Federal Acquisition Regulation (FAR)

52.227-20 Rights in Data—SBIR Program

As prescribed in 27.409(1), insert the following clause:

**Rights in Data—SBIR Program (MAR 1994)**

(a) Definitions.

Computer software, as used in this clause, means computer programs, computer data bases, and documentation thereof.

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

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

(2) The Contractor shall have the right to—
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Rights to SBIR data. (a) The Contractor shall, in accordance with paragraphs (e) and (f) of this clause, incorporate in data delivered under this contract the following SBIR Rights Notice to SBIR data delivered under this contract:

SBIR RIGHTS NOTICE (MAR 1994)

These SBIR data are furnished with SBIR rights under Contract No. ____ (and subcontract ____ if appropriate). For a period of 4 years after acceptance of all items to be delivered under this contract, the Government agrees to use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support Contractors. After the aforesaid 4-year period the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

(b) The Government’s sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(c) Omitted or incorrect markings. (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Contractor may request, within six months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor’s expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied in this contract;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction, at the Contractor’s expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(End of notice)
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(f) Protection of limited rights data. When data other than that listed in subdivisions (b)(1), (i), (ii), and (iii) of this clause are specified to be delivered under this contract and such data qualify as either limited rights data or restricted computer software, the Contractor, if the Contractor desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor’s obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(h) Relationship 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.

(End of clause)

52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(q), insert the following clause:

TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (JAN 1997)

(a) Scope of clause. This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) Technical data declaration. (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

END OF DECLARATION

The Contractor, , hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. (and subcontract , if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

52.227-21(b) Withholding of payment. (1) At any time before final payment under this contract the Contracting Officer may, in the Government’s interest, withhold payment until a reserve not exceeding $100,000 or 5 percent of the amount of this contract, whichever is less, if in the Contracting Officer’s opinion respecting any technical data that are subject to this clause, the Contractor fails to—

(i) Make timely delivery of such technical data as required by this contract;

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

(iii) Make the corrections required by subparagraph (b)(2) of this clause; or

(iv) Make revisions requested under paragraph (c) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.