



31 January 2021

Robert Schmidt  
Kevin Burns  
Co-Chairmen

**Subject:** Advance Notice of Proposed Rulemaking (ANPR) for DFARS Case 2019-D043:  
Small Business Innovation Research Program Data Rights

Jere Glover  
Executive Director

Dear Ms. Johnson:

Larry Nannis  
Treasurer

On behalf of the Small Business Technology Council (SBTC) and its member companies, I respectfully submit the following comments to the proposed amendments to the Defense Federal Acquisition Regulations Supplement (DFARS) sections 227 and 252 relating to Small Business Innovation Research Program Data Rights under DAR Docket ID: DARS-2020-0033/DFARS Case 2019-D043.

Matt Oristano  
Mid-Atlantic  
Regional Chair

Ash Thakker  
Southeast  
Regional Chair

Mary Delahunty  
Southwest  
Regional Chair

Russ Farmer  
Mountain  
Regional Chair

SBTC is the nation's largest association of small, technology-based companies in diverse fields, and is proud to serve as the technology council of the National Small Business Association (NSBA), the nation's oldest nonprofit advocacy organization for small business, serving more than 150,000 small companies throughout the United States. SBTC's membership are primary participants in the nation's Small Business Innovation Research/Small Business Technology Transfer (SBIR) program, which is a mainstay of American innovation, small business growth, and contribution to America's technology-based economy and the Department of Defense's continuing strengthening of its technology-based sources of strategic and tactical advantage.

Michael Browne  
Pacific  
Regional Chair

We have provided two enclosures for review:

- Appendix A includes or specific comments and rationale.
- Appendix B includes a copy of our recommended changes to the 2019-D043 (a) DFARS Text LILO.

Paul Donovan  
Michael Squillante  
NIH Committee  
Co-Chairs

Thank you for your consideration of our comments. Please direct any questions to Mary Delahunty, SBTC Southwest Regional Chair (Email: [mdelahunty@invocon.com](mailto:mdelahunty@invocon.com); Ph: 281-292-9903 x117).

Ash Thakker  
Phase III Committee  
Chair

Sincerely,

A handwritten signature in blue ink that reads "Mary Delahunty". The signature is written in a cursive style and is positioned above a horizontal line.

Russ Farmer  
DCAA Committee  
Chair

Mary Delahunty

SBTC Southwest Regional Chair  
Vice President & General Counsel, Invocon, Inc.



## APPENDIX A - SBTC Comments and Rationale

SBTC provides below a listing of each DFARS section of concern followed by our comment on the requested change or revision. Requested changes or revisions are indicated by stricken or underlined text in red font. Please note that the changes/revisions are also provided in MSWord review mode in the attached Appendix B.

### DFARS 227.7104-1(a)(2) Rights in SBIR or STTR data.

(2) SBIR/[STTR] data rights in **[all other ]** technical data and computer software **developed and/or** generated under the contract and **[appropriately]** marked with the SBIR/[STTR] data rights legend. 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]** with contract award and ending **five[20]** years after **[that date unless, subsequent to the award, the agency and the contractor negotiate for some other protection period for the SBIR/STTR data]** completion of the project under which the data were generated. Upon expiration of the **[SBIR/STTR data protection period]** **five-year** restrictive license, the Government has **[Government purpose]** unlimited rights in the SBIR/[STTR data] technical data and computer software. **[These Government purpose rights do not expire.]**

**Rationale:** SBTC recommends adding the language shown above to include “developed” and to strike the word “appropriately” since the meaning of that qualifier is unclear. Does “appropriately” mean marked a certain way or format?

### DFARS 227.7104-1 (c) Rights in SBIR or STTR data.

(c) Before award of a contract for STTR only, the provision at 252.227-70XX, Additional Preaward Requirements for Small Business Technology Transfer (STTR) Program, requires offerors to submit, as part of the proposal, a **draft** written agreement between the offeror and a partnering research institution that **evidences the parties agreement to negotiate in good faith the allocates allocation** any rights in intellectual property. The contracting officer shall review the agreement to ensure it does not conflict with the provisions of the solicitation or any right to carry out follow-on research. If those conflicts cannot be resolved, the submitted proposal is not eligible for award.

**Rationale:** See SBTC comments below under **252.227-70XX Additional Preaward Requirements for Small Business Technology Transfer (STTR) Program** for the rationale for the changes above.

### DFARS 227.7104-1 (d) Rights in SBIR or STTR data

(d) The Small Business Administration’s SBIR and STTR Program Policy Directive (effective May 2, 2019) provides for special considerations 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 to allow the SBIR/STTR awardee to retain rights in SBIR/STTR data during the SBIR/STTR protection period.



**Rationale:** While SBTC appreciates this added language, it does not go far enough in instructing contracting personnel and others with respect to the treatment of prototypes, or in the protection of the technical data in a prototype. It only cites that Policy Directive discusses this. In the principle of the intention of SBIR Data Rights, specific language should be added prohibiting the disclosure and reverse engineering of prototypes. This gap in the language and the protection of the prototype -- which itself is an embodiment of the technical data -- must be addressed. SBTC calls the Government's attention to the infamous Night Vision goggles case: <https://www.zynsys.com/sbir/articles/nvc-case.htm> in which the failure of a company to attach the SBIR legend to a prototype was a determining factor in the loss of its data rights. In many cases, attaching a legend to a prototype can be impractical and not feasible.

**DFARS 252.227-7013 Rights in Technical Data--Noncommercial Items.**

(2) The clause at DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program[ and Small Business Technology Transfer (STTR) Program, will govern technical data that is SBIR/STTR data.

**(i) Contractor shall insert DFARS 252.227-7018 in any subcontracts that qualify as SBIR/STTR contracts as defined by the SBA SBIR/STTR Policy Directive**

**Rationale:** SBTC members have repeatedly encountered contracting situations in which the application of DFARS 252.227-7018 is misunderstood by prime contractors. SBTC recommends the additional language above to provide explicit instructions regarding the application of 252.227-7018 to subcontracts since it is not normally a flowdown clause but rather one that must be inserted per the Policy Directive.

**DFARS 252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.**

(b) *Applicability.* This clause governs all noncommercial computer software or computer software documentation, except that the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program, will govern any computer software or computer software documentation that is SBIR/STTR data.

**(1) Contractor shall insert DFARS 252.227-7018 in any subcontracts that qualify as SBIR/STTR contracts as defined by the SBA SBIR/STTR Policy Directive**

**Rationale:** Same rationale as previous comment: SBTC members have repeatedly encountered contracting situations in which the application of DFARS 252.227-7018 is misunderstood by prime contractors. SBTC recommends the additional language above to provide explicit instructions regarding the application of 252.227-7018 to subcontracts since it is not normally a flowdown clause but rather one that must be inserted per the Policy Directive.

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

(1) For contracts that require the delivery of technical data, the terms "technical data" and "computer software" are defined in the Rights in Technical Data--Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program[**or Small Business Technology Transfer Program**], **"technical data" and "computer software" are defined in** the Rights in



Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR)[ **Program and Small Business Technology Transfer (STTR)**] Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in Noncommercial Computer[ **Software**] and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program[**or Small Business Technology Transfer Program**], **“computer software” is defined in the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR)[ **Program and Small Business Technology Transfer (STTR) Program**]** clause of this contract.

**Rationale:** SBTC recommends the changes above purely for clarification of meaning.

**DFARS252.227-7018 (a)(13)** “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. **For Computer Software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.**

**Rationale:** SBTC recommends adding the additional language above from the SBA SBIR Policy Directive that specifically addresses Computer Software for both consistency and clarity of meaning.

**DFARS 252.227-7018 (a)(21)** “SBIR/STTR data” means all data developed or generated in the performance of an SBIR/STTR **Phase I, II or III** contract, **purchase order, OTA, award, or subcontract as defined by the Small Business Administration SBIR and STTR Policy Directives.**

**Rationale:** It has been SBTC members’ experience that both prime contractors and government contracting officers are either unaware of or unfamiliar with the SBIR program and specifically with SBIR Phase III contracts. As stated in the SBA SBIR/STTR May 2019 Policy Directive, Phase III contracts are not SBIR/STTR-program funded – which is not necessarily common knowledge to non-SBIR government contracting personnel or prime contractor personnel. Adding the recommended language above clarifies that the SBIR contract can be of any phase and also directs contracting personnel to the appropriate source for the definition of what qualifies a contract or subcontract to be considered an SBIR Phase III.

**DFARS 252.227-7018 (c)(1)(vi) and (c)(1)(vii)**

~~(vi) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, 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]; and~~

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



**Rationale:** SBTC requests that this language be stricken or re-written to provide more clarification. As written, it states that the Government obtains Unlimited Rights in Government purpose license rights or Government purpose rights that have expired. However, this causes some confusion in that in the next section of this clause, DFARS 252.227-7018(c)(2)(ii)(B), it is stated that the Government shall have Government purpose rights perpetually in SBIR/STTR data after the 20-year protection period. This perpetual period should be taken in account in (c)(vi) and (c)(vii) above to clarify this exception to the Unlimited rights.

**DFARS 252.227-7018 (c)(2)(i) and (ii) Government purpose rights.**

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

~~(A) Not SBIR/STTR data, and are—~~

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

~~(2) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or productions 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 execution 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.~~

**Rationale:** SBTC requests the language above be stricken from the proposed revision. While the intent may be to clarify the Government's rights, adding it in this creates confusion as to what rights assign to items delivered under an SBIR/STTR contract. SBTC believes that the Government's concerns are better addressed through the Identification of Data Rights required by 252.227-7017 or through some instruction in the Solicitation.

**DFARS 252.227-7018 (c)(2)(iii) and (iv) Government purpose rights.**

(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 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); ~~or and~~

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



**Rationale:** SBTC requests the revisions above.

**DFARS 252.227-7018(g)(2) Omitted Markings** – SBTC requests this entire paragraph be stricken.

**Rationale:** SBTC requests this language in **DFARS 252.227-7018(g)(2) Omitted Markings** be completely deleted. The majority of small businesses entering the SBIR program consist of extremely small companies, many with fewer than twenty employees with leadership unexperienced in the arena of data rights or intellectual property. They consist of founders who regularly operate in the red, taking no salary, willing to mortgage their homes to launch their business. This is not hyperbole. With the original goals of the SBIR program to foster innovation from small businesses, penalizing them for making inadvertent marking omissions would result in frustrating new entrants from entering the SBIR program. The concerns evidenced by this language may be better addressed in the Government providing templates with Phase I, II and III contract awards for application to technical data deliverables under both prime and subcontracts, rather than simply incorporating DFARS 252.227-7018 into the contract for awardees to decipher.

**[252.227-70XX Additional Preaward Requirements for Small Business Technology Transfer (STTR) Program.**

As prescribed in [227.7104-2\(e\)\(1\)](#), use the following provision:

ADDITIONAL PREAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM (DATE)

(a) *Definitions.* The terms used in this provision have the same meaning as defined in the clause 252.227-70YY contained in this solicitation.

(b) Offers submitted in response to this solicitation shall include the following:

(1) The **draft** written agreement between the Offeror and a partnering research institution, which shall contain—

(i) **An agreement to negotiate in good faith a** specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from the STTR 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 provisions that conflict with the requirements of this solicitation, including the rights of the United States and the Offeror 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 partnering research institution; and~~

~~(ii) The written agreement does not conflict with the requirements of this solicitation.~~



~~\_\_\_\_\_ (c) The Offeror's written representation required by paragraph (a)(2) of this provision shall be submitted 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 (a) of this provision with its offer may render the offer ineligible for award.~~

~~\_\_\_\_\_ (e) If the Offeror is awarded a contract, the written agreement and written representation required by paragraph (a) of this provision shall be included in an attachment to that contract.~~

(End of provision)

**Rationale:** Negotiations concerning intellectual property involve complex considerations of business strategies, projected future markets and costs of commercialization. By requiring a small business and a partnering institution to engage in significant negotiations regarding intellectual property (IP) rights and draft a written agreement to the level of detail required under the language proposed above without a government award in place is major tax on the resources of both parties without guarantee of an award. In addition, the subject matter for negotiations may be different between Phase I and II, and overburdening the negotiation requirements may create a barrier to practically reaching agreement. The parties should be free to negotiate as independent parties their IP rights in a timeframe that gives them the opportunity to better evaluate their respective interests and concerns. Leaving paragraph (b)(1)(iii) in protects the Government's interests.

### **252.227-70YY Additional Postaward Requirements for Small Business Technology Transfer (STTR) Program.**

(b) *Preaward submissions.* Attached to this contract are the following documents, submitted by the Contractor pursuant to the Defense Federal Acquisition Regulation Supplement solicitation provision 252.227-70XX, Additional Preaward Requirements for Small Business Technology Transfer (STTR) Program:

(1) The **draft** written agreement between the Contractor and a partnering research institution;  
and

~~\_\_\_\_\_ (2) The Contractor's written representation that it is satisfied with that written agreement, which does not conflict with the requirements of this contract.~~

~~\_\_\_\_\_ (c) Postaward updates. After award, the Contractor shall not allow any modification to may modify its written agreement with the partnering 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 STTR award;~~

~~\_\_\_\_\_ (3) The Contractor's written, dated, and signed representation that—~~

~~\_\_\_\_\_ (i) The Contractor is satisfied with its written agreement with the partnering research institution, as modified; and~~



~~\_\_\_\_\_ (ii) The written agreement, as modified, does not conflict with the requirements of this contract; and~~

~~\_\_\_\_\_ (4) No provisions that conflict with the requirements of this contract, including the rights of the United States and the Contractor 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 draft** 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 required by paragraph (b)(2) of this clause,~~ to the Contracting Officer for attachment to this contract.*

(End of clause)]

**Rationale:** SBTC questions the need for the parties to provide to the Government the final negotiated terms of allocation of data rights between the parties. As long as the Government's interests are addressed between the Government and the Prime, the allocation of intellectual property rights between the small business and research institution should not be part of the small business concern's contract with the Government.



## APPENDIX B

### DFARS Case 2019-D043 Small Business Innovation Research Data Rights Advance Notice of Proposed Rulemaking

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

\* \* \* \* \*

#### SUBPART 227.71—RIGHTS IN TECHNICAL DATA

\* \* \* \* \*

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

##### [227.7104-1 Rights in SBIR or STTR data.]

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

~~(a)~~ **(b)** Under the clause at [252.227-7018](#), **[Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program,]** the Government obtains **[the following standard license rights:**

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

**(2) [SBIR/STTR] data rights in [all other ]technical data and computer software ~~developed and/or~~ generated under the contract and ~~[appropriately]~~ marked with the SBIR/STTR] data rights legend. 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]** ~~with contract award and ending five~~ **[20] years after [that date unless, subsequent to the award, the agency and the contractor negotiate for some other protection period for the SBIR/STTR data]** ~~completion of the project under which the data were generated.~~ Upon expiration of the **[SBIR/STTR data protection period]** ~~five-year restrictive license,~~ the Government has **[Government purpose]** ~~unlimited~~ rights in the SBIR/STTR data] technical data and computer software. **[These Government purpose rights do not expire.]****

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

**[ (c) Before award of a contract for STTR only, the provision at 252.227-70XX, Additional Preaward Requirements for Small Business Technology Transfer (STTR) Program, requires offerors to submit, as part of the proposal, a ~~draft~~ written agreement between the offeror and a partnering research institution that ~~evidences the parties agreement to negotiate in good faith the allocates allocation of~~ any rights in intellectual property. The contracting**

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officer shall review the agreement to ensure it does not conflict with the provisions of the solicitation or any right to carry out follow-on research. If those conflicts cannot be resolved, the submitted proposal is not eligible for award.

**(d)<sup>1</sup> The Small Business Administration’s SBIR and STTR Program Policy Directive (effective May 2, 2019) provides for special considerations 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 to allow the SBIR/STTR awardee to retain rights in SBIR/STTR data during the SBIR/STTR protection period.**

### **227.7104-2 Solicitation provisions and contract clauses.**

**(a) Use the clause at [252.227-7018](#), Rights in Noncommercial Technical Data and Computer Software–Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program, when technical data or computer software will be generated during any portion of contract performance governed by any phase of the SBIR or STTR program.**

**(1) When only a portion of contract performance is governed by the SBIR or STTR program (e.g., performance of one or more subcontracts qualifies as a Phase III SBIR or STTR award), the clause at [252.227-7018](#) will govern the data that is governed by the SBIR or STTR program.**

**(2) The remainder of the data will be governed by the applicable clauses at [252.227-7013](#), [252.227-7014](#), or [252.227-7015](#), in accordance with the prescriptions for those clauses.]**

**(d[b]) Use the clause at [252.227-7018](#) with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—**

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

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

**(e[c]) Use the following provision and clauses in ~~SBIR~~ solicitations and contracts that include the clause at [252.227-7018](#):**

**(1) [252.227-7016](#), Rights in Bid or Proposal Information;**

**(2) [252.227-7017](#), Identification and Assertion of Use, Release, or Disclosure Restrictions;**

**(3) [252.227-7019](#), Validation of Asserted Restrictions–Computer Software;**

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<sup>1</sup> DFARS case 2018-D071 contains a paragraph that addresses negotiation of special licenses under the SBIR Program. When the final rules for 2018-D071 and 2019-D043 are published, the paragraph will be inserted as a new paragraph (d) in this section.

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(4) [252.227-7030](#), Technical Data—Withholding of Payment; and

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

(~~f~~**[d]**) Use the following clauses and provision in SBIR[ **and STTR**] solicitations and contracts in accordance with the guidance at [227.7103-6](#)(c) and (d):

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

(2) [252.227-7028](#), Technical Data or Computer Software Previously Delivered to the Government.

**[(e) Use the following provision and clause in STTR solicitations and contracts:**

**(1) 252.227-70XX, Additional Preaward Requirements for Small Business Technology Transfer (STTR).**

**(2) 252.227-70YY, Additional Postaward Requirements for Small Business Technology Transfer (STTR).]**

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

\* \* \* \* \*

#### **252.227-7013 Rights in Technical Data—Noncommercial Items.**

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

##### **RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS (~~FEB 2014~~**[DATE]**)**

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

\* \* \* \* \*

**[ (15) “SBIR/STTR data” means all data developed or generated in the performance of a SBIR/STTR contract.]**

**[(16)]~~15~~** “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

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([17]16) “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

**(b) Applicability.** (1) Except as provided in paragraph (b)(2) of this clause, this clause will govern all technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7015, Technical Data—Commercial Items, will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense.

(2) The clause at DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program[ and Small Business Technology Transfer (STTR) Program, will govern technical data that is SBIR/STTR data.

(i) Contractor shall insert DFARS 252.227-7018 in any subcontracts that qualify as SBIR/STTR contracts as defined by the SBA SBIR/STTR Policy Directive

([c]b) *Rights in technical data.* \* \* \*

([d]e) *Contractor rights in technical data.* \* \* \*

([e]d) *Third party copyrighted data.* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

([g]f) *Marking requirements.* \* \* \*

([h]g) *Contractor procedures and records.* \* \* \*

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

([j]i) *Relation to patents.* \* \* \*

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

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

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, **[the data rights portions of 15**

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U.S.C. 638, and the identification, assertion, and delivery processes of paragraph (f) of this clause are recognized and protected.

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

**(i)(A) Except as provided in paragraph (1)(2)(ii) of this clause, use this** ~~This clause~~ **[to]**~~will~~ govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense and

**[(B) Use]**the clause at **[DFARS] 252.227-7015** **[to]**~~will~~ govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. **[**

**(ii) Use the clause at [DFARS] 252.227-7018 to govern technical data that is SBIR/STTR data.**

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

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

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

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

(End of clause)

\* \* \* \* \*

### **252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.**

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

RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND  
NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (~~FEB~~  
2014[DATE])

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

\* \* \* \* \*

[ (16) “SBIR/STTR data” means all data developed or generated in the performance of a SBIR/STTR contract.]

(1[7]6) “Unlimited rights” means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

\* \* \* \* \*

**(b) *Applicability.* This clause governs all noncommercial computer software or computer software documentation, except that the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program, will govern any computer software or computer software documentation that is SBIR/STTR data.**

**(1) Contractor shall insert DFARS 252.227-7018 in any subcontracts that qualify as SBIR/STTR contracts as defined by the SBA SBIR/STTR Policy Directive]**

~~(c)~~*b) Rights in computer software or computer software documentation.* \* \* \*

~~(d)~~*e) Rights in derivative computer software or computer software documentation.* \* \*

~~(e)~~*d) Third party copyrighted computer software or computer software documentation.* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

~~(g)~~*f) Marking requirements.* \* \* \*

~~(h)~~*g) Contractor procedures and records.* \* \* \*

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

~~(j)~~*i) Relation to patents.* \* \* \*

## APPENDIX B

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

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

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

**[(ii) The Contractor shall use the clause at DFARS 252.227-7018 to govern computer software or computer software documentation that is SBIR/STTR data.**

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

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

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

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

\* \* \* \* \*

### **252.227-7015 Technical Data—Commercial Items.**

As prescribed in [227.7102-4](#)(a)(1), use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (~~FEB 2014~~[DATE])

\* \* \* \* \*

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

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

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**(2) The clause at DFARS 252.227-7013, Rights in Technical Data--Noncommercial Items, will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense and is not covered under the SBIR or STTR program.]**

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

~~([d]e)~~ *Additional license rights. \* \* \**

~~([e]d)~~ *Release from liability. \* \* \**

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

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320[,] ~~and~~ 10 U.S.C. 2321[, **and the data rights portions of 15 U.S.C. 638].**

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

**(i) Use the clause at 252.227-7018 to govern technical data that is generated during any portion of performance that is covered under the SBIR or STTR program; and**

**(ii) Use the clause at 252.227-7013 to govern any technical data that is not generated during any portion of performance that is covered under the SBIR or STTR program].**

(End of clause)

\* \* \* \* \*

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

As prescribed in [227.7103-6\(e\)\(1\)](#), [227.7104\[-2\(c\)\]\(e\)\(1\)](#), or [227.7203-6\(b\)](#), use the following clause:

#### RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011[DATE])

(a) *Definitions.*

(1) For contracts that require the delivery of technical data, the terms “technical data” and “computer software” are defined in the Rights in Technical Data--Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program[**or Small Business Technology Transfer Program**], **“technical data” and “computer software” are defined in the Rights in Noncommercial Technical Data and Computer Software--Small Business**



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Innovation Research (SBIR)[ **Program and Small Business Technology Transfer (STTR)**] Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term “computer software” is defined in the Rights in Noncommercial Computer[ **Software**] and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovation Research Program[**or Small Business Technology Transfer Program**], “**computer software**” **is defined in** the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR)[ **Program and Small Business Technology Transfer (STTR) Program**] clause of this contract.

\* \* \* \* \*

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

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

(2) The Government’s right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) [**Program and Small Business Technology Transfer (STTR) ]**Program clause(s) of this contract.

\* \* \* \* \*

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

As prescribed in [227.7103-3\(b\)](#), [227.7104\[-2\(c\)\]\(e\)\(2\)](#), or [227.7203-3\(a\)](#), use the following provision:

#### IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JAN-2011[DATE])

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation—

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data--Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program[ **or Small Business Technology Transfer Program**], the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR)[ **Program and Small Business Technology Transfer (STTR)**] Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software

## APPENDIX B

Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program[**or Small Business Technology Transfer Program**], the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR)[ **Program and Small Business Technology Transfer (STTR)**] Program clause.

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

\* \* \* \* \*

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

\* \* \* \* \*

### **252.227-7018 Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program[ and Small Business Technology Transfer (STTR) Program].**

As prescribed in [227.7104\[-2\]](#)(a), use the following clause:

#### RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE--SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM [AND SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM] (~~FEB 2014~~[DATE])

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

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

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

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

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

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

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

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

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

(6) “Covered Government support contractor” means a contractor (other than a litigation support contractor covered by **[Defense Federal Acquisition Regulation Supplement (DFARS)] 252.204-7014**, **[Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation]**) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

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

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

**[(7) “Data” means recorded information, regardless of form or method of the recording. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.]**

**[(8)7] “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.**

**[(9)8] “Developed” means—**

(i) (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

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type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

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

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

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

(10)9 “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

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

(ii) 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.

(11)0 “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.

(12)1 “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.

(13)2 “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. For Computer Software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

(14)3 “Generated” means technical data or computer software first created in the performance of this contract.

(15)4 “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-

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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.

[ (16) “Government purpose rights” means the rights to—

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

(ii) 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.]

(1[7]5) “Limited rights” means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The production, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

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

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

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

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

(1[8]6) “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.

(1[9]7) “Noncommercial computer software” means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

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(~~[20]18~~) “Restricted rights” apply only to noncommercial computer software and mean the Government's rights to—

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

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

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

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

(A) Use the modified software only as provided in paragraphs (a)(~~[20]18~~)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(~~[20]18~~)(ii), (v), (vi), and (vii) of this clause;

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

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

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at [\[DFARS\] 227.7103-7](#) of the Defense Federal Acquisition Regulation Supplement or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at [\[DFARS\] 252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(~~[20]18~~)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitations in paragraphs (a)(~~[20]18~~)(i) through (iii) of this clause;

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

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

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)([20]18)(iv) of this clause, for any other purpose; and

(C) Such use is subject to the limitations in paragraphs (a)([20]18)(i) through (iii) of this clause; and

(vii) Permit covered Government support contractors in the performance of Government contracts that contain the clause at [DFARS] [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to the paragraph (a)([20]18)(iv) of this clause, for any other purpose; and

(B) Such use is subject to the limitations in paragraphs (a)([20]18)(i) through (iv) of this clause.

[ (21) “SBIR/STTR data” means all data developed or generated in the performance of an SBIR/STTR **Phase I, II or III contract, purchase order, OTA, award, or subcontract as defined by the Small Business Administration SBIR and STTR Policy Directive.**

(22) “SBIR/STTR data protection period” means the period of time 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 protection period begins on the date of award of the contract under which the SBIR/STTR data is developed or generated and ends 20 years after that date unless, subsequent to the award, the agency and the Contractor negotiate for some other protection period for the SBIR/STTR data. This protection period is not extended by any subsequent SBIR/STTR contracts under which any portion of that SBIR/STTR data are 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.]

([23]19) “SBIR/[STTR] data rights” means the Government’s rights, **during the SBIR/STTR data protection period, in SBIR/STTR data covered by paragraph (c)(5) of this clause,** ~~during the SBIR data protection period (specified in paragraph (b)(4) of this clause) to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated under a SBIR award as follows:~~

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

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

(2[4]0) “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 ~~[information] data~~ incidental to contract administration, such as financial and/or management information.

(2[5]1) “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 will govern all SBIR/STTR data. For any data that is not SBIR/STTR data—**

**(1) The clause at DFARS 252.227-7013, Rights in Technical Data–Noncommercial Items, will govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and the clause at DFARS [252.227-7015, Technical Data–Commercial Items](#), will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense;**

**(2) The clause at DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, will govern noncommercial computer software and computer software documentation; and**

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

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

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

(i) Form, fit, and function data;

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

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

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



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

~~\_\_\_\_\_ (vi) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, 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]; and~~

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

[ (2) *Government purpose rights.*

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

~~\_\_\_\_\_ (A) Not SBIR/STTR data, and are—~~

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

~~\_\_\_\_\_ (2) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or productions 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 execution 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, or for such other period as may be negotiated. This period commences upon the expiration of the SBIR data protection period. Upon expiration of any such negotiated period, the Government shall have unlimited rights in the data.

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(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 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); ~~or and~~

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

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

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

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

([5]4) *SBIR/[STTR] data rights.* Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph ([c]b)(1) of this clause, the Government shall have SBIR/[STTR] data rights[, during the SBIR/STTR data protection period of this contract,] in all [SBIR/STTR] ~~technical data or computer software~~ generated under this contract ~~during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.~~

([6]5) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs ([c]b)(1) through ([c]b)([5]4) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(1)[7]5) of this clause or lesser rights in computer software than are enumerated in paragraph (a)([20]18) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.<sup>2</sup>

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<sup>2</sup> DFARS case 2018-D071 will revise this paragraph to specify that negotiation of a special license will happen after contract award, in accordance with the SBIR/STTR Program Policy Directive. This paragraph will also state that the contractor's asserted restrictions that form the basis for the special license shall remain subject to challenge pursuant to 252.227-7019 and 252.227-7037, as applicable.

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

- (i) The parties have agreed otherwise; or
- (ii) Any restrictions on the Government's rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

([8]7) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with paragraph (a)(1[5]4), (a)(1[9]7), or ([c]b)([5]4) of this clause, or in accordance with the terms of a license negotiated under paragraph ([c]b)([6]5) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

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

- (i) Limited rights technical data and restricted rights computer software are authorized to be released or disclosed to covered Government support contractors;
- (ii) The Contractor will be notified of such release or disclosure;
- (iii) The Contractor may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions as identified in a restrictive legend) regarding the covered Government support contractor's use of such data or software, or alternatively that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement; and
- (iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data or software as set forth in the clause at **[DFARS]** [252.227-7025](#), Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The non-disclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement.

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

([e]d) *Third party copyrighted technical data and computer software.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the

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Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (c) 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 furnished with restrictions on use, release, or disclosure.*

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

(2) Except as provided in paragraph (f)(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 Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

\*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.

\*\*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.

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

\*\*\*\*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 of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

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

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend 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. Technical data, computer software, or computer software documentation delivered or otherwise provided under**~~

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~~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 (c)(2) of this subsection) 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.~~

~~(i) The Contractor may request permission to have appropriate legends 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 the applicable clause at DFARS 252.227-7013 or 252.227-7014; 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.~~

~~(ii) The Contracting Officer should grant permission to mark only if the technical data, software, or documentation were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure that are consistent with the proposed restrictive marking.~~

**(32) Government purpose rights markings.** Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

**GOVERNMENT PURPOSE RIGHTS**

Contract No. \_\_\_\_\_

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

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

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

The Government’s rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by paragraph (c)(2) of the Rights in Noncommercial Technical Data and Computer Software —Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of data or portions thereof marked with this legend must also reproduce the markings.

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### (End of legend)

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

#### LIMITED RIGHTS

Contract No. \_\_\_\_\_  
Contractor Name \_\_\_\_\_  
Contractor Address \_\_\_\_\_  
\_\_\_\_\_

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

(End of legend)

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

#### RESTRICTED RIGHTS

Contract No. \_\_\_\_\_  
Contractor Name \_\_\_\_\_  
Contractor Address \_\_\_\_\_  
\_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph ~~(c)~~(4)(3) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program **and Small Business Technology Transfer (STTR) 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)~~4) *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)(5) of this clause, technical data or computer software generated

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under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR/[STTR] data rights[protection] period on the legend:

### SBIR/[STTR] DATA RIGHTS

Contract No. \_\_\_\_\_

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

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

Expiration of SBIR/[STTR] Data  
Rights[Protection]Period \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (c)(4) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program **and Small Business Technology Transfer (STTR) Program** clause contained in the above identified contract. ~~No restrictions apply~~ **a[After the expiration date shown above], the Government has perpetual government purpose rights as provided in paragraph (c)(4) of that clause].** 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 with the following legend:

### SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract No. \_\_\_\_ (Insert contract number) \_\_\_\_, License No. \_\_\_\_ (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)(6) of this clause).

(8) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior



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contract or license. The marking procedures in paragraph ~~(g)~~(1) of this clause shall be followed.

~~(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 furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

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

~~(j)~~ *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 to be delivered under this contract when—

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

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

(2) The limitation in paragraph ~~(k)~~(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

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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.

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

(1) The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, **[the data rights portions of 15 U.S.C. 638, ]**and the identification, assertion, and delivery processes required by paragraph **([f]e)** of this clause are recognized and protected.

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

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

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

**(A) Use the clause at DFARS 252.227-7013 to govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and use the clause at DFARS [252.227-7015](#) to govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense;**

**(B) Use the clause at DFARS 252.227-7014 to govern noncommercial computer software and computer software documentation; and**

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

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

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

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

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

(End of clause)

ALTERNATE I (~~JUN 1995~~[DATE])

As prescribed in [227.7104-2\(b\)](#)(~~d~~), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

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

(2) Upon expiration of the SBIR/[STTR] data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor, prior to the expiration of the SBIR/[STTR] data rights period, or within ~~two~~ [2] years following delivery of the data or software item, or within ~~twenty-four~~ [24] months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government's rights in the published data.

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

\* \* \* \* \*

**[252.227-70XX Additional Preaward Requirements for Small Business Technology Transfer (STTR) Program.**

As prescribed in [227.7104-2](#)(e)(1), use the following provision:

### **ADDITIONAL PREAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM (DATE)**

(a) *Definitions.* The terms used in this provision have the same meaning as defined in the clause 252.227-70YY contained in this solicitation.

(b) Offers submitted in response to this solicitation shall include the following:

(1) The **draft** written agreement between the Offeror and a partnering research institution, which shall contain—

(i) **An agreement to negotiate in good faith a** specific allocation of ownership, rights, and responsibilities for intellectual property (including

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inventions, patents, technical data, and computer software) resulting from the STTR 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 provisions that conflict with the requirements of this solicitation, including the rights of the United States and the Offeror 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 partnering research institution; and~~

~~————(ii) The written agreement does not conflict with the requirements of this solicitation.~~

~~—(e) The Offeror's written representation required by paragraph (a)(2) of this provision shall be submitted 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 (a) of this provision with its offer may render the offer ineligible for award.~~

~~—(e) If the Offeror is awarded a contract, the written agreement and written representation required by paragraph (a) of this provision shall be included in an attachment to that contract.~~

(End of provision)

252.227-70YY Additional Postaward Requirements for Small Business Technology Transfer (STTR) Program.

As prescribed in [227.7104-2\(e\)\(2\)](#), use the following clause:

### ADDITIONAL POSTAWARD REQUIREMENTS FOR SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM (DATE)

(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:

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(i) A nonprofit institution that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual (section 4(3) of the Stevenson-Wydler Technology Innovation Act of 1980); or

(ii) A Federally-funded research or research and development center as identified by the National Science Foundation (<https://www.nsf.gov/statistics/ffrdclist/>) in accordance with the FAR.

“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 the Defense Federal Acquisition Regulation Supplement solicitation provision 252.227-70XX, Additional Preaward Requirements for Small Business Technology Transfer (STTR) Program:

(1) The draft written agreement between the Contractor and a partnering research institution; and

~~\_\_\_\_\_ (2) The Contractor’s written representation that it is satisfied with that written agreement, which does not conflict with the requirements of this contract.~~

~~\_\_\_\_\_ (c) *Postaward updates.* After award, the Contractor shall not allow any modification to its written agreement with the partnering 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 STTR award;~~

~~\_\_\_\_\_ (3) The Contractor’s written, dated, and signed representation that—~~

~~\_\_\_\_\_ (i) The Contractor is satisfied with its written agreement with the partnering research institution, as modified; and~~

~~\_\_\_\_\_ (ii) The written agreement, as modified, does not conflict with the requirements of this contract; and~~

~~\_\_\_\_\_ (4) No provisions that conflict with the requirements of this contract, including the rights of the United States and the Contractor 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 draft written agreement described in paragraph (b)(1) of this clause, the Contractor shall submit a copy of that updated written agreement, and

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~~the updated written representation required by paragraph (b)(2) of this clause~~, to the Contracting Officer for attachment to this contract.

(End of clause)]