(v) Disclosed to and reproduced for use by
support service Contractors or their sub-
contractors, subject to the same restrictions
set forth in this contract; and
(vi) Used or copied for use with a replace-
ment computer.

(3) If the commercial computer software is
otherwise available without disclosure re-
strictions, the Contractor licenses it to the
Government without disclosure restrictions.

(c) The Contractor shall affix a notice sub-
stantially as follows to any commercial com-
puter software delivered under this contract:

Notice—Notwithstanding any other lease
or license agreement that may pertain to, or
accompany the delivery of, this computer
software, the rights of the Government re-
garding its use, reproduction and disclosure
are as set forth in Government Contract No.

(End of clause)

52.227-20 Rights in Data—SBIR Pro-
gram.

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

RIGHTS IN DATA—SBIR PROGRAM (DEC 2007)

(a) Definitions. As used in this clause—

Computer database or database means a col-
lection of recorded information in a form ca-
pable of, and for the purpose of, being stored
in, processed, and operated on by a com-
puter. The term does not include computer
software.

Computer software—(1) Means (i) Computer
programs that comprise a series of instruc-
tions, rules, routines, or statements, regard-
less of the media in which recorded, that
allow or cause a computer to perform a spe-
cific operation or series of operations; and
(ii) Recorded information comprising source code listings, design details, algo-
rithms, processes, flow charts, formulas, and
related material that would enable the com-
puter program to be produced, created, or
compiled.

(2) Does not include computer databases or
computer software documentation.

Computer software documentation means
owner’s manuals, user’s manuals, installa-
tion instructions, operating instructions, and
other similar items, regardless of stor-
age medium, that explain the capabilities of
the computer software or provide instruc-
tions for using the software.

Data means recorded information, regard-
less 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, adminis-
trative, cost or pricing or management infor-
mation.

Form, fit, and function data means data re-
ating to items, components, or processes
that are sufficient to enable physical and
functional interchangeability, and data iden-
tifying source, size, configuration, mating
and attachment characteristics, functional
characteristics, and performance require-
ments. For computer software it means data
identifying source, functional characteristics,
and performance requirements but spe-
cifically excludes the source code, algo-
rithms, processes, formulas, and flow charts
of the software.

Limited rights data means data (other than
computer software) developed at private ex-
pense that embody trade secrets or are com-
mercial or financial and confidential or priv-
ileged.

Restricted computer software means com-
puter software developed at private expense
and that is a trade secret, is commercial or
financial or confidential or privileged, or is
copyrighted computer software, including
minor modifications of the computer soft-
ware.

SBIR data means data first produced by a
Contractor that is a small business concern
in performance of a small business innova-
tion research contract issued under the au-
thority of 15 U.S.C. 638, which data are not
generally known, and which data without ob-
liation as to its confidentiality have not
been made available to others by the Con-
tractor or are not already available to the
Government.

SBIR rights means the rights in SBIR data
set forth in the SBIR Rights Notice of para-
graph (d) of this clause.

Technical data means recorded information
(regardless of the form or method of the re-
cording) of a scientific or technical nature
(including computer databases and computer
software documentation). This term does not
include computer software or financial, ad-
ministrative, cost or pricing, or management
data or other information incidental to con-
tract administration. The term includes re-
corded information of a scientific or tech-
nical nature that is included in computer
databases. (See 41 U.S.C. 403(8).)

Unlimited rights means the right of the Gov-
ernment to use, disclose, reproduce, prepare
derivative works, distribute copies to the
public, and perform publicly and display pub-
lcily, in any manner and for any purpose
whatsoever, and to have or permit others to
do so.

(b) Allocation of rights. (1) Except as pro-
vided in paragraph (c) of this clause regard-
ing copyright, the Government shall have
unlimited rights in—

(1) Data specifically identified in this con-
tract as data to be delivered without restric-
tion;
(i) Form, fit, and function data delivered under this contract;
(ii) Data delivered under this contract (except for restricted computer software) that computer software to the extent provided in installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished under this contract; and
(iii) 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.

(b) The Contractor shall have the right to—
(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
(ii) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;
(iii) Substantiate use of, add, or correct SBIR rights or copyright notices and to take other appropriate action, in accordance with subparagraphs (e) and (f) of this clause; and
(iv) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (f) of this clause.

(c) Copyright—

(i) Data first produced in the performance of this contract. (1) Except as otherwise specifically provided in this contract, the Contractor may assert copyright subsisting in any data first produced in the performance of this contract.
(2) The Contractor shall have the right to—
(a) Affix the applicable copyright notice of 17 U.S.C. 401 or 402 and an acknowledgment of Government sponsorship (including contract number).
(b) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.
(3) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract unless the Contractor (i) identifies such data and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(ii) Rights to SBIR data. (1) The Contractor is authorized to affix the following “SBIR Rights Notice” to SBIR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

SBIR Rights Notice (DEC 2007)

These SBIR data are furnished with SBIR rights under Contract No. _____ (and subcontract ______, if applicable). For a period of 4 years, unless extended in accordance with FAR 27.409(b), after acceptance of all items to be delivered under this contract, the Government will 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, these data may be disclosed for use by support Contractors. After the protection period, the Government has a paid-up 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)

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

(e) Omitted or incorrect markings. (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause shall be deemed to have been furnished with unlimited rights. The Government assumes no liability for the disclosure, use, or reproduction of such data.
(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the 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;
(ii) Demonstrates that the omission of the notice was inadvertent;
52.227-21  Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

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

**Technical Data Declaration, Revision, and Withholding of Payment—Major Systems (DEC 2007)**

(a) **Scope of declaration.** The Contractor shall provide in accordance with 41 U.S.C. 418a (d)(7), the following declaration with respect to all technical data that relate to a major system and that are delivered or required to be delivered under this contract or that are delivered within 3 years after acceptance of all items of technical data delivered under this contract unless a different period is set forth in the contract.

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:

"Technical Data Declaration (JAN 1997)

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)

(2) The Government may, at any time during the period covered by this clause, direct the Contractor to make revisions to any deficiency that is not in compliance with contract requirements. The corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) **Technical data revision.** The Contractor shall submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) **Withholding of payment.** (1) At any time before final payment under this contract the Contracting Officer may withhold payment as a reserve up to an amount not exceeding $100,000 or 5 percent of the amount of this contract, whichever is less, if the Contractor fails to—

(i) Make timely delivery of the technical data;

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

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

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

(2) The Contracting Officer may withhold the reserve until the Contractor has complied with the direction or requests of the Contracting Officer or determines that the deficiencies relating to delivered data, arose..."