other than DOE, then authorization from all the funding agency(ies) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency(ies). However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If approval from such federal government agency(ies) is not practicable, the Patent Counsel may provide approval instead.

(2) *Assert copyright in the OSS.* Once the Contractor has met the program approval requirements set forth in paragraph (f)(1) of this clause, copyright in the software to be distributed as OSS may be asserted by the Contractor, or, for OSS developed under a CRADA, User Facility Agreement, or SPP Agreement, either by the Contractor, CRADA Participant, User Facility User, or SPP Sponsor, as applicable, which precludes marking such OSS as protectable from public distribution.

(3) *Submit Software Announcement Notice 241.4 to OSTI.* The Contractor must submit Software Announcement Notice (AN) 241.4 (or the current notice as may be required by DOE) to OSTI. In the AN 241.4, the Contractor shall provide the unique URL (*i.e.*, a persistent identifier) from which the software can be obtained so that OSTI can announce the availability of the OSS and the public has access via the URL.

(4) *Maintain OSS record.* The Contractor must maintain a record of all software distributed as OSS. Upon request of the Patent Counsel, the Contractor shall provide the necessary information regarding any or all OSS.

(5) *Provide public access to the OSS.* The Contractor shall ensure that the OSS is publicly accessible as open source via the Contractor's website, Open Source Bulletin Boards operated by third parties, DOE, or other standard industry methods.

(6) *Select an OSS license.* Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the Assistant General Counsel for Technology Transfer and Intellectual Property, may periodically issue guidance on OSS licenses. Each Contractor-created OSS license, must contain, at a minimum, the following provisions—

(i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works. This provision may allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

(7) *Relationship to other required clauses in the contract.* OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or

Federal Government, U.S. Competitiveness and U.S. Preference, as set forth in paragraphs (f) and (g) of the clause within this contract entitled Technology Transfer Mission (48 CFR 970.5227-3). The requirement for the Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties, as set forth elsewhere in this clause, is not modified by this section.

(8) *Government license.* For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(9) *Contractor abandons OSS.* If the Contractor ceases to make OSS publicly available, then the Contractor shall submit to OSTI the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised Announcement Notice 241.4 (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to OSTI.

(g) *Subcontracting.*

(1) Unless otherwise directed by the Patent Counsel, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the DOE policy and procedures, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 48 CFR 927.409 including alternates as appropriate with the prior approval of DOE Patent Counsel. The Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternate II or III, respectively, without the prior approval of the Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(d). In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE, the Contractor shall use the "Rights in Data-Facilities" clause at 48 CFR 970.5227-1.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(h) *Rights in Limited Rights Data.* Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided,

however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. ____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

This Notice shall be marked on any reproduction of this data in whole or in part.

(End of notice)

(i) *Rights in restricted computer software.*

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with paragraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. __ with (name of Contractor).

(End of notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(j) *Relationship to patents.* Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of clause)

Alternate I (DEC 2000). As prescribed in 970.2704-3(b), where access to Category C-24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase “and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology” after “laser isotope separation” and before the comma in paragraph (b)(2)(ii) of the clause at 970.5227-2, Rights in Data—Technology Transfer, as appropriate.

(End of clause)

Alternate II (DATE XXXX). As prescribed in 970.2704-3(b), where government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project, insert paragraph (f) in the Limited Rights Notice of the basic clause:

(f) This “limited rights data” may be disclosed in future solicitations for the continuation or completion of the work contemplated under this contract under the restriction that the “limited rights data” be retained in confidence and not be further disclosed.

(End of clause)

Parent topic: Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts