



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE ASSISTANT SECRETARY OF WAR
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2026-O0036

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Revolutionary Federal Acquisition Regulation (FAR) Overhaul
Part 27, Defense FAR Supplement (DFARS) Part 227

Effective February 1, 2026, contracting officers shall use—

- The revised FAR Part 27, Patents, Data, and Copyrights published on the Revolutionary FAR Overhaul web page at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-27> in lieu of the text codified at 48 CFR chapter 1 (<https://www.ecfr.gov>).
- The attached DFARS Part 227, Patents, Data, and Copyrights in lieu of the text codified at 48 CFR chapter 2; and
- The attached DFARS Procedures, Guidance, and Information (PGI) 227, Patents, Data, and Copyrights in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

This class deviation implements the following:

- Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR “should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.

- Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
- The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.

This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to osd.pentagon.ousd-a-s.mbx.dfars@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing, Contracting, and
Acquisition Policy

Attachments:
As stated

PART 227—PATENTS, DATA, AND COPYRIGHTS

SUBPART 227.3—PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

227.300 Scope of subpart.

In addition to FAR 27.300, this subpart provides patent-related procedures and contract clauses for use in Government contracts.

227.303 Contract clauses.

(1) Insert the clause at 252.227-7039, Patents—Reporting of Subject Inventions, in solicitations and contracts containing the clause at FAR 52.227-11, Patent Rights—Ownership by the Contractor.

(2)(i) Insert the clause at 252.227-7038, Patent Rights—Ownership by the Contractor (Large Business), instead of the clause at FAR 52.227-11, in solicitations and contracts for experimental, developmental, or research work if—

(A) The contractor is other than a small business concern or nonprofit organization; and

(B) No alternative patent rights clause is used in accordance with FAR 27.303(c) or (e).

(ii) Insert the clause with its Alternate I if—

(A) The acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement;

(B) The agency head determines at the time of award that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement; or

(C) Other rights are necessary to effect a treaty or agreement, in which case Alternate I may be modified.

(iii) Insert the clause with its Alternate II in long-term contracts if necessary to effect treaty or agreements to be entered into.

227.304 Procedures.

227.304-70 Reporting.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work may be submitted on DD Form 882, Report of Inventions and Subcontracts.

SUBPART 227.4—RIGHTS IN DATA AND COPYRIGHTS

227.400 Scope of subpart.

Use the procedures in subparts 227.71 and 227.72 instead of the guidance in FAR subpart 27.4.

SUBPART 227.6—FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

227.670 [Reserved]

227.671 [Reserved]

227.672 [Reserved]

227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

See PGI 227.673 for guidance on foreign license and technical assistance agreements between the Government and domestic concerns.

227.674 Supply contracts between the Government and a foreign government or concern.

See PGI 227.674 for guidance on supply contracts between the Government and a foreign government or concern.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675-1 Statutes, regulations, and guidance.

See PGI 227.675-1 for a list of applicable export control statutes, regulations, and guidance.

227.675-2 Review of agreements.

See PGI 227.675-2 for guidance on review of foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.676 [Reserved]

SUBPART 227.70—[Reserved]

SUBPART 227.71—TECHNICAL DATA, COMPUTER SOFTWARE, COMPUTER SOFTWARE DOCUMENTATION, AND ASSOCIATED RIGHTS RELATED TO OTHER THAN COMMERCIAL PRODUCTS, COMPONENTS, SERVICES, PROCESSES, AND COMPUTER SOFTWARE

227.7100 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data, computer software, computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements the following laws and Executive Order:

- (1) 10 U.S.C. 3013.

- (2) 10 U.S.C. 3208(d).
- (3) 10 U.S.C. 3771-3775.
- (4) 10 U.S.C. 3781-3786.
- (5) 10 U.S.C. 8687.
- (6) 17 U.S.C. 1301, et seq.
- (7) Public Law 103-355.
- (8) Executive Order 12591 (subsection 1(b)(7)).

(b) Does not apply to—

(1) Releases of technical data, computer software, and computer software documentation to litigation support contractors (see subpart 204.74); or

(2) Computer software or computer software documentation acquired under Federal Supply Schedule contracts or orders.

227.7101 Definitions.

As used in this subpart—

“Commercial computer software” means software developed or regularly used for nongovernmental purposes which—

- (1) Has been sold, leased, or licensed to the public;
- (2) Has been offered for sale, lease, or license to the public;
- (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
- (4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

“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.

“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.

“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.

“Contractor” means a contractor to include a contractor’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

“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—

(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

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

“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.

“Developed” means—

(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;

(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;

(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

(4) Computer software documentation the contractor must deliver under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

“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.

(1) Private expense determinations should be made at the lowest practicable level.

(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.

“Developed exclusively with Government funds” means development was not accomplished exclusively or partially at private expense.

“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.

“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.

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

“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, computer software, or computer software documentation 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, computer software, or computer software documentation within the Government without restriction; and

(2) Release or disclose technical data, 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 that data or software for United States Government purposes.

“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—

- (1) The reproduction, release, disclosure, or use is—
 - (i) Necessary for emergency repair and overhaul; or
 - (ii) A release or disclosure to—

(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

(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;

(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

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

“Offeror” means an offeror to include an offeror’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

“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.

“Restricted rights” apply only to other than commercial computer software and mean the Government’s rights to—

(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;

(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;

(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 (1), (2), (4) and (5) of this definition;

(4) Modify computer software provided that the Government may—

(i) Use the modified software only as provided in paragraphs (1) and (3) of this definition; and

(ii) Not release or disclose the modified software except as provided in paragraphs (2) and (5) of this clause;

(5) Use, modify, reproduce, perform, display, or release or disclose the computer software, and permit contractors, subcontractors, or covered Government support contractors to do so, for purposes set forth in subparagraph (i) of this paragraph, subject to the conditions set forth in subparagraphs (ii) of this paragraph:

(i)(A) In performance of service contracts (see FAR 37.101), to diagnose and correct deficiencies, to modify the 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 the Government notifies the party which has granted restricted rights that any such release or disclosure to particular contractors or subcontractors was made;

(B) To perform emergency repairs or overhaul of items or components procured under this or a related contract, when necessary to perform such repairs or overhaul; or

(C) For the management and oversight of a program or effort by a person authorized to receive restricted rights computer software, including in the performance of covered Government support contracts.

(ii)(A) Any contractor, subcontractor, or covered Government support contractor receiving access to the software for the purposes of subparagraphs (i), (ii), or (iii) of this paragraph must either be subject to the use and nondisclosure agreement at 227.7103-7 or be performing a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government must not permit any recipient of the software under this paragraph to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (4) of this definition, for any other purpose; and

(C) Any use, modification, reproduction, performance, display, release, or disclosure of the computer software under this paragraph remains subject to the limitations in paragraphs (1) through (4) of this 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.

“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.

“Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data, 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.

227.7102 [Reserved]

227.7103 Other than commercial products, commercial services, commercial processes, commercial computer software, or commercial computer software documentation.

227.7103-1 Policy.

(a) DoD policy is to acquire only the technical data, computer software, and computer software documentation, and the associated rights, necessary to satisfy agency needs.

(b) Contracting officers must ensure that solicitations and contracts—

(1) Specify the technical data, computer software, and computer software documentation the contractor must deliver under a contract and delivery schedules for the data;

(2) Specify procedures for determining the acceptability of technical data, computer software, and computer software documentation;

(3) Specify separate line items, to the extent practicable, for the technical data, computer software, and computer software documentation the contractor must deliver under a contract and require offerors and contractors to price each deliverable data or computer software item separately; and

(4) Require offerors and contractors to identify, to the extent practicable, technical data and computer software they will furnish or deliver with restrictions on the Government’s rights in the technical data or computer software.

(c) Do not require offerors, 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 computer software developed at private expense or technical data related to items, components or processes developed at private expense except for the data or the software identified at 227.7103-5(a)(2), (4) through (9), and (12) through (15).

(d) Do not prohibit offerors and contractors from furnishing or offering to furnish computer software, items, components, or processes developed at private expense solely

because the Government's rights to use, modify, release, reproduce, perform, display, or disclose computer software or technical data related to those items may be restricted.

(e) Solicitations for major systems development contracts must not require offerors to submit proposals that would permit the Government to competitively acquire items identical to items developed at private expense unless a determination is made at a level above the contracting officer (10 U.S.C. 3208). The determination must address the following:

(1) The offeror will not be able to satisfy program schedule or delivery requirements.

(2) The offeror's proposal to meet mobilization requirements does not satisfy mobilization needs.

(f) For acquisitions involving major weapon systems or subsystems of major weapon systems, the acquisition plan must address acquisition strategies that provide for technical data, computer software, computer software documentation, and the associated license rights in accordance with 207.106-70.

(g) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data related to the design (10 U.S.C. 8687; 17 U.S.C. 1301(a)(3)).

227.7103-3 Identification of restrictions on the Government's right to use, reproduce or disclose technical data or computer software.

(a)(1)(i) Offerors are required to identify to the contracting officer, prior to contract award, any technical data or computer software that the offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. Offerors are required to attach the notification and identification to their offer.

(ii)(A) An offeror's failure to submit the attachment or to complete it in accordance with the provision—

(1) Constitutes a minor informality within the meaning of FAR part 14; or

(2) Provides reason to seek clarification within the meaning of FAR part 15.

(B) Provide the offeror an opportunity to remedy the failure under the procedures in FAR part 14 or 15. If the offeror does not correct the error, its offer will be ineligible for award.

(2)(i) Contracting officers may request information to enable the review and evaluation of any offeror-provided assertion. Resolve questions regarding the validity of asserted restrictions prior to contract award.

(ii) After award of the contract, use the procedures at 227.7103-13 to evaluate an asserted restriction or asserted rights category.

(3) The Government may use information that offerors provide in response to the provision at 252.227-7992 during source selection to evaluate the impact of restrictions on the Government's ability to use or disclose technical data or computer software. Do not—

(i) Prohibit offerors from offering products for which the offeror is entitled to provide the technical data or 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 technical data or computer software except for the standard rights specified in the applicable clauses.

(4) Attach the successful offeror's assertions to the contract unless, in accordance with the procedures at 227.7103-13, the parties have agreed that an asserted restriction is not justified. Validate that the contract attachment contains 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 that the offeror provided in response to the solicitation.

(5) Neither the contractor's pre- or post-award assertions, nor the fact that the attachment to the contract identifies certain assertions, determines 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.

(b) [Reserved]

(c) After award of the contract, the contractor may make additional assertions under certain conditions. The contractor is required to make any additional assertions in accordance with the applicable clause.

227.7103-4 License rights.

(a) *Grant of license.* (1)(i) The Government obtains rights in technical data, computer software, and computer software documentation, including a copyright license, under an irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data or software not granted to the Government.

(ii) For technical data related to items, components, or processes, the source of funds used to develop the item, component, or process generally determines the scope of the license.

(iii) When the technical data do not relate to items, components, or processes, the source of funds used to create the data determines the scope of the license.

(iv) For computer software licenses, the source of funds used to develop the software generally determines the scope of the license.

(2) *Technical data and computer software.*

(i) *Development exclusively at private expense; limited rights and restricted rights.*

(A) Contractors or licensors may restrict the Government's rights to use, modify, release, reproduce, perform, display or disclose:

(1) Technical data related to items, components, or processes developed exclusively at private expense unless an exception at 227.7103-5(a) applies; or

(2) Computer software developed exclusively at private expense, except as provided at 227.7103-5(a)(12) through (15).

(B) The Government has a limited rights or restricted rights license in such technical data or computer software described in paragraph (A).

(ii) *Development exclusively at Government expense; unlimited rights.*

(A) Contractors or licensors may not restrict the Government's rights in technical data related to items, components, processes developed exclusively at Government expense without the Government's approval.

(B) Contractors or licensors may not, without the Government's agreement, restrict the Government's rights in computer software developed exclusively with Government funds or in computer software documentation that is a required deliverable under a contract.

(C) The Government has an unlimited rights license in such technical data or computer software described in paragraphs (A) and (B).

(iii) *Development with mixed funding; government purpose rights.*

(A) When an item, component, or process is developed with mixed funding, except as provided at 227.7103-5(a)(2), (a)(4) through (9), and (a)(11), the Government may use, modify, release, reproduce, perform, display or disclose the technical data related to such items, components, or processes within the Government without restriction but may release or disclose the data outside the Government only for government purposes.

(B) When computer software is developed with mixed funding, except as provided at 227.7103-5(a)(12) through (15), the Government may use, modify, release, reproduce, perform, display or disclose the computer software within the Government without restriction but may release or disclose the computer software outside the Government only for government purposes.

(C) The Government has a government purpose rights license in such technical data or computer software described in paragraphs (A) and (B).

(3) *Technical data that do not relate to items, components, or processes.* Technical data may be created during the performance of a contract for a conceptual design or similar effort that does not require the development, manufacture, construction, or production of items, components or processes. The Government generally obtains unlimited rights in such data when the data were created exclusively with Government funds, government purpose rights when the data were created with mixed funding, and limited rights when the data were created exclusively at private expense.

(b) *Source of funds determination.* (1) Agencies should make the determination of the source of development funds for technical data related to items, components, or processes at any practical sub-item or subcomponent level or for any segregable portion of a process. Contractors may assert limited rights in a segregable sub-item, sub-component, or portion of a process which otherwise qualifies for limited rights under the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services.

(2) Agencies should make the determination of the source of funds used to develop computer software at the lowest practicable segregable portion of the software or documentation (e.g., a software sub-routine that performs a specific function). Contractors may assert restricted rights in a segregable portion of computer software which otherwise qualifies for restricted rights.

227.7103-5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, limited rights, or restricted rights. In unusual situations, the standards rights may not satisfy the Government's needs, or the Government may be willing to accept lesser rights in data or computer software in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights, and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are listed in paragraphs (a) through (d) of this section.

(a) *Unlimited rights.* The Government obtains unlimited rights in technical data, computer software, or computer software documentation that are—

(1) Technical data related to an item, component, or process which has been or will be developed exclusively with Government funds;

(2) Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;

(3) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

- (4) Form, fit, and function data;
 - (5) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
 - (6) Corrections or changes to—
 - (i) Government-furnished technical data; or
 - (ii) Government-furnished computer software or computer software documentation;
 - (7) Technical data, computer software, or computer software documentation that—
 - (i) Is publicly available; or
 - (ii) Was previously released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from—
 - (A) The sale, transfer, or other assignment of interest in the technical data or computer software to another party; or
 - (B) The sale or transfer of some or all of a business entity or its assets to another party;
 - (8) Technical data, computer software, or computer software documentation in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
 - (9) Technical data, computer software, or computer software documentation furnished to the Government, under a Government contract or subcontract, with—
 - (i) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or
 - (ii) Government purpose rights and the contractor's exclusive right to use such technical data or computer software for commercial purposes has expired.
 - (10) Computer software developed exclusively with Government funds; or
 - (11) Computer software documentation the contractor must deliver under a Government contract.
- (b) *Government purpose rights.* (1) The Government obtains government purpose rights in—
- (i) Technical data related to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this section; or

(ii) Technical data 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

(iii) Computer software developed with mixed funding.

(2) The period during which government purpose rights are effective is negotiable. A five year period is nominal. Either the Government or the contractor may request a different period.

(3) The government purpose rights period begins upon execution of the contract, subcontract, or similar contractual instrument that required the development. Upon expiration of the Government rights period, the Government has unlimited rights in the data or software including the right to authorize others to use the data or software for commercial purposes.

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, technical data or computer software marked with government purpose rights legends for commercial purposes. The Government will not release or disclose data or software 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 nondisclosure agreement at 227.7103-7; or

(ii) The intended recipient is a Government contractor receiving access to the data or software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When the Government will release or disclose technical data or computer software marked with government purpose rights legends to a contractor performing under a contract that does not include the clause at 252.227-7994, modify the contract prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and nondisclosure agreement.

(6)(i) Agencies must establish procedures to prevent the release or disclosure of marked technical data or computer software with government purpose rights legends to entities that are not subject to use and disclosure restrictions. .

(ii) Public announcements in the System for Award Management or other publications must provide notice of the use and nondisclosure requirements.

(iii) Consider using class use and nondisclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period). Enter into class agreements at any time prior to release or disclosure of the government purpose rights data or software. Documents transmitting government purpose rights data or software to persons under class agreements must identify the technical data or computer software subject to government purpose rights and the class agreement providing such data or software.

(c) *Limited rights.* (1) The Government obtains limited rights in technical data—

(i) Related to items, components, or processes developed exclusively at private expense except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this section; or

(ii) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) Do not use, release, or disclose data in which the Government has limited rights outside the Government without the permission of the contractor asserting the restriction except when it is—

(i) Necessary for emergency repair and overhaul;

(ii) To a covered Government support contractor; or

(iii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluational or informational purposes.

(3) The Government must notify the person asserting limited rights of its intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data, except for emergency repair or overhaul. For emergency repair or overhaul, the Government will make the notification as soon as practicable.

(4) If 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), (ii), or (iii) of this section, the intended recipient must, prior to receiving the limited rights data, either—

(i) Complete the use and nondisclosure agreement at 227.7103-7; or

(ii) Be performing under a Government contract that contains the clause at 252.227-7994.

(d) *Restricted rights.* (1) The Government obtains restricted rights in other than commercial computer software the contractor must deliver or otherwise provide to the Government under a contract that was developed exclusively at private expense.

(2)(i) Contractors are not required to provide the Government additional rights in computer software delivered or otherwise provided to the Government with restricted rights.

(ii) When the Government has a need for additional rights, negotiate with the contractor to determine acceptable terms for transferring such rights. Any resulting license agreement, made part of the contract (see paragraph (e) of this section), must list or describe all software for which the contractor has granted the Government additional rights, and specify the additional rights granted.

(e) *Specifically negotiated license rights.* (1)(i) Negotiate specific licenses when the parties agree to modify the standard license rights granted to the Government or when the Government needs to obtain rights in data or software in which it does not have rights.

(ii) When negotiating to obtain, relinquish, or increase the Government's rights in technical data, consider the acquisition strategy for the item, component, or process, including logistics support and other factors relevant to a particular procurement.

(iii) When negotiating to obtain, relinquish, or increase the Government's rights in computer software, consider the planned software maintenance philosophy, anticipated time or user sharing requirements, and other factors relevant to a particular procurement.

(iv) The Government may accept lesser rights when it has unlimited or government purpose rights in data or software but may not accept less than limited rights or restricted rights in such data or software, respectively.

(v) The negotiated license rights must stipulate what rights the Government has to release or disclose the data or software to other persons or to authorize others to use the data or software.

(vi) Identify all negotiated rights in a license agreement that are made part of the contract.

(2)(i) When the Government needs additional rights in data or software acquired with government purpose, limited rights, or restricted rights, negotiate with the contractor to determine acceptable terms for transferring such rights. Generally, conduct such negotiations only when—

(A) A need exists to disclose the data or software outside the Government; or

(B) The additional rights are required for competitive reprocurement and the anticipated savings through competition will likely exceed the acquisition cost of the additional rights.

(ii) Prior to negotiating for additional rights in limited rights data, consider alternatives such as—

(A) Using performance specifications and form, fit, and function data to acquire or develop functionally equivalent items, components, or processes;

(B) Obtaining a contractor's contractual commitment to qualify additional sources and maintain adequate competition among the sources; or

(C) Reverse engineering, or providing items from Government inventories to contractors who request the items to facilitate the development of equivalent items through reverse engineering.

227.7103-6 Solicitation provisions and contract clauses.

(a)(1) Insert the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures, when the contract requires delivery of technical data—

(i) Related to other than commercial products or commercial services; or

(ii) Related to commercial products or commercial services for which the Government will have paid for any portion of the development costs. For such contracts—

(A) The clause at 252.227-7989 will govern the technical data related to any portion of a commercial product or commercial service that was developed in any part at Government expense; and

(B) The clause at 252.227-7990 will govern the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(2) Do not use the clause when the only deliverable items are 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).

(3) When contracting under the Small Business Innovation Research (SBIR) Program or the Small Business Technology Transfer (STTR) Program, see 227.7104-4(a).

(b)(1) Insert the clause at 252.227-7989 with its Alternate I in research solicitations and contracts, including research solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, upon determining that public dissemination by the contractor would be—

(i) In the interest of the government; and

(ii) 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.

(2) Insert the clause at 252.227-7989 with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the development or delivery of a vessel design or any useful article embodying a vessel design.

(c) Insert the clause at 252.227-7989 in solicitations and contracts when the contract will require the successful offeror to deliver other than commercial computer software or other than commercial computer software documentation.

(d) [Reserved]

(e) Insert the clause at 252.227-7994, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, in solicitations and contracts if the Government anticipates providing the contractor, other than a litigation support contractor, technical data marked with another contractor's restrictive legend for performance of its contract.

(f) Insert the provision at 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver technical data.

(g) Insert the following provisions and clauses in solicitations and contracts that include the clause at 252.227-7989:

(1) 252.227-7991, Rights in Bid or Proposal Information.

(2) 252.227-7992, Identification and Assertion of Use, Release, or Disclosure Restrictions.

(3) 252.227-7996, Technical Data—Withholding of Payment.

(4) 252.227-7997, Validation of Asserted Restrictions (paragraph (e) of the clause contains information that must be included in a challenge).

(h) Insert the clause at 252.227-7995, Deferred Ordering of Technical Data or Computer Software, when a potential need exists for technical data, computer software or computer software documentation, but a firm requirement for the particular data item is not established prior to contract award.

227.7103-7 Use and nondisclosure agreement.

(a) Except as provided in paragraph (b) of this section, agencies may not provide technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure to third parties, until the intended recipient completes and signs the use and nondisclosure agreement at paragraph (c) of this section.

(1) In an attachment to the use and nondisclosure agreement, the Government must stipulate the specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data or computer software subject to limited rights, restricted rights, or SBIR/STTR data rights.

(2) Modify paragraph (1)(d) of the use and nondisclosure agreement in paragraph (c) of this section to enter the conditions for an intended release, disclosure or authorized use of technical data or computer software subject to special license rights, 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) Requirements for use and nondisclosure agreements does not apply to Government contractors needing access to a third party's data or software for the performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(c) The prescribed use and nondisclosure agreement is:

Use and NonDisclosure Agreement

The undersigned, _____ (Insert Name) _____, an authorized representative of the _____ (Insert Company Name) _____, (which is hereinafter referred to as the "Recipient") requests the Government to provide the Recipient with technical data or computer software (hereinafter referred to as "Data") in which the Government's use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this 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 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 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 data requested is marked with special license rights legends.]

(2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.

(3) The Recipient agrees to accept these Data “as is” without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.

(4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.

(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.

(6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

(7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.

(8) This Agreement shall be effective for the period commencing with the Recipient’s execution of this Agreement and ending upon _____ (Insert Date) _____. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Recipient’s Business Name _____
By _____

Authorized Representative _____
Date _____

Representative's Typed Name _____
and Title _____
(End of use and nondisclosure agreement)

227.7103-8 Deferred ordering of technical data.

Order as necessary any technical data, computer software or computer software documentation generated in the performance of the contract or subcontract at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. See the clause at 252.227-7995, Deferred Ordering of Technical Data or Computer Software.

227.7103-9 Copyright.

(a) *Copyright license.* (1) Contractors are required to grant or obtain for the Government license rights permitting the Government to reproduce data, distribute copies of the data, software, or software documentation, publicly perform or display the data, software, or software documentation 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 contract. When negotiating non-standard license rights in technical data or computer software, negotiate the extent of the copyright license as a part of the 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 or restricted rights license in computer software.

(2) Contractors are not permitted to incorporate a third party's copyrighted data into a deliverable data or software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf. Grant approval to use third-party copyrighted data or 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—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 or computer software to be delivered with restrictive markings.

(a) *Contractor marking requirements.* Contractors are required to—

(1) Place restrictive markings on the data or software, provide instructions for the placement of the restrictive markings, and authorize the use of certain restrictive markings when restricting the Government's rights in technical data or computer software; and

(2) Deliver, furnish, or otherwise provide to the Government any technical data or computer software in which the Government has previously obtained rights with the

Government's preexisting rights in that data or software, unless restrictions on the Government's rights have expired. When restrictions still apply, the contractor is permitted to mark the data or software with the appropriate restrictive legend for which the data or software qualified.

(b) *Unmarked technical data.* (1) Presume technical data or computer software delivered or otherwise provided with unlimited rights under a contract without restrictive markings may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (b)(2) of this section) to correct an inadvertent omission of markings, do not release or disclose the technical data or computer software pending evaluation of the request.

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

(i) Identify the technical data or computer software 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 or computer software contained in the contract; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data or computer software 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 or computer software 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) Contractors, and their subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, are required 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 or software.

(b) Contractors are required to maintain sufficient records to justify the validity of restrictive markings on technical data or computer software the contractor must deliver under a Government contract.

227.7103-12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) The marking requirements in the applicable clauses prescribe the content and format of authorized markings on technical data and computer software. 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 clauses at 252.227-7989 and 252.227-7993 is also a nonconforming marking.

(2) Notify the contractor or offeror of technical data or computer software bearing nonconforming markings to provide that person an opportunity to correct or strike the nonconforming marking at that person's expense. If the contractor or offeror fails to correct the nonconformity and deliver the corrected data within 60 days following the person's receipt of the data or software, the contracting officer may correct or strike the nonconformity at that person's expense. Prior to correction, the Government may use the data in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not accurately depict restrictions applicable to the Government's use, modification, reproduction, release, performance, display, or disclosure of the marked technical data or computer software. Accordingly, a limited rights legend placed on technical data related to items, components, or processes 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. Similarly, a restricted rights legend placed on computer software developed under a Government contract either exclusively at Government expense or with mixed funding is an unjustified marking.

(2) The contracting officer has 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 either—

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

(ii) Instruct the person asserting the restriction to correct the technical data or computer software at that person's expense. If the person fails to correct or strike the unjustified restriction and deliver the corrected data or software to the contracting officer within 60 days following this instruction, strike or correct the unjustified marking at that person's expense.

227.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.

(a) *General.* (1) An offeror's assertion of restrictions on the Government's rights to use, modify, reproduce, release, or disclose technical data or computer software do not, by themselves, determine the extent of the Government's rights in the technical data or computer software.

(2) Review asserted restrictions before acceptance of technical data and computer software deliverables under a contract.

(3) The contracting officer may challenge asserted restrictions when reasonable grounds exist to believe an assertion is not valid.

(b) *Pre-award considerations.* See 227.7103-3(a) for guidance on pre-award review of asserted restrictions.

(c) *Challenge considerations and presumption.*

(1) *Requirements to initiate a challenge.* (i) Contracting officers must have reasonable grounds to challenge the validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information related to the assertion.

(ii) A need for additional license rights is not, by itself, a sufficient basis for requesting information concerning an asserted restriction.

(iii) Follow the procedures at 227.7103-5(e) when the Government needs additional license rights but has no grounds to challenge an asserted restriction.

(2) *Commercial products and commercial services—presumption regarding development exclusively at private expense.*

(i) Presume that a commercial product or commercial service was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. Under 10 U.S.C. 3772(a)(1) and 3784, there is a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial products or commercial services on the basis of development exclusively at private expense.

(ii) Do not challenge a contractor's assertion that a commercial product or commercial service was developed exclusively at private expense unless the Government can specifically state the reasonable grounds to question the validity of the assertion. The challenge notice must include sufficient information to demonstrate that the commercial product or commercial service was not developed exclusively at private expense. To sustain the challenge, provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense.

(ii) The challenge notice and all related correspondence are subject to handling procedures for classified information and controlled unclassified information.

(iv) A contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

(d) *Challenge and validation.*

(1) *Challenge period.* Review asserted restrictions before acceptance of technical data or computer software deliverable under the contract. Challenge assertions within six years after final payment under the contract or six years after delivery of the data or software, whichever is later. There is no time limit for challenging restrictive markings if the technical data or computer software—

(i) Are publicly available without restrictions;

(ii) Have been provided to the United States without restriction;

(iii) Have been otherwise made available without restriction 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; or

(iv) Is the subject of a fraudulently asserted use or release restriction.

(2) *Pre-challenge requests for information.*

(i) Contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in detail to enable the contracting officer to determine the basis of the restrictive markings. Request additional supporting documentation when the explanation does not, in the contracting officer's opinion, establish the validity of the assertion.

(ii) Consider challenging the assertion when—

(A) The person asserting the restriction fails to respond to the contracting officer's request for information or additional supporting documentation; or

(B) The information submitted, or any other available information related to the validity of a restrictive marking, does not justify the asserted restriction.

(3) *Transacting matters directly with subcontracts.* Contracting officers should permit, after obtaining the contractor's agreement, a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(i) A subcontractor's or supplier's business interests in its technical data or computer software would be compromised if the data were disclosed to a higher tier contractor;

(ii) The contractor will unlikely respond in a timely manner to a challenge, and an untimely response would jeopardize a subcontractor's or suppliers right to assert restrictions; or

(iii) A subcontractor or supplier requests it.

(4) *Challenge notice.*

(i) Do not issue a challenge notice unless reasonable grounds exist to question the validity of an assertion. For commercial products or commercial services, also see paragraph (c)(2) of this section.

(ii) No requirement exists to request information under paragraph (d)(2) of this section before issuing a challenge.

(iii) Issue challenge notices, in writing, to the contractor or, after consideration of the situations described in paragraph (d)(3) of this section, the person asserting the restriction. See PGI 227.7103-13(d)(4)(iii) for procedures regarding challenge notices.

(5) *Extension of response time.* If the contractor submits a written request for additional time to prepare a response, the contracting officer will extend the time for response as appropriate, in accordance with paragraph (f)(2) of the clause at 252.225-7999.

(6) *Contracting officer's final decision.* Issue a final decision for each challenged assertion, whether or not the contractor justified the assertion.

(i) *Failure to respond.* If the person asserting the restriction fails to respond to the challenge within 60 days or any extension of time the contracting officer granted, issue a final decision that the assertion is not justified as soon as practicable.

(ii) *Assertion justified.* If the assertion is determined to be justified based on the response to the challenge notice, issue the final decision sustaining the validity of the restriction. The contracting officer will issue this final decision within 60 days after receipt of the response to the challenge notice, or within a longer period that the contracting officer has notified the contractor or subcontractor that the Government will require. The contracting officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice. If the contractor made the asserted restriction subsequent to submitting its offer, then add the asserted restriction to the contract attachment.

(iii) *Assertion not justified.* If the assertion is determined not to be justified based on the information provided, issue a final decision. The decision must be issued within 60 days after receipt of the response to the challenge notice, or within a longer period that the contracting officer has notified the contractor or subcontractor that the Government will require. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice. As provided in paragraph (h) of the clause, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances dictate otherwise.

(7) *Multiple challenges to an asserted restriction.* When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer must consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

(8) *Validation.* Only a contracting officer's final decision, actions of an agency board of contract appeals, or a court of competent jurisdiction sustaining the validity of an asserted restriction, constitutes validation of the asserted restriction.

227.7103-14 Conformity, acceptance, and warranty of technical data and computer software.

(a) [Reserved]

(b) *Conformity and acceptance.* (1) Solicitations and contracts requiring the delivery of technical data, including computer software documentation, must specify the requirements that the data must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether technical data tendered for acceptance conform to the contractual requirements.

(2) The clause at 252.227-7996, Technical Data—Withholding of Payment, provides for withholding up to 10 percent of the contract price pending either correction or replacement of the nonconforming technical data, or negotiation of an equitable reduction in contract price. The amount subject to withholding may be expressed as a fixed dollar amount or as a percentage of the contract price. In either case, consider the relative value and importance of the data when determining the amount.

(3) Do not accept technical data that do not conform to the contractual requirements in all respects. Except for nonconforming restrictive markings (see paragraph (b)(4) of this section), require correction or replacement of nonconforming data (or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests) in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(4) Follow the procedures at 227.7103-12(a)(2) if nonconforming markings are the sole reason technical data fail to conform to contractual requirements. The contracting officer may withhold an amount for payment, consistent with the terms of the clause at 252.227-7996, pending correction of the nonconforming markings.

(5)(i) Specify, in solicitations and contracts requiring the delivery of computer software, requirements the software must satisfy to be acceptable under the contract.

(ii) Contracting officers, or their authorized representatives, are responsible for determining whether computer software tendered for acceptance conforms to the contractual requirements.

(iii) Except for nonconforming restrictive markings, do not accept software that does not conform in all respects to applicable contractual requirements. However, follow the procedures at 227.7103-12(a) if nonconforming markings are the sole reason computer software tendered for acceptance fails to conform to contractual requirements.

(iv) Require correction or replacement of nonconforming software (or an equitable reduction in contract price when correction or replacement of the

nonconforming data is not practicable or is not in the Government's interests) in accordance with—

(A) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(B) The procedures at FAR part 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(c) *Warranty.* (1) Consider the intended use of the technical data (including repair and maintenance) and the costs to obtain the warranty before deciding to obtain a data warranty (see FAR part 46).

(2) As prescribed in 246.710, insert the clause at 252.246-7001, Warranty of Data, and its alternates, or a substantially similar clause when the Government needs a specific warranty of technical data.

(3) *Warranties for Computer Software.* (i) *Weapon systems.* Computer software that is a component of a weapon system or major subsystem should be warranted as part of the weapon system warranty. Follow the procedures at 246.7.

(ii) *Non-weapon systems.* The contracting officer must approve use of a computer software warranty other than a weapon system warranty. Consider the factors at FAR 46.703 when deciding whether to obtain a computer software warranty. When approval for a warranty is obtained, modify the clause at 252.246-7001, Warranty of Data, and its alternates, as necessary for use with computer software.

227.7103-15 Subcontractor rights in technical data, computer software, or computer software documentation.

(a) Subcontractors and suppliers at all tiers should receive the same protection for their rights in technical data, computer software or computer software documentation as are provided to prime contractors (10 U.S.C. 3771).

(b) When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers must deal directly with such persons, as provided at 227.7103-13(d)(3) (10 U.S.C. 3782).

(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, if furnishing technical data for other than commercial products or commercial services or other than commercial computer software in response to a Government requirement:

(1) 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services.

(2) 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(3) 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government.

(4) 252.227-7997, Validation of Asserted Restrictions.

(d) Do not require, as a condition of award of any contract action, that a contractor compel its subcontractors or suppliers at any tier to relinquish rights in technical data or computer software. This limitation does not apply to the Government's license rights obtained under the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services.

227.7103-16 Providing technical data, computer software, or computer software documentation to foreign governments, foreign contractors, or international organizations.

Technical data, computer software, or computer software documentation may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, DoD—

(a) May release or disclose technical data, computer software, or computer software documentation in which it has obtained unlimited rights to such foreign entities or authorize the use of such data or software by those entities; and

(b) May not release or disclose technical data, computer software, or computer software documentation that have asserted restrictions on use, release, or disclosure to foreign entities, or authorize the use of technical data, computer software, or computer software documentation by those entities, unless the intended recipient is subject to the same provisions as included in the use and nondisclosure agreement at 227.7103-7 and the requirements of the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services.

227.7103-17 [Reserved]

227.7103-18 Acquisition of other than commercial computer software and computer software documentation and associated rights.

See PGI 227.7103-18 for guidance on acquisition of other than commercial computer software and computer software documentation and associated rights.

227.7104 Contracts under the Small Business Innovation Research Program and Small Business Technology Transfer Program.

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 related to those items, components, or processes may be restricted.

(c) Consistent with the guidance in this section, 227.7103-3(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 for guidance on copyright licenses;
- (2) 227.7103-3 and 227.7103-10 for guidance on contractor identification and marking of technical data and computer software to be delivered with restrictive markings;
- (3) 227.7103-11 for guidance on maintenance of contractor records; and
- (4) 227.7103-12 for guidance on nonconforming and unjustified markings.

227.7104-2 Rights in SBIR or STTR data.

(a) The Government obtains the following standard license rights in SBIR/STTR data:

(1) Unlimited rights in the technical data and computer software listed in paragraph (c)(1) of the clause at 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software-Small Business Innovation Research Program and Small Business Technology Transfer Program.

(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.

(i) 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.

(ii) 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 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 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 must not condition contract award 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 252.227-7993 specifies the Government's license rights in SBIR/STTR data. However, the following clauses or guidance specify the Government's license rights in any data that are not SBIR/STTR data:

(1) For technical data related 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 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, governs such technical data in accordance with 227.7102-4(b).

(2) For technical data related to any portion of a commercial product or commercial service developed exclusively at private expense, the clause at 252.227-7990, 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 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, governs such software and computer software documentation, in accordance with 227.7103-6(c).

(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 STTR program requirements offerors 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. 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, attach to the contract the accepted written agreement and representation provided by the contractor pursuant to the provision at 252.227-7998.

(c) After contract award, for any modification to the written agreement between the contractor and research institution, review the agreement and representation to ensure the modified agreement adheres to the requirements of 252.227-7999. If acceptable, attach the modified agreement to the contract.

227.7104-4 Solicitation provisions and contract clauses.

(a)(1) Insert the clause at 252.227-7993, 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 delivered, developed, or generated under the contract, see 227.7103-6 for guidance on applicable clauses.

(b) See 227.7103-6 for other applicable provisions in solicitations and clauses in solicitations and contracts that include the clause at 252.227-7993.

(c)(1) Insert the provision at 252.227-7040, Additional Preaward Requirements for Small Business Technology Transfer Program, in solicitations that contain the clause at 252.227-7999.

(2) Insert the clause at 252.227-7999, 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.

227.7105 Contracts for the acquisition of existing works.

227.7105-1 General.

(a) Existing works include motion pictures, television recordings, video recordings, and other audiovisual works in any medium; sound recordings in any medium; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. Usually, these or similar works were not first created, developed, generated, originated, prepared, or produced under a Government contract. Therefore, the Government must obtain a license in the work if it intends to reproduce the work, distribute copies of the work, prepare derivative works, or perform or display the work publicly. When the Government is not responsible for the content of an existing work, it should require the copyright owner to indemnify the Government for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b)(1) Follow the procedures at 227.7106 for special works that will be first created, developed, generated, originated, prepared, or produced under a Government contract and the Government—

(i) Needs to control distribution of the work; or

(ii) Has a specific need to obtain indemnity for liabilities that may arise out of the creation, content, performance, use, or disclosure of the work or from libelous or other unlawful material contained in the work.

(2) Follow the procedures at 227.7103 when the Government does not need to control distribution of such works or obtain such indemnities.

227.7105-2 Acquisition of existing works without modification.

(a) No specific contract clause governs the Government's rights in existing works. Negotiate contract terms related to use and distribution of existing works when—

(1) The existing works will be acquired without modification; and

(2) The Government requires the right to reproduce, prepare derivative works, or publicly perform or display the existing works; or

(3) The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) Negotiated terms should provide the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, world-wide license to reproduce, prepare derivative works and publicly perform or display the works called for by a contract and to authorize others to do so for government purposes.

(c) A contract clause is not required to acquire existing works such as books, magazines and periodicals, in any storage or retrieval medium, when the Government will not reproduce the books, magazines or periodicals, or prepare derivative works.

227.7105-3 Acquisition of modified existing works.

Follow the procedures at 227.7106 for solicitations and contracts for modified existing works.

227.7106 Contracts for special works.

(a)(1) Contracts primarily for the production or compilation of works first produced, created, or generated in the performance of a contract (special works) for the Government's own use, must specifically address the Government's rights to use, disclose, modify, distribute, and reproduce the special works.

(2)(i) Contracts may include negotiated terms controlling contractor use and distribution of special works by obtaining an assignment of copyright or obtaining indemnity for liabilities that might arise out of the content, performance, or disclosure of special works.

(ii) Negotiated terms may specify the purposes and conditions (including time limitations) under which the contractor may use, release, or reproduce the special works other than for contract performance.

(iii) Such contract terms should not permit a contractor to incorporate into a special work any works copyrighted by others unless the contractor obtains the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display publicly any portion of the work, and to permit others to do so for government purposes.

(iv) Contracting officers should grant such permissions only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(b) No specific contract clause governs the Government's rights in special works. Negotiate contract terms regarding control of, use, and distribution of special works—

(1) When the Government must own or control copyright in all works first produced, created, or generated and which the contractor must deliver under a contract; or

(2) In addition to the clause at 252.227-7989 when the Government must own or control copyright in a portion of a work first produced, created, or generated and which the contractor must deliver under a contract. The specific portion in which the Government must own or control copyright must be identified in a special contract requirement.

(c) See PGI 227.7106(c) for a list of examples of special works.

227.7107 [Reserved]

227.7108 [Reserved]

**SUBPART 227.72—TECHNICAL DATA, COMPUTER SOFTWARE,
COMPUTER SOFTWARE DOCUMENTATION, AND ASSOCIATED RIGHTS
RELATED TO COMMERCIAL PRODUCTS, COMPONENTS, SERVICES,
PROCESSES, AND COMPUTER SOFTWARE**

227.7200 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data, computer software and computer software documentation related to commercial products, components, services, processes, and computer software, and the rights to use, modify, reproduce, release, perform, display, or disclose such data or software. It implements the following laws and Executive order:

- (1) 10 U.S.C. 3013.
- (2) 10 U.S.C. 3208(d).
- (3) 10 U.S.C. 3771-3775.
- (4) 10 U.S.C. 3781-3786.
- (5) 10 U.S.C. 4576.
- (6) Executive Order 12591 (subsection 1(b)(7)).

(b) Does not apply to—

(1) Technical data, computer software, or computer software documentation acquired under General Services Administration (GSA) schedule contracts; or

(2) Releases of technical data, computer software, or computer software documentation to litigation support contractors (see subpart 204.74).

227.7201 Definitions.

As used in this subpart—

“Commercial computer software” means software developed or regularly used for nongovernmental purposes which—

- (1) Has been sold, leased, or licensed to the public;
- (2) Has been offered for sale, lease, or license to the public;

(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

(4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

“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.

“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.

“Contractor” means a contractor to include a contractor’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier

“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—

(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

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

“Offeror” means an offeror to include an offeror’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier

“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.

227.7202 Commercial computer software and commercial computer software documentation.

227.7202-1 Policy.

- (a) Acquire commercial computer software or commercial computer software documentation under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.
- (b) Obtain commercial computer software and commercial computer software documentation competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.
- (c) Do not require offerors and contractors to—
 - (1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or
 - (2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.
- (d) When establishing contract requirements and negotiation objectives to meet agency needs, the Government should consider the factors identified in PGI 227.7103-18 for commercial computer software and computer software documentation, consistent with paragraph (c) of this section.

227.7202-2 [Reserved]

227.7202-3 Rights in commercial computer software or commercial computer software documentation.

- (a) The Government has the rights specified in the license under which the Government obtained the commercial computer software or commercial computer software documentation.
- (b) No contract clause governs the Government's rights in commercial computer software or commercial computer software documentation.

(c) If the Government has a need for rights not conveyed under the license customarily provided to the public, negotiate with the contractor to determine acceptable terms for transferring such rights. Any resulting license agreement, made part of the contract, must list or describe all software and software documentation for which the contractor has granted the Government additional rights, and specify the additional rights granted.

227.7202-4 [Reserved]

227.7203 [Reserved]

227.7203-1 - 227.7203-17 [Reserved]

227.7204 227.7207 [Reserved]

227.7208 Technical data related to commercial products, commercial components, commercial services, or commercial processes.

227.7208-1 Policy.

(a) DoD policy is to acquire only the technical data customarily provided to the public with a commercial product, commercial service, or commercial process, except technical data that—

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial products or commercial processes, or for the proper installation, operating, or handling of a commercial product, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial product, commercial service, or commercial process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, do not require (except for the technical data described in paragraph (a) of this section) offerors, and contractors to—

(1) Furnish technical information related to commercial products, commercial services, or commercial processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data related to commercial products, commercial services, or commercial processes except for a mutually agreed transfer of rights.

(c) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data related to the design (10 U.S.C. 8687; 17 U.S.C. 1301(a)(3)).

227.7208-2 Rights in technical data.

(a) The Government has specific license rights in technical data related to commercial products, commercial services, or commercial processes.

(1) DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government.

(2) The data may not be used to manufacture additional quantities of the commercial products and, except for emergency repair or overhaul and for covered Government support contractors, may not be released or disclosed to, or used by, third

parties without the contractor's written permission. Those restrictions do not apply to the technical data described in 227.7208-1(a).

(b) If the Government requires additional rights, negotiate with the contractor to determine whether acceptable terms exist for transferring such rights. Any resulting license agreement, made part of the contract, must list or describe all technical data for which the contractor has granted the Government additional rights, and specify the additional rights granted

227.7208-3 Government right to review, verify, challenge, and validate asserted restrictions.

Follow the procedures at 227.7103-13 regarding the validation of asserted restrictions on technical data related to commercial products or commercial services.

227.7208-4 Contract clauses.

(a)(1) Except as provided in paragraph (b) of this section, insert the clause at 252.227-7990, Technical Data—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 contract will require delivery of technical data related to commercial products, commercial components, commercial services, or commercial processes.

(2) Insert the clause at 252.227-7990 with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for the development or delivery of a vessel design or any useful article embodying a vessel design.

(b)(1) *Government development funding.* When the Government has paid for any portion of the development of a commercial product or commercial service, insert the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, in addition to the clause at 252.227-7990.

(2) *Applicability.* For technical data, the clause at 252.227-7989 governs the technical data related to the Government-funded portions, and the clause at 252.227-7990 governs the technical data related to the portions developed exclusively at private expense. These clauses do not apply to commercial computer software or commercial software documentation.

(c) Insert the clause at 252.227-7997, Validation of Asserted Restrictions on Technical Data, in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services that include the clause at 252.227-7990 or the clause at 252.227-7989.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES

252.227-7000 - 252.227-7012 [Reserved]

252.227-7989 Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(a) and (c), use the following clause:

RIGHTS IN TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION—OTHER THAN COMMERCIAL PRODUCTS OR COMMERCIAL SERVICES (DEVIATION 2026-O0036) (FEB 2026)

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

“Commercial computer software” means software developed or regularly used for nongovernmental purposes which—

- (1) Has been sold, leased, or licensed to the public;
- (2) Has been offered for sale, lease, or license to the public;
- (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
- (4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

“Computer database” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

“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.

“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.

“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.

“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—

(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

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

“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.

“Developed” means—

(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;

(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;

(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

(4) Computer software documentation the contractor must deliver under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

“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.

(1) Private expense determinations should be made at the lowest practicable level.

(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.

“Developed exclusively with Government funds” means development was not accomplished exclusively or partially at private expense.

“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.

“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.

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

“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, computer software, or computer software documentation 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, computer software, or computer software documentation within the Government without restriction; and

(2) Release or disclose technical data, 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 that data or software for United States Government purposes.

“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—

(1) The reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to—

(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

(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;

(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

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

“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.

“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.

“Restricted rights” apply only to other than commercial computer software and mean the Government’s rights to—

(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;

(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;

(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 (1), (2), (4) and (5) of this definition;

(4) Modify computer software provided that the Government may—

(i) Use the modified software only as provided in paragraphs (1) and (3) of this definition; and

(ii) Not release or disclose the modified software except as provided in paragraphs (2) and (5) of this clause;

(5) Use, modify, reproduce, perform, display, or release or disclose the computer software, and permit contractors, subcontractors, or covered Government support contractors to do so, for purposes set forth in subparagraph (i) of this paragraph, subject to the conditions set forth in subparagraphs (ii) of this paragraph:

(i)(A) In performance of service contracts (see FAR 37.101), to diagnose and correct deficiencies, to modify the 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 the Government notifies the party which has granted restricted rights that any such release or disclosure to particular contractors or subcontractors was made;

(B) To perform emergency repairs or overhaul of items or components procured under this or a related contract, when necessary to perform such repairs or overhaul; or

(C) For the management and oversight of a program or effort by a person authorized to receive restricted rights computer software, including in the performance of covered Government support contracts.

(ii)(A) Any contractor, subcontractor, or covered Government support contractor receiving access to the software for the purposes of subparagraphs (i), (ii), or (iii) of this paragraph shall be subject to the use and nondisclosure agreement at 227.7103-7 or be performing a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government must not permit any recipient of the software under this paragraph to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (4) of this definition, for any other purpose; and

(C) Any use, modification, reproduction, performance, display, release, or disclosure of the computer software under this paragraph remains subject to the limitations in paragraphs (1) through (4) of this 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.

“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.

“Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data, 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.* (1) Except as provided in paragraph (b)(2) of this clause—

(i) This clause governs all technical data related 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;

(ii) This clause governs all other than commercial computer software or other than commercial computer software documentation; and

(iii) The clause at DFARS 252.227-7990, Technical Data—Commercial Products and Commercial Services, governs the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(2) The clause at DFARS 252.227-7993, 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) *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:

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data, computer software, or computer software documentation that are—

(i) Data related to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Technical data created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Technical data necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Government-furnished corrections or changes to—

(A) Technical data furnished to the Contractor by the Government; or

(B) Computer software or computer software documentation;

(vii) Data, computer software, or computer software documentation that is publicly available or previously released or disclosed by the Contractor or 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 to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data, computer software, or computer software documentation in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations;

(ix) Data furnished to the Government, under this or any other Government contract or subcontract, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

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

(x) Computer software developed exclusively with Government funds;

(xi) Computer software documentation the contractor must deliver under this contract; or

(xvii) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract 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) The Government shall have government purpose rights for a 5-year period, or such other period as may be negotiated, in technical data or computer software—

(A) Related to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data or software as provided in paragraphs (c)(1)(ii), (c)(1)(iv) through (c)(1)(ix), and (c)(1)(xii) through (c)(1)(x)(v)(i) 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 5-year period, or such other period as may have been negotiated, shall begin 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, development of the computer software, or creation of the data described in paragraph (c)(2)(i)(B) of this clause. Upon expiration of the 5-year or other negotiated period, the Government shall have unlimited rights in the technical data or computer software.

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

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

(B) The recipient is a Government contractor receiving access to the data or software for performance of a Government contract that contains the clause at DFARS 252.227-7994, 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 or computer software 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 (g)(3) of this clause.

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

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

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government will require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) 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 furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. The Contractor shall ensure that any resulting license agreement, made part of the contract, lists or describes all technical data for which the Government has been granted additional rights and specifies those additional rights.

(iv) The Contractor acknowledges that—

(A) The Government is authorized to release or disclose limited rights data to covered Government support contractors;

(B) The Government will notify the contractor of such release or disclosure;

(C) The Contractor or the party asserting restrictions in the limited rights legend may—

(1) Require each covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding use of the data; or

(2) Waive in writing the requirement for a nondisclosure agreement; and

(D) Any such 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 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(4) *Restricted rights.* (i) The Government shall have restricted rights in other than commercial computer software the contractor must deliver, or that is otherwise provided, to the Government under this contract that was 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. The Contractor shall ensure that any resulting license agreement, made part of the contract, lists or describes all other than commercial computer software for which the Government has been granted additional rights and specifies those additional rights.

(iii) The Contractor acknowledges that—

(A) The Government is authorized to release or disclose restricted rights computer software to covered Government support contractors;

(B) The Government will notify the Contractor of such release or disclosure;

(C) The Contractor or the party asserting restrictions in the restricted rights legend may—

(1) Require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding the use of the software; or

(2) Waive in writing the requirement for a nondisclosure agreement; and

(D) Any such 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 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(5) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (c)(1) through (c)(4) of this clause, including the period during which the Government shall have government purpose rights in technical data or computer software, may be modified by mutual agreement but shall not provide the Government lesser rights than provided in the definition of "limited rights" or "restricted rights" of this clause. Any negotiated rights shall be identified in a license agreement made part of this contract.

(6) *Prior government rights.* Technical data 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 preexisting rights, unless—

(i) The parties have agreed otherwise; or

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

(7) *Release from liability.* The Contractor agrees to release the Government from liability for any authorized release or disclosure of technical data or computer software made in accordance with this clause or any negotiated license agreement. This release from liability for the Government also applies to releases or disclosures made by a third party who received the data or software from an authorized recipient. For any unauthorized use or disclosure by such third parties of technical data or computer software marked with restrictive legends, the Contractor agrees to seek relief solely from that party.

(d) *Contractor rights in technical data and computer software.* The Contractor retains all rights not granted to the Government.

(e) *Third party copyrighted data and software.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data or software in the technical data or computer software the contractor must deliver under this contract unless the Contractor is the copyright owner or has obtained license rights for the Government of the appropriate scope set forth in paragraph (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) *Identification and delivery of data to be delivered 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 (f)(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 are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data or software with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, the Contractor may identify other assertions after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. The Contractor shall submit such identification and assertions to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data or 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 data or	Basis for	Asserted	Name of person
(LIST)	(LIST)	(LIST)	(LIST)

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

² Generally, the development of an item, component, process, or computer software 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 or technical data related 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.

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

Technical data or	Basis for	Asserted	Name of person
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 in the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract.

(g) *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 the Contractor must deliver under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (g)(7) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (g)(3) of this clause; the limited rights legend at paragraph (g)(4) of this clause; the restricted rights legend at paragraph (g)(5) of this clause; the special license rights legend at paragraph (g)(6) of this clause; and 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 or 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. For software that will or might be used in combat or situations that simulate combat conditions, the contractor shall not insert 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, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data or computer software or any

portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Omitted markings.* (i) Technical data or computer software 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 or computer software pending evaluation of the request.

(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data or computer software 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 computer software, or any extension of that time approved by the Contracting Officer. The Contractor shall—

(A) Identify the technical data or computer software 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 or computer software 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 or computer software 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 the government purpose rights license in the DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—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)

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

LIMITED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by the limited rights license in the DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—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)

(5) *Restricted rights markings.* Software delivered or otherwise furnished to the Government with restricted rights shall be marked as follows:

RESTRICTED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by the restricted rights license in 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)

(6) *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 as follows:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data or software are restricted by Contract Number *[Insert contract number]*,

License 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)(5) of this clause).

(7) *Preexisting data or software 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 deliverable under this contract, 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)(1) of this clause.

(h) *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) *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 or computer software delivered or to be delivered under this contract are contained in the DFARS 252.227-7997, Validation of Asserted Restrictions, 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 Asserted Restrictions clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data or computer software 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 252.227-7997, Validation of Asserted Restrictions, 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 60 days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(j) *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) *Limitation on charges for rights in technical data, 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 technical data, computer software, or computer software documentation the Contractor must deliver 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 or software are available to the public without restrictions.

(2) The limitation in paragraph (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, 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 technical data, computer software, or computer software documentation will be delivered.

(l) *Applicability to subcontractors 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, and the identification, assertion, and delivery processes of paragraph (f) of this clause are recognized and protected.

(2)(i) Except as provided in paragraph (l)(2)(ii) of this clause, the Contractor shall include this clause in any subcontract or contractual instrument under which technical data or computer software will be obtained from a subcontractor or supplier for delivery to the Government. This requirement applies to technical data or software related to other than commercial products or commercial services, or related to commercial products or commercial services developed in any part with Government funds. The Contractor shall also require its subcontractors and suppliers to include this clause, without alteration except to identify the parties, in any contractual instrument under which technical data or computer software will be obtained from a subcontractor or supplier for delivery to the Government. This clause will govern the technical data related to an other than commercial product or service or to any portion of a commercial product or commercial service that was developed in any part at Government expense, and the clause at 252.227-7990 will govern the technical data related to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to expand or reduce 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, computer software, or computer software documentation.

(ii) The Contractor shall use the clause at DFARS 252.227-7993, 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, computer software, or computer software documentation that is SBIR/STTR data.

(3) Technical data, computer software, or computer software documentation a subcontractor or supplier must deliver 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 or software 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 the award of a contract as economic leverage to obtain rights in technical data, computer software, or computer software documentation 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, computer software, or computer software documentation as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

Alternate I (DEVIATION 2026-O0036) (FEB 2026). As prescribed in 227.7103-6(b)(1) and (d), add the following paragraph (m) to the basic clause:

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

(2) The Government will not publish a deliverable technical data or computer software item or items identified in this contract as being subject to paragraph (m) of this clause or authorize others to publish such data or software on its behalf if, prior to publication for sale by the Government and within 24 months following the date specified in this contract for delivery of such data or software 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 or software.

(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 (DEVIATION 2026-O0036) (FEB 2026). As prescribed in 227.7103-6(b)(2), add the following definition of "Vessel design" in alphabetical order to paragraph (a) and add paragraph (c)(7) to the basic clause:

(a) "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.

(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 related to the vessel design.

252.227-7014 [Reserved]

252.227-7990 Technical Data—Commercial Products and Commercial Services. (DEVIATION 2026-O0036)

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

**TECHNICAL DATA—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES
(DEVIATION 2026-O0036) (FEB 2026)**

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

“Commercial product and commercial service” includes commercial components and commercial processes but does not include commercial computer software.

“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—

(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

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

“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.

“Technical data” means recorded information, regardless of the form or method of 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 related 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) 252.227-7993, 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 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, governs the technical data related 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) *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 (c)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government will 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) The Government is authorized to release or disclose technical data covered by paragraph (c)(2) of this clause to covered Government support contractors;

(ii) The Government will notify the Contractor of such release or disclosure;

(iii) The Contractor or the party asserting restrictions in a restrictive legend may—

(A) Require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding the use of the data; or

(B) Waive in writing the requirement for a nondisclosure agreement;
and

(iv) Any such 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 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(d) *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. The Contractor shall ensure that any resulting special license agreement, made part of the contract, lists or describes all technical data for which the Government has been granted additional rights and specifies those additional rights.

(e) *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) *Subcontractors or suppliers.* (1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771-3775, 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 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 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 related to any portion of a commercial product or commercial service that was developed exclusively at private expense, and the Contractor shall use the following clauses to govern the technical data related to any portion of a commercial product or commercial service that was developed in any part at Government expense:

(i) Use the clause at DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—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 252.227-7993, 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 (DEVIATION 2026-O0036) (FEB 2026). As prescribed in 227.7102-4(a)(2), add the following definition of “Vessel design” in alphabetical order to paragraph (a) and add (c)(4) to the basic clause:

(a) “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.*

(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 related to the vessel design.

252.227-7991 Rights in Bid or Proposal Information. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(g)(1), or 227.7104-4(b)(1), use the following clause

RIGHTS IN BID OR PROPOSAL INFORMATION ((DEVIATION 2026-O0036)
(FEB 2026)

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

“Computer software” is defined in—

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, 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 252.227-7993, 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.

“Technical data” is defined in—

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, 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 252.227-7993, 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.

(b) *Government rights before contract award.* By submission of its offer, the Offeror agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, will use information contained in the bid or proposal only for evaluation purposes and will not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

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

(1) Except as provided in paragraphs (c)(2), (d), and (e) of this clause, the Government has 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 will 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 the Contractor must deliver under this contract are determined by the Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services; ; or DFARS 252.227-7993, 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.

(d) *Government-furnished information.* The Government’s rights with respect to Government-furnished technical data or computer software contained in the Contractor’s bid or proposal are subject only to restrictions on use, modification,

reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) *Information available without restrictions.* The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) *Flowdown.* Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

252.227-7992 Identification and Assertion of Use, Release, or Disclosure Restrictions. (DEVIATION 2026-O0036)

As prescribed in 227.7103-3(b) or 227.7104-4(b)(2), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE
RESTRICTIONS (DEVIATION 2026-O0036) (FEB 2026)

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

“Computer software” is defined in—

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services; or

(2) If this solicitation contemplates a contract under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227-7993, 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 252.227-7993, 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.

“Technical data” is defined in—

(1) The 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, 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

252.227-7993, 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.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software the Contractor must deliver with other than unlimited rights. For contracts to be awarded under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer Program (STTR) Program, these requirements apply to SBIR/STTR data 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 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	Basis for	Asserted rights	Name of person
(LIST) ⁵	(LIST)	(LIST)	(LIST)

¹ For technical data (other than computer software documentation) related to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

Technical data or	Basis for	Asserted rights	Name of person
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 relate. 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 (<i>e.g.</i> , 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)

252.227-7993 Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program. (DEVIATION 2026-O0036)

As prescribed in 227.7104-4(a)(1), use the following clause:

RIGHTS IN OTHER THAN COMMERCIAL TECHNICAL DATA AND COMPUTER
SOFTWARE—SMALL BUSINESS INNOVATION RESEARCH PROGRAM AND
SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM
(DEVIATION 2026-O0036) (FEB 2026)

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

“Commercial computer software” means software developed or regularly used for nongovernmental purposes which—

- (1) Has been sold, leased, or licensed to the public;
- (2) Has been offered for sale, lease, or license to the public;
- (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
- (4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

“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.

“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.

“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, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

“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.

“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—

(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

(2) Receives access to the technical data or computer software for performance of a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

“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.

“Developed” means—

(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;

(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;

(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

(4) Computer software documentation the Contractor must deliver under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

“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.

(1) Private expense determinations should be made at the lowest practicable level.

(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.

“Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.

“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.

“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.

“Generated” means, with respect to technical data or computer software, first created in the performance of this contract.

“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.

“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—

(1) The reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to—

(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

(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;

(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

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

“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.

“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.

“Restricted rights” apply only to other than commercial computer software and mean the Government’s rights to—

(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;

(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;

(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 (1), (2), (4) and (5) of this definition;

(4) Modify computer software provided that the Government may—

(i) Use the modified software only as provided in paragraphs (1) and (3) of this definition; and

(ii) Not release or disclose the modified software except as provided in paragraphs (2) and (5) of this clause;

(5) Use, modify, reproduce, perform, display, or release or disclose the computer software, and permit contractors, subcontractors, or covered Government support

contractors to do so, for purposes set forth in subparagraph (i) of this paragraph, subject to the conditions set forth in subparagraphs (ii) of this paragraph:

(i)(A) In performance of service contracts (see FAR 37.101), to diagnose and correct deficiencies, to modify the 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 the Government notifies the party which has granted restricted rights that any such release or disclosure to particular contractors or subcontractors was made;

(B) To perform emergency repairs or overhaul of items or components procured under this or a related contract, when necessary to perform such repairs or overhaul; or

(C) For the management and oversight of a program or effort by a person authorized to receive restricted rights computer software, including in the performance of covered Government support contracts.

(ii)(A) Any contractor, subcontractor, or covered Government support contractor receiving access to the software for the purposes of subparagraphs (i), (ii), or (iii) of this paragraph shall be subject to the use and nondisclosure agreement at 227.7103-7 or be performing a Government contract that contains the clause at 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(B) The Government must not permit any recipient of the software under this paragraph to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (4) of this definition, for any other purpose; and

(C) Any use, modification, reproduction, performance, display, release, or disclosure of the computer software under this paragraph remains subject to the limitations in paragraphs (1) through (4) of this 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.

“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, as follows:

- (1) Limited rights in such SBIR/STTR technical data; and

(2) Restricted rights in such SBIR/STTR computer software.

“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.

“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) 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, governs the technical data related 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 252.227-7990, Technical Data—Commercial Products and Commercial Services, governs the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense;

(2) The clause at DFARS 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, 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) *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. The Contractor retains all rights not granted to the Government.

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data 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 in which the Government has acquired previously unlimited rights under another Government contract or 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

(vii) Computer software documentation generated or the Contractor must deliver under this contract.

(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 related 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 252.227-7994, 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) *Limited rights.* The Government shall have limited rights in technical data that were not generated under this contract, are related to items, components, or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (g)(1) of this clause, with the legend prescribed in paragraph (g)(4) of this clause.

(4) *Restricted rights in computer software.* The Government shall have restricted rights in other than commercial computer software the Contractor must deliver or otherwise furnished to the Government under this contract that was developed exclusively at private expense and was not generated under this contract.

(5) *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)(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 under this contract. 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) *Specifically negotiated license rights.* After contract award, the standard license rights granted to the Government under paragraphs (c)(1) through (5) 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 the definition of “limited rights” of this clause or lesser rights in computer software than are enumerated in 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) *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 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) *Release from liability.* The Contractor agrees to release the Government from liability for any authorized release or disclosure of technical data or computer software made in accordance with this clause or any negotiated license agreement. This release from liability for the Government also applies to releases or disclosures made by a third party who received the data or software from an authorized recipient. For any unauthorized use or disclosure by such third parties of technical data or computer software marked with restrictive legends, the Contractor agrees to seek relief solely from that party.

(9) *Covered Government support contractors.* The Contractor acknowledges that—

(i) The Government is authorized to release or disclose limited rights technical data and restricted rights computer software to covered Government support contractors;

(ii) The Government will notify the Contractor of such release or disclosure;

(iii) The Contractor or the party asserting restrictions in a restrictive legend may—

(A) Require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor or the party asserting restrictions regarding the use of the data or software; or

(B) Waive in writing the requirement for a nondisclosure agreement;
and

(iv) Any such 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 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(d) *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) *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 the Contractor must deliver under this contract unless the Contractor is the copyright owner or has obtained license rights for the Government of the appropriate scope set forth in paragraph (c) 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) *Identification and delivery of technical data or computer software to be delivered 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 (f)(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 data or	Basis for	Asserted rights	Name of person
(LIST)	(LIST)	(LIST)	(LIST)
¹ If 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.			
² 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 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.			
³ Enter asserted rights category (e.g., limited rights, restricted rights, or government purpose rights from a prior contract, SBIR/STTR data rights under this or 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 assertions, at a later date, in accordance with the procedures in the DFARS 252.227-7997, Validation of Asserted Restrictions, clause of this contract.

(g) *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 the Contractor must

deliver under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (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 (g)(4) of this clause; the restricted rights legend at paragraph (g)(5) of this clause; the SBIR/STTR data rights legend at paragraph (g)(6) of this clause; or the special license rights legend at paragraph (g)(7) of this clause; and 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 the government purpose rights license in the DFARS 252.227-7993, 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) *Limited rights markings.* Technical data not generated under this contract that are related to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked as follows:

LIMITED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by the limited rights license in the DFARS 252.227-7993, 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. 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) *Restricted rights markings.* Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked as follows:

RESTRICTED RIGHTS

Contract Number

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by the restricted rights license in the DFARS 252.227-7993, 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. 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)

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

SBIR/STTR DATA RIGHTS

Contract Number

Contractor Name

Contractor Address

Expiration of SBIR/STTR Data 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 the SBIR/STTR data rights license in the DFARS 252.227-7993, 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. After the SBIR/STTR data protection period expiration date shown above, the Government has perpetual

government purpose rights as provided in the 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) *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 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 Number *[Insert contract number]*, License Number *[Insert license identifier]*. Any reproduction of technical data, computer software, or portions thereof marked with this marking 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)(7) of this clause).

(8) *Preexisting 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)(1) of this clause.

(h) *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) *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 delivered or to be delivered under this contract are contained in the DFARS 252.227-7997, Validation of Asserted Restrictions, clause 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 252.227-7997, Validation of Asserted Restrictions, 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 60 days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(j) *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) *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 the Contractor must deliver 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)(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) *Subcontractors 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) 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 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 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, to govern the technical data related 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 252.227-7990, Technical Data—Commercial Products and Commercial Services, to govern the technical data related to any portion of a commercial product or commercial service that was developed exclusively at private expense;

(B) Use the DFARS clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, 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) No other clause shall be used to expand or reduce 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 the Contractor must deliver 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)

252.227-7019 [Reserved]

252.227-7020 [Reserved]

252.227-7021 [Reserved]

252.227-7022 [Reserved]

252.227-7023 [Reserved]

252.227-7024 [Reserved]

252.227-7994 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(e) or 227.7104-4(b)(4), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED
INFORMATION MARKED WITH RESTRICTIVE LEGENDS
(DEVIATION 2026-O0036) (FEB 2026)

(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,” “restricted rights,” and “Government purpose rights” are defined in the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services.

(2) For Small Business Innovation Research (SBIR) 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 252.227-7993, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research 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 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 nondisclosure agreement at DFARS 227.7103-7. The Contractor shall modify paragraph (1)(c) of the 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 are or are related to a commercial product or commercial service and 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 shall take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(iii) The Contractor shall ensure that the party whose name appears in the legend is notified of the access or use within 30 days of the Contractor's access or use of such data or software;

(iv) The Contractor shall enter into a nondisclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such nondisclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the 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 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)

252.227-7026 [Reserved]

**252.227-7995 Deferred ordering of technical data or computer software.
(DEVIATION 2026-O0036)**

As prescribed at 227.7103-6(h), use the following clause:

**DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
(DEVIATION 2026-O0036) (FEB 2026)**

In addition to technical data or computer software the Contractor must deliver elsewhere in this contract, the Government may, at any time during the performance of this contract or within a period of three years after acceptance of all items (other than technical data or computer software) the Contractor must deliver under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any of its subcontracts. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The Contractor's obligation to deliver technical data related to an item from a subcontractor expires three years after the Contractor accepts the final delivery of that item from that subcontractor. The Government's rights to use the data or computer software shall be pursuant to the clause at 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products or Commercial Services, of this contract.

(End of clause)

252.227-7028 Technical data or computer software previously delivered to the government.

As prescribed in 227.7103-6(f) or 227.7104-4(b)(4), use the following provision:

**TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO
THE GOVERNMENT (JUN 1995)**

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

- (a) The contract number under which the data or software were produced;
- (b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and
- (c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

252.227-7029 [Reserved]

252.227-7996 Technical data—withholding of payment (DEVIATION 2026-O0036).

As prescribed at 227.7103-6(g)(2) or 227.7104-4(b)(5), use the following clause

**TECHNICAL DATA—WITHHOLDING OF PAYMENT (DEVIATION 2026-O0036)
(FEB 2026)**

(a) If technical data the Contractor must deliver under this contract is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7989(f)(2) or 252.227-7993(f)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7031 [Reserved]

252.227-7032 [Reserved]

252.227-7033 [Reserved]

252.227-7034 - 252.227-7036 [Reserved]

252.227-7997 Validation of Asserted Restrictions. (DEVIATION 2026-O0036)

As prescribed in 227.7103-6(g), 227.7104-4(b)(6), or 227.7203-6(c), use the following clause:

**VALIDATION OF ASSERTED RESTRICTIONS (DEVIATION 2026-O0036)
(FEB 2026)**

(a) *Definitions.* The terms used in this clause are defined in the 252.227-7989, Rights in Technical Data, Computer Software, and Computer Software Documentation—Other Than Commercial Products and Commercial Services, clause of this contract.

(b) *Technical data related to commercial products or commercial services—presumption regarding development exclusively at private expense.* For technical data related to commercial products or commercial services, the Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial product or commercial service are justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not issue a challenge unless there are reasonable grounds to question the validity of the assertion that the commercial item was developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its asserted restrictions on the rights of the Government and others to use, duplicate, release, or disclose technical data or computer software delivered, required to be delivered, or otherwise provided to the Government under the contract or subcontract. Except as provided in paragraph (b) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information related to asserted restrictions on technical data.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any asserted restriction on the right of the United States or others to use, disclose, or release technical data. If, upon review of the explanation submitted, the Contracting Officer cannot determine the basis of the asserted restriction, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any asserted restriction on technical data delivered, to be delivered, or otherwise provided to the Government under the contract or subcontract (*e.g.*, a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information related to the validity of an asserted restriction, determines that reasonable grounds exist to question the current validity of the asserted restriction and that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer will follow the procedures in paragraph (f) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer may challenge the validity of the asserted restriction as described in paragraph (f) of this clause.

(e) *Prechallenge request for information related to assertion restrictions on computer software.* (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 marking and return the corrected software to the Contracting Officer within 60 days following receipt of the software, the Contracting Officer may correct or strike the marking 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.

(f) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the asserted restriction is warranted, the Contracting Officer will send a written challenge notice to the Contractor or subcontractor making the asserted restriction. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will—

(i) State the specific grounds for challenging the asserted restriction including, for technical data related to commercial products or commercial services, sufficient information to reasonably demonstrate that the commercial product or commercial service was not developed exclusively at private expense;

(ii) Require a response within 60 days justifying the assertion based upon records kept in accordance with paragraph (c) of this clause and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a Contracting Officer's final decision, issued pursuant to paragraph (h) of this clause, 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) sustaining the validity of a prior asserted restriction identical to the current asserted restriction, within the 3-year period preceding the current challenge, shall serve as justification for the current asserted restriction if the prior validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (g) of this clause.

(2) The Contracting Officer will extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same asserted restrictions from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, will formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule will afford the Contractor or subcontractor a reasonable opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(5) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.

(6) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(g) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice or a request for additional information (under paragraphs (f)(1) and (f)(5) of this clause), the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial products or commercial services, the Contracting Officer will provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense. This final decision will be issued as soon as possible after the expiration of the time period of paragraph (f)(1)(ii) or (f)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (h)(2)(ii) through (iv) of this clause.

(h) *Final decision when Contractor or subcontractor responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the asserted restriction, the Contracting Officer will issue a final decision to the Contractor or subcontractor that sustains the validity of the asserted restriction and that states that the Government will continue to be bound by the asserted restriction. The Contracting Officer will issue this final decision within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the asserted restriction is not justified, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. To

sustain the challenge for technical data related to commercial products or commercial services, the Contracting Officer will provide information demonstrating that the commercial product or commercial service was not developed exclusively at private expense. Notwithstanding paragraph (e) of the Disputes clause, the final decision will be issued within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the asserted restriction for a period of 90 days from the issuance of the Contracting Officer's final decision under paragraph (h)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Court of Federal Claims, it will provide a notice of intent to file suit to the Contracting Officer within 90 days from the issuance of the Contracting Officer's final decision under paragraph (h)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal to an agency Board of Contract Appeals, file suit in an appropriate court, or provide a notice of intent to file suit in an appropriate court to the Contracting Officer within the 90-day period, the Government may cancel or ignore the restrictive markings that are based on the asserted restrictions, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the asserted restriction where a notice of intent to file suit in the United States Court of Federal Claims is provided to the Contracting Officer within 90 days from the issuance of the final decision under paragraph (h)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive marking that is based on the asserted restriction, if the Contractor or subcontractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data or computer software. The Government agrees not to release or disclose such technical data or computer software unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103-7, or is a Government contractor receiving access to the technical data or computer software for performance of a Government contract that contains the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the asserted restrictions where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Court of Federal Claims. Notwithstanding the foregoing, where the head of an agency

determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data or computer software. The Government agrees not to release or disclose such technical data or computer software unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103-7, or is a Government contractor receiving access to the technical data or computer software for performance of a Government contract that contains the clause at DFARS 252.227-7994, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(i) *Final disposition of appeal or suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking that is based on the asserted restriction on the technical data or computer software shall be cancelled, corrected or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government will continue to be bound by the restrictive marking; and

(ii) The Government will be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(j) *Duration of right to challenge.* (1) The Government may review the validity of any restriction on technical data or computer software, delivered or that the Contractor must deliver under a contract, asserted by the Contractor or subcontractor. During the period within 6 years of final payment on a contract or within 6 years of delivery of the technical data or computer software to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data or computer software at any time if such technical data or computer software—

- (i) Are publicly available;
- (ii) Have been furnished to the United States without restriction;
- (iii) Have been otherwise made available without restriction; or
- (iv) Are the subject of a fraudulently asserted use or release restriction.

(2) Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking 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" as addressed in 10 U.S.C. 3785(c).

(k) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(l) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictions. However, this clause neither creates nor implies privity of contract between the Government and subcontractor.

(m) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial products or commercial services, with its subcontractors or suppliers at any tier requiring the delivery of technical data or computer software. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

252.227-7038 Patent Rights—Ownership by the Contractor (Large Business).
As prescribed in 227.303(2), use the following clause:

PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS)
(JUN 2012)

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

“Invention” means—

(1) Any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code; or

(2) Any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

“Made”—

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means—

- (1) A university or other institution of higher education;
- (2) An organization of the type described in the Internal Revenue Code at 26 U.S.C. 501(c)(3) and exempt from taxation under 26 U.S.C. 501(a); or
- (3) Any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means—

- (1)(i) To manufacture, in the case of a composition or product;
 - (ii) To practice, in the case of a process or method; or
 - (iii) To operate, in the case of a machine or system; and
- (2) In each case, under such conditions as to establish that—
 - (i) The invention is being utilized; and
 - (ii) The benefits of the invention are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor’s rights*—(1) *Ownership*. The Contractor may elect to retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License*. (i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor’s license-

(A) Extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part;

(B) Includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at the time of contract award; and

(C) Is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor’s business to which the invention pertains.

(ii) The agency—

(A) May revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR Part 404 and agency licensing regulations;

(B) Will not revoke the license in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public; and

(C) May revoke or modify the license in any foreign country to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency—

(A) Will furnish the Contractor a written notice of its intention to revoke or modify the license; and

(B) Will allow the Contractor 30 days (or such other time as the funding agency may authorize for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified.

(iv) The Contractor has the right to appeal, in accordance with 37 CFR part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) *Contractor's obligations.* (1) The Contractor shall—

(i) Disclose, in writing, each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters, or within 6 months after the Contractor first becomes aware that a subject invention has been made, whichever is earlier;

(ii) Include in the disclosure—

(A) The inventor(s) and the contract under which the invention was made;

(B) Sufficient technical detail to convey a clear understanding of the invention; and

(C) Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and

(iii) After submission of the disclosure, promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain ownership. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the agency may shorten the period of election of title to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall—

(i) File either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election, provided that in all cases the application is filed prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use;

(ii) File a nonprovisional application within 10 months of the filing of any provisional application; and

(iii) File patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date the Commissioner of Patents grants permission to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (2), and (3) of this clause. The Contracting Officer will normally grant the extension unless there is reason to believe the extension would prejudice the Government's interests.

(d) *Government's rights—(1) Ownership.* The Contractor shall assign to the agency, upon written request, title to any subject invention—

(i) If the Contractor elects not to retain title to a subject invention;

(ii) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause and the agency requests title within 60 days after learning of the Contractor's failure to report or elect within the specified times;

(iii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause, provided that, if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country; and

(iv) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License.* If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest.* (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d)(1) of this clause and enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall—

(i) Require, by written agreement, its employees, other than clerical and nontechnical employees, to—

(A) Disclose each subject invention promptly in writing to personnel identified as responsible for the administration of patent matters, so that the Contractor can comply with the disclosure provisions in paragraph (c) of this clause; and

(B) Provide the disclosure in the Contractor's format, which should require, as a minimum, the information required by paragraph (c)(1) of this clause;

(ii) Instruct its employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or statutory foreign bars; and

(iii) Execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in this invention."

(5) The Contractor shall—

(i) Establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters;

(ii) Include in these procedures the maintenance of—

(A) Laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions; and

(B) Records that show that the procedures for identifying and disclosing the inventions are followed; and

(iii) Upon request, furnish the Contracting Officer a description of these procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor shall, when licensing a subject invention, arrange to—

(i) Avoid royalty charges on acquisitions involving Government funds, including funds derived through the Government's Military Assistance Program or otherwise derived through the Government;

(ii) Refund any amounts received as royalty charges on the subject inventions in acquisitions for, or on behalf of, the Government; and

(iii) Provide for the refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish to the Contracting Officer the following:

(i) Interim reports every 12 months (or any longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no subject inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no subject inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no subcontracts.

(8)(i) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying—

(A) The subcontractor;

(B) The applicable patent rights clause;

(C) The work to be performed under the subcontract; and

(D) The dates of award and estimated completion.

(ii) The Contractor shall furnish, upon request, a copy of the subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses specified in paragraph (l)(1) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for the refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with that subcontract without the written authorization of the Contracting Officer.

(10) The Contractor shall provide to the Contracting Officer, upon request, the following information for any subject invention for which the Contractor has retained ownership:

(i) Filing date.

(ii) Serial number and title.

(iii) A copy of any patent application (including an English-language version if filed in a language other than English).

(iv) Patent number and issue date.

(11) The Contractor shall furnish to the Government, upon request, an irrevocable power to inspect and make copies of any patent application file.

(f) *Reporting on utilization of subject inventions.* (1) The Contractor shall—

(i) Submit upon request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts in obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees;

(ii) Include in the reports information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other information as the agency may reasonably specify; and

(iii) Provide additional reports that the agency may request in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (h) of this clause.

(2) To the extent permitted by law, the agency shall not disclose the information provided under paragraph (f)(1) of this clause to persons outside the Government without the Contractor's permission, if the data or information is considered by the Contractor or its licensee or assignee to be "privileged and confidential" (see 5 U.S.C. 552(b)(4)) and is so marked.

(g) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the agency may waive the requirement for an exclusive license agreement upon a showing by the Contractor or its assignee that—

(1) Reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States; or

(2) Under the circumstances, domestic manufacture is not commercially feasible.

(h) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), 37 CFR 401.6, and any supplemental regulations of the agency in effect on the date of contract award.

(i) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(j) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this contract before the Contractor delivers to the Contracting Officer—

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) *Subcontracts.* (1) The Contractor—

(i) Shall include the substance of the Patent Rights-Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier—

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as

consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

(End of clause)

Alternate I (DEC 2007). As prescribed in 227.303(2)(ii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: _____*.
[Contracting Officer to complete with the names of applicable existing treaties or international agreements. This paragraph is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

Alternate II (DEC 2007). As prescribed in 227.303(2)(iii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The agency reserves the right to—

(A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract; and

(B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.

252.227-7039 Patents—reporting of subject inventions.

As prescribed in 227.303(1), use the following clause:

PATENTS—REPORTING OF SUBJECT INVENTIONS (APR 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

252.227-7998 Additional preaward requirements for Small Business Technology Transfer Program. (DEVIATION 2026-O0036)

As prescribed in 227.7104-4(c)(1), use the following provision:

ADDITIONAL PREAWARD REQUIREMENTS FOR SMALL BUSINESS
TECHNOLOGY TRANSFER PROGRAM (DEVIATION 2026-O0036) (FEB 2026)

(a) *Definitions.* As used in this provision, the terms “research institution” and “United States” have the meaning given in the 252.227-7999, 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 252.227-7993, 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)

252.227-7999 Additional postaward requirements for Small Business Technology Transfer Program. (DEVIATION 2026-O0036)

As prescribed in 227.7104-4(c)(2), use the following clause:

ADDITIONAL POSTAWARD REQUIREMENTS FOR SMALL BUSINESS
TECHNOLOGY TRANSFER PROGRAM (DEVIATION 2026-O0036) (FEB 2026)

(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-Wylder 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/>) in accordance with the guidance at Federal 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) 252.227-7998, 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 252.227-7993, 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 252.227-7993, 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 252.227-7993, 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)

PGI PART 227—PATENTS, DATA, AND COPYRIGHTS

PGI 227.6—FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

PGI 227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services must, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract should provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and its subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and it must conform to the requirements of the International Traffic in Arms Regulations (see PGI 227.675-1).

(b) Consider the following factors, among others, in negotiating the price to be paid the primary source under contracts within (a) of this section—

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, etc.;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

PGI 227.674 Supply contracts between the Government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source—

(a) Obtain from the second source a detailed statement for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Do not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

PGI 227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

PGI 227.675-1 Statutes, regulation and guidance.

See applicable export control regulations, policies, and guidance in the—

(a) Arms Export Control Act (AECA) (22 U.S.C. Chapter 39);

(b) Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852;

(c) International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130;

(d) Export Administration Regulations (EAR), 15 CFR Parts 730-774;

(e) DoDI 2040.02, International Transfers of Technology, Articles, and Services;

(f) DoDI 5230.24, Distribution Statements on DoD Technical Information; and

(g) DoDM 5105.38-M, Security Assistance Management Manual (SAMM).

PGI 227.675-2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned must, insofar as its interests are involved, indicate whether the agreement meets the requirements of sections 124.07-124.10 of the ITAR (see PGI 227.675-1) or in what respects the agreement is deficient. Paragraphs (b) through (g) of this subsection provide general guidance.

(b) When the Government will likely purchase from the second source the supplies or services involved in the agreement, or that Foreign Military Financing Program funds will be provided for the procurement of the supplies or services, the following guidance applies:

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government, in recognition of the

Government's rights in patents and data, the Department, before indicating its approval, concerned should evaluate the amount of the reduction to determine whether the amount is fair and reasonable in the circumstances.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval should be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government, in accordance with section 124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned should evaluate the acceptability of the provision before indicating its approval.

(4) If circumstances do not permit the evaluation called for in (b) (1), (2), or (3) of this subsection, follow the guidance in (c) of this subsection.

(c) When the Government will unlikely purchase from the second source the supplies or services involved in the agreement nor that Foreign Military Financing Program funds will be provided for the purchase of the supplies or services, then the following guidance applies:

(1) If the agreement provides for charges to the second source for data or patent rights, fulfill the requirements of section 124.10 insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when the second source has knowledge of any purchase made or to be made from the second source by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to the primary source from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, the primary source will negotiate with the Department concerned an appropriate reduction in its charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source should pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned should—

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement must reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement must provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f)(1) In connection with every agreement referred to in (b) of this section, a request should be made to the primary source—

(i) To identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of its subcontractors,

(ii) To identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and

(iii) To segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance.

(2) Reviewing personnel should verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned should make clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, nor constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Foreign Military Financing Program or otherwise through the Government.

PGI 227.71—TECHNICAL DATA, COMPUTER SOFTWARE, COMPUTER SOFTWARE DOCUMENTATION, AND ASSOCIATED RIGHTS RELATED TO OTHER THAN COMMERCIAL PRODUCTS, COMPONENTS, SERVICES, PROCESSES, AND COMPUTER SOFTWARE

PGI 227.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.

(d) *Challenge and validation.*

(4) *Challenge notice.*

(iii) The challenge notice must include the information in paragraph (f) of the clause at 252.227-YYYY.

PGI 227.7103-18 Acquisition of other than commercial technical data, computer software, and computer software documentation and associated rights.

(a) *Applicable Guidance.* See DoDI 5010.44, Intellectual Property (IP) Acquisition and Licensing, sections 4.1 and 4.2, when formulating business advice and contract implementation strategies regarding the program manager's tailoring of technical data requirements to the needs of the Government.

(b) *Compliance with applicable policies.* Work closely with data managers and requirements personnel to ensure that technical data, computer software, and computer software documentation requirements included in solicitations are consistent with the policy expressed in 227.7103-1.

(c) *Acquisition of technical data.* (1)(i) Data managers or other requirements personnel are responsible for identifying the Government's life-cycle needs for technical data.

(ii) When establishing technical-data needs, requirements personnel must give consideration to—

(A) The offeror's economic interests in technical data pertaining to items, components, or processes that have been developed at private expense (including the economic interests of small businesses and nontraditional contractors);

(B) The Government's costs to acquire, maintain, store, retrieve, and protect the technical data;

(C) Reprourement needs;

(D) Repair, maintenance, and overhaul philosophies;

(E) Spare and repair part considerations; and

(F) Whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis.

(iii) When the Government will likely obtain unlimited or government purpose rights in technical data necessary for competitive spare or repair parts procurements, such data should be identified as deliverable technical data items; and

(iv) The fact that reprourement needs might not justify acquiring detailed manufacturing or process data when—

(A) Items or components can be acquired using performance specifications, form, fit, and function data; or

(B) When a sufficient number of alternate sources exist that will likely provide such items on a performance specification or form, fit, or function basis.

(2) When reviewing offers received in response to a solicitation or other request for data, data managers should, as appropriate, balance the original assessment of the Government's data needs with data prices contained in the offer.

(d) *Acquisition of computer software and computer software documentation.* (1) (i) Data managers or other requirements personnel are responsible for identifying the Government's life-cycle needs for computer software and computer software documentation.

(ii) To the maximum extent practicable, assessment of life-cycle needs should include consideration of periodic delivery of computer software and computer software documentation including all executable code, source code, associated scripts, build procedures, automation scripts, tools, databases, libraries, test results, data sets, firmware, training materials, and any other elements necessary to integrate, test and evaluate, debug, deploy, and operate the software application in all relevant environments (e.g., development, staging, production).

(iii) See DoDI 5010.44, Intellectual Property (IP) Acquisition and Licensing, sections 4.1 and 4.2, when formulating business advice and contract implementation strategies regarding the program manager's tailoring of software requirements to the needs of the Government.

(iv) In addition to desired software performance, compatibility, or other technical considerations, identification of life-cycle needs should include consideration of such factors as—

(A) The offeror's economic interests in software that has been developed at private expense (including the economic interests of small businesses and nontraditional contractors);

(B) The Government's costs to develop, acquire, maintain, store, retrieve, and protect the computer software and computer software documentation;

(C) Multiple site or shared use requirements;

(D) Whether the Government's software maintenance philosophy will require the right to modify or have third parties modify the software; and

(E) Any special computer software documentation requirements.

(2) (i) *Procurement planning.* The assessment of life-cycle needs should consider delivery timelines to facilitate transition to a different contractor or to the Government. This approach facilitates management of program risk and supports options for flexibility in the transition of software sustainment to another organization. Ensure that, wherever practicable, solicitations and contracts include the requirements for periodic delivery and any delivery timelines for computer software and computer software documentation, based upon the assessment of life-cycle needs. To the maximum extent practicable, when assessing the life-cycle needs, data managers or other requirements personnel will address in the procurement planning and requirements documents (e.g., acquisition plans, purchase requests) the acquisition at appropriate times in the life cycle of all computer software, related recorded information, and associated license rights necessary to—

(A) Reproduce, build, or recompile the software from its source code and required software libraries (e.g., software libraries called, invoked, or linked by the computer

software source code that are necessary for the operation of the software). (Based on the results of the assessment of life-cycle needs, and to the maximum extent practicable, all software capability descriptions should accompany source code (e.g., features, story points, use cases) and all as-built architecture and design products, traceability products, interface definitions including interfaces to proprietary software elements, and any other requisite documentation.);

(B) Conduct required computer software testing and evaluation;

(C) Integrate and deploy computer programs on relevant hardware including developmental, operational, diagnostic, training, or simulation environments; and

(D) Sustain and support the software over its life cycle.

(ii) *Alternatives to delivery of source code and related software design details.*

The assessment of life-cycle needs should consider alternatives to the delivery of source code and related software design details for privately developed computer software as necessary to meet the Government's needs, such as—

(A) Technical data and computer software sufficient to implement a modular open system approach or a similar approach.

(1) In determining whether the Government should require delivery of computer software source code and related software design details developed exclusively or partially at private expense, data managers and other requirements personnel are responsible for considering whether these alternatives permit the Government to—

(i) Acquire the amount of data needed to procure and support systems, material, and services in an economical manner based on a cost or price analysis;

(ii) Meet its management, engineering, and logistics needs; and

(iii) Maintain the currency of acquired technical data or software consistent with the assessment of life-cycle needs.

(2) To the extent practicable, the Government should also require open interface documentation for any privately developed computer software used in or interoperable with software developed for the Government, to allow for technology insertion on all sides of the interface, as applicable, and to support the use of modular open system approaches;

(B) Access to technical data or computer software, including access agreements for cloud-based or subscription-based software products or services.

(1) Access agreements permit the Government to view, print, download, annotate, modify, or make derivatives of technical data or computer software stored within a contractor-controlled repository or facility (e.g., in an online environment or in person). Examples of access arrangements include remote online authorization to access an integrated data environment, product data management system operated by the contractor, or mechanisms authorizing physical entry to a contractor-controlled data repository, or cloud-based or subscription-based software products or services. The

negotiated access agreement must stipulate permissions based on the assessment of life-cycle needs; make the access agreement part of the contract.

(2) For each technical data or computer software requirement, the requiring activity should determine whether the Government's needs can be better satisfied through access or formal delivery of the technical data or software (e.g., physical or electronic transfer of the data into Government custody). The Government should consider access to technical data or software when—

(i) The delivery of technical data or software is not cost-effective or feasible for technical, legal, or contractual reasons; and

(ii) Access meets the Government's needs for such technical data or software throughout the life-cycle of the program;

(C) Software support and maintenance provided directly from the contractor; or

(D) Other contracting or licensing mechanisms including priced options, specially negotiated licenses, direct licensing between contractors for qualifying second sources, data escrow agreements, deferred delivery solutions, and subscription agreements.

(1)(i) Under a data escrow agreement, the Government and the contractor identify a third-party escrow agent that will keep designated technical data or computer software for safekeeping until a contractually specified condition occurs.

(ii) If a contractually specified condition occurs, then the Government may obtain delivery of the escrowed technical data or computer software.

(iii) Include the data escrow agreement in the contract. Include in the contract the Government's license rights in the escrowed technical data or computer software.

(2) Use of data escrow agreements is not preferable in all cases but may be useful when formal delivery or access is not feasible or cost-effective during the contract's period of performance or delivery schedule.

(3) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data managers should, if appropriate, balance the original assessment of the Government's needs with prices offered.

(e) *Contract implementation of technical data and software requirements.* Ensure that, wherever practicable, solicitations and contracts—

(1) Identify the type and quantity of the technical data to be delivered under the contract and the format and media in which the data will be delivered;

(2) Identify the types of computer software and the quantity of computer programs and computer software documentation to be delivered, any requirements for multiple users

at one site or multiple site licenses, and the format and media in which the software or documentation will be delivered;

(3) Establish each type of data item, computer software, or computer software documentation to be delivered as a separate contract line item (this requirement may be satisfied by an exhibit to the contract);

(4) Identify the prices established for each separately priced deliverable item of technical data, computer software, or computer software documentation under a fixed-price type contract;

(5) Include delivery schedules and acceptance criteria for each deliverable item of technical data or computer software;

(6) Specifically identify the place of delivery for each deliverable item of technical data or computer software; and

(7) Specify in the negotiated terms that any required other than commercial computer software, related recorded information, and associated license rights identified in the assessment of life-cycle needs in paragraph (b) of this section must, to the extent appropriate—

(i) Include computer software delivered in a digital format compatible with applicable computer programs on relevant system hardware;

(ii) Not rely on additional internal or external other than commercial or commercial technical data and software, unless such technical data or software is—

(A) Included in the items to be delivered with license rights sufficient to meet the Government's needs; or

(B) Commercially available with license rights sufficient to meet the Government's needs; and

(iii) Include sufficient information, with license rights sufficient to meet the Government's needs, to support maintenance and understanding of interfaces and software version history when the negotiated terms do not allow for the inclusion of the external or additional other than commercial or commercial technical data and software.

PGI 227.7104 Contracts under the Small Business Innovation Research Program and Small Business Technology Transfer Program.

PGI 227.7104-1 Policy.

See section 4(c) of the Small Business Administration's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive (effective May 3, 2023) for guidance on examples of SBIR/STTR phase III, which is available at

https://www.sbir.gov/sites/default/files/SBA%20SBIR_STTR_POLICY_DIRECTIVE_May2023.pdf.

PGI 227.7104-2 Rights in SBIR or STTR data.

The clause under which the SBIR/STTR data were generated or developed will govern the Government's license rights in such SBIR/STTR data. The following examples illustrate the definition of the SBIR/STTR data protection period and the applicability of the DFARS 252.227-7993 clause:

(1) *Redelivery of SBIR data.*

(i) *SBIR data first generated under a prior SBIR clause and redelivered under the current SBIR clause.* In this example, a contractor generates and delivers SBIR data under a 2016 phase II SBIR contract that includes a prior version of the clause at DFARS 252.227-7993. The contractor delivers identical data in a contiguous series of follow-on contracts, including a later phase III contract that is an extension of the research effort in the 2016 contract. That phase III contract includes the current version of the clause at DFARS 252.227-7993. The contractor asserts SBIR data rights in these data. The 2016 contract included the clause at DFARS 252.227-7993, which defined the SBIR data protection period as the period commencing with contract award and ending upon the date 5 years after completion of the project from which such data were generated. This previous definition of the SBIR data protection period applies to the redelivered SBIR data in the contiguous series of follow-on contracts, including the later phase III contract. The SBIR data protection period is extended because the later contract derives from, extends, or completes an effort made under a prior SBIR contract that included the prior version of the clause at DFARS 252.227-7993. This is the case even under later contracts that include the current version of the clause at DFARS 252.227-7993 with a non-extendable 20-year SBIR/STTR data protection period. In addition, the SBIR data protection period from the prior version of the clause at DFARS 252.227-7993 may be extended indefinitely for subsequent redeliveries of identical SBIR data as long as the SBIR project has not been completed.

(ii) *SBIR data first delivered with the 20-year SBIR data protection period and later redelivered under the current SBIR clause.* In another example, a contractor generates and delivers SBIR data under a 2021 phase II SBIR contract. The contractor delivers identical data under a later phase III contract that is an extension of the research effort in the 2021 contract. The contractor asserts SBIR data rights in these data. That 2021 contract included a version of the DFARS 252.227-7993 clause that defines the SBIR data protection period as the period commencing on the date of contract award and ending 20 years after that date. The same definition of the SBIR/STTR data protection period applies to the redelivered SBIR data in the later phase III contract. Redelivery of identical SBIR data under any later contract will not extend the 20-year SBIR data protection period.

(2) *Modifications to previously delivered SBIR or STTR data.* A contractor generates and delivers SBIR/STTR data under a phase II STTR contract with the current version of the clause at DFARS 252.227-7993. The contractor develops and delivers modified STTR data under a later phase III contract. The contractor asserts SBIR/STTR data rights in these data. The previously delivered portions of the STTR data will be governed by the previous SBIR/STTR data protection period, while the newly developed portions of the STTR data will be governed by a new 20-year SBIR/STTR data protection period.

(3) *SBIR or STTR data delivered under a contract and the contractor was not awarded a SBIR or STTR contract.* A subcontractor was awarded a SBIR phase I contract. Later, the subcontractor performed SBIR phase III work under a contract awarded to a contractor who

was not awarded a SBIR or STTR contract. The subcontractor furnished technical data and computer software deliverables related to SBIR phase III work performed under this contract. This technical data and computer software was furnished to the Government with SBIR data rights. The clause at DFARS 252.227-7993 should have been included either in the initial contract or via a contract modification, and the Government's rights in this SBIR data are subject to the terms of the clause at DFARS 252.227-7993.

PGI 227.7106 Contracts for special works.

(c) Examples of special works include, but are not limited, to audiovisual works, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.