DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 227, and 252

[Docket DARS–2020–0033]

RIN 0750–AK84

Defense Federal Acquisition Regulation Supplement: Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the data rights portions of the Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directives.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 77680 on December 19, 2022, to implement in the DFARS the intellectual property (*e.g.,* data rights) portions of the Small Business Administration's (SBA's) revised Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directive. DoD had previously published an advance notice of proposed rulemaking (ANPR) at 85 FR 53758 on August 31, 2020. Six respondents submitted written public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments submitted in writing and discussed by the attendees at the virtual public meetings on February 2, 2023, and March 2, 2023, in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

Based on the comments received, the following DFARS guidance, contract clauses, and solicitation provisions are revised:

• DFARS 227.7104–1 is revised to further explain the scope of SBIR/STTR Phase III work to which the SBIR/STTR data rights clauses apply.

• DFARS 227.7104–2 is revised to provide a list of applicable clauses and policies that govern the Government's license rights in any data that are not SBIR/STTR data.

• The following provision and clauses are revised to ensure consistent definitions of the term "SBIR/STTR data" and the term "generated": DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products or Commercial Services; 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation; 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions; and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program.

• DFARS 252.227–7018(c)(2)(ii)(B) is revised to remove language that may have been misinterpreted to imply that special licenses may be negotiated prior to contract award when the standard license rights are SBIR/STTR data rights.

• The provision at DFARS 252.227–7040, Additional Preaward Requirements for Small Business Technology Transfer Program, and the clause at DFARS 252.227–7041, Additional Postaward Requirements for Small Business Technology Transfer Program, are revised to clarify STTR program requirements regarding consistency between the clause at DFARS 252.227–7018 and written agreements between the offeror and a research institution, and regarding written representations related to the written agreements in preaward submissions and postaward updates.

• Proposed changes to the marking requirements related to restrictions on third-party recipients of technical data and computer software (in the clauses at DFARS 252.227–7013, 252.227–7014, and 252.227–7018) have been removed from this rule. Proposed changes regarding restrictive markings on technical data related to commercial technology in the clause at DFARS 252.227–7015, Technical Data—Commercial Products and Commercial Services, have also been removed from this rule.

B. Analysis of Public Comments

1. Restrictive Marking Requirements

Comment: Several respondents provided comments and recommended revisions to proposed changes to restrictive marking requirements in DFARS 252.227–7013, 252.227–7014, 252.227–7015, and 252.227–7018.

Response: As discussed in the ANPR, DoD proposed revisions to address the SBIR/STTR Policy Directive's emphasis on requiring restrictive markings for SBIR/STTR data, while ensuring appropriate procedures to address the inadvertent omission of restrictive markings by SBIR/STTR contractors. These issues are addressed by clarifying that the long-standing requirements for identification and marking of deliverable other than commercial technical data and software, including the procedures to address inadvertent omission of restrictive markings, apply to SBIR/STTR data. For example, this final rule adds references to the clause at DFARS 252.227–7018 at DFARS 227.7103–10 and 227.7103–12 for other than commercial technical data and DFARS 227.7203–10 and 227.7203–12 for other than commercial computer software; and incorporating such procedures into all associated clauses at DFARS 252.227–7013, 252.227–7014, and 252.227–7018).

As discussed in the proposed rule, DoD proposed further revisions to address additional related matters regarding the absence of restrictive markings (*e.g.,* the lack of an unlimited rights marking), and to address additional public comments and recent case precedent regarding requirements, restrictions, and procedures for correcting nonconforming markings, in cases of commercial markings and markings directed to non-Government, third-party recipients of marked data. The vast majority of the public comments were directed to complex matters related to these additional markings issues, rather than the more limited markings topics addressed in the SBIR/STTR Policy Directive. To expedite implementation of the primary SBIR/STTR policy elements of this DFARS case while enabling further consideration of comments and recommendations from the public on proposed revisions directed to such additional important marking requirements in these clauses, these regulatory changes related to marking requirements have been removed from this final rule (*e.g.,* unlimited rights markings, markings for commercial technical data, and markings directed to third-party recipients).

2. Scope and Applicability of Clauses and Scope of License Rights

a. Applicability Section of the Clauses

Comment: Several respondents recommended removal or revision of the proposed applicability sections in the data rights clauses. A respondent asserted that proposed applicability sections of the clauses should indicate that the SBIR/STTR clauses are no longer applicable to SBIR/STTR data once the related product becomes commercial. Other respondents recommended revisions to the proposed applicability sections to remove applicability of DFARS 252.227–7013 to portions of a commercial item that was developed in any part at Government expense. Lastly, other respondents recommended moving the applicability sections to a later section of the clauses to reduce the administrative burden on contractors resulting from changes in paragraph numbering in restrictive markings.

Response: In view of DFARS drafting conventions, DoD added applicability sections to paragraph (b) of the clauses and the associated guidance to contracting officers to clarify contractors' and contracting officers' understanding of the scope of DFARS 252.227–7013, 252.227–7014, 252.227–7015, and 252.227–7018. These revisions reflect the existing prescriptive guidance found in DFARS 227.7102–4, 227.7104, and the SBIR/STTR Policy Directive, none of which exclude or limit the applicability of the SBIR/STTR program requirements once the related product becomes commercial. These revisions will ensure proper application of the SBIR/STTR data rights clause, as prescribed in the SBIR/STTR Policy Directive, and other clauses. For this reason, DoD has not adopted the respondents' recommendations for removal or revision of the applicability sections.

b. Guidance on Scope of SBIR/STTR Contracts, Including Phase III Work

Comment: One respondent asserted that part 227 should be revised to define the scope of SBIR/STTR contracts by referencing the definition in the SBIR/STTR Policy Directive. Another respondent recommended clarifying the scope of Phase III work.

Response: DoD has partially adopted these recommendations. Based on guidance from the SBIR/STTR Policy Directive, DFARS 227.7104–1 is revised to further clarify the scope of applicability of SBIR/STTR data rights and the scope of SBIR/STTR Phase III work.

c. Guidance on the SBIR Protection Period

Comment: A respondent recommended providing guidance on how the SBIR protection period applies to multiple awards at various SBIR phases.

Response: DFARS 227.7104–2(a)(2) provides the guidance recommended by the respondent. In addition, DFARS Procedures, Guidance, and Information 227.7104–2 provides examples and guidance on how the SBIR or SBIR/STTR protection period applies in each example.

d. Guidance on Applicability of Commercial Computer Software Licenses

Comment: A respondent recommended revising DFARS 227.7104–4 to discuss the applicability of commercial computer software licenses.

Response: DoD has adopted this recommendation. DFARS 227.7104–2 is revised to provide a list of applicable clauses and policies that govern the Government's license rights in any data that are not SBIR/STTR data. DFARS 227.7104–2 references commercial computer software and the applicability of licenses customarily provided to the public, in accordance with DFARS 227.7202–3.

e. New STTR Provision and Clause

Comment: A respondent recommended edits to DFARS 252.227–7040 and DFARS 252.227–7041 regarding potential conflicts with DFARS 252.227–7018 in the STTR agreements and associated representation.

Response: DoD has adopted this recommendation. DFARS 252.227–7040 and DFARS 252.227–7041 are revised to clarify requirements for written agreements between the offeror and a research institution, preaward submissions, and postaward updates.

f. Consistent Inclusion of Definitions in the Clauses

Comment: A respondent asserted that DFARS 252.227–7013, 252.227–7014, 252.227–7017, and 252.227–7018 should consistently include definitions of the term "SBIR/STTR" data and "generated" when referenced in the clauses. In addition, a respondent asserted that the definition of the term "generated" in the clause at DFARS 252.227–7013 should not reference computer software.

Response: DFARS 252.227–7013, 252.227–7014, 252.227–7017, and 252.227–7018 are revised to ensure consistent inclusion of the definitions of

the terms "SBIR/STTR data" and "generated." However, DoD has not adopted the second recommendation. For the sake of consistency, the definition of the term "generated" is the same in both DFARS 252.227–7013 and 252.227–7014.

g. License Rights in Computer Software Documentation Under DFARS 252.227–7018

Comment: A respondent asserted that computer software documentation should not be a separate category of unlimited rights data in paragraph (c)(1) of DFARS 252.227–7018. The respondent asserted that the edits to DFARS 252.227–7018 expand the scope of the Government's license rights in computer software documentation.

Response: Under both DFARS 252.227–7014 and DFARS 252.227–7018, the Government has an unlimited rights license in computer software documentation. The edits to DFARS 252.227–7018(c)(1) do not expand the scope of the Government's existing license rights in computer software documentation. For the sake of clarity, these edits align the format of the "unlimited rights" license grant in DFARS 252.227–7014 with DFARS 252.227–7018. The Government's unlimited rights license in computer software documentation is based in the requirements of 10 U.S.C. 3771(b)(3) (see 60 FR 33464, 33467 (June 28, 1995)). The statute at 10 U.S.C. 3771 provides an unlimited rights license in technical data necessary for operation, maintenance, installation, or training purposes. Computer software documentation is technical data. It is defined narrowly to include only owner's manuals, user's manuals, installation instructions, operating instructions, and similar items that explain the capabilities of computer software or provide instructions for using the software. Such data are necessary for operation, maintenance, installation, or training. Consequently, under 10 U.S.C. 3771, a contractor may not restrict the Government's rights to release or disclose computer software documentation or to permit others to use the data. Accordingly, these revisions to DFARS 252.227–7018(c) are aligned with the Government's license rights to computer software documentation in 10 U.S.C. 3771 and DFARS 252.227–7014.

h. Assertion Requirements

Comment: Several respondents commented that the identification and assertion requirements in DFARS 252.227–7017 should not be applied to SBIR/STTR data. Another respondent

recommended that this provision should include permission for SBIR contractors to add new assertions after contract award.

Response: The assertion requirements are necessary to identify and protect the intellectual property interests of contractors and subcontractors under SBIR/STTR contracts, because they provide a practical document that specifically identifies deliverable technical data and software to be furnished with restrictions. These procedures help ensure appropriate protections for deliverable technical data and software, and these protections should be equally applicable to SBIR/STTR data. In addition, these procedures will help clarify the protection period(s) applicable to deliverable SBIR/STTR data (*e.g.,* see discussion at section II.2.c. of this preamble). In addition, DFARS 252.227–7018 already permits post-award revisions to the assertions table ''when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision.'' For these reasons, DoD has not adopted the respondent's recommendations.

3. Evaluation of Proposals and Post-Award Negotiations of SBIR/STTR Data Rights

a. Evaluation of Proposals in SBIR/STTR Contracts

Comment: Respondents asserted that the revisions to DFARS 227.7104–1(c) are inconsistent with the SBIR/STTR Policy Directive because they imply that the Government may reject a proposal due to SBIR data rights. A respondent asserted that the effect of this language will be inconsistent with the intent of the SBIR/STTR Policy Directive and may result in violations of the Directive.

Response: The rule revises DFARS 227.7104–1 to mirror the policies at DFARS 227.7103–10(a)(5) and DFARS 227.7203–10(a)(5), and it adds cross-references at DFARS 227.7104–1 to policies at DFARS 227.7103–10 and DFARS 227.7203–10. These instructions expressly prohibit contracting officers from requiring offerors to relinquish SBIR/STTR data rights or from rejecting offerors solely due to SBIR/STTR data rights restrictions. The guidance also indicates that, during the source selection process, the Government may evaluate the impact of restrictions on the Government's ability to use or disclose technical data or computer software in a manner consistent with acquisition preferences and other

guidance applicable to SBIR/STTR offerors.

b. Negotiation in SBIR/STTR Contracts

Comment: A respondent recommended revisions to DFARS 252.227–7018(c)(2)(ii)(B). The respondent asserted that the proposed rule may be misinterpreted to imply that special licenses may be negotiated prior to contract award where the standard license rights are SBIR/STTR data rights.

Response: DFARS 252.227–7018(c)(2)(ii)(B) is revised to remove this language. In addition, DFARS 227.7104–2(c) is added to indicate that the Government and the SBIR/STTR contractor or subcontractor may negotiate special license rights only after contract award. Note that DFARS Case 2018–D071, Negotiation of Price for Technical Data and Preference for Specially Negotiated Licenses, addresses proposed DFARS revisions to implement policies and procedures regarding negotiation of special licenses, including applicable SBIR/STTR policies and procedures.

4. Guidance in the SBIR/STTR Policy Directive Outside of the Scope of Part 227

a. Restrictions on Prototypes

Comment: Some respondents recommended applying the marking requirements to prototypes, end items, or products themselves.

Response: The ANPR, proposed rule, and this final rule recognize and reference the SBIR/STTR Policy Directive guidance on prototypes in DFARS 227.7104–2(c). Because the license rights and marking requirements prescribed in DFARS Part 227 apply only to technical data and computer software rather than hardware, DoD has not adopted the respondents' recommended revision to Part 227 and the associated clauses.

b. Guidance From SBIR/STTR Policy Directive Not Related to Data Rights

Comment: Respondents recommended revising part 227 to include guidance from the SBIR/STTR Policy Directive that is not related to data rights, including guidance on agency notices of intent to award, SBA notices of intent to appeal, SBA appeals, suspensions of work, and sole-source awards.

Response: The respondents' recommendations are not related to license rights to technical data or software. Therefore, they are beyond the scope of part 227 and this rule.

C. Other Changes

Editorial changes were made, including updates to comport with DFARS content and formatting conventions. The rule also adds cross-references at DFARS 227.7104–1 for SBIR/STTR technical data and software to the policies at DFARS 227.7103–9 through 227.7103–12 and 227.7203–9 through 227.7203–12 related to other than commercial technical data and other than commercial computer software. These policies have also been revised to clarify their applicability to SBIR/STTR data.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products (Including Commercially Available Off-the-Shelf Items), and for Commercial Services

The rule clarifies the following DFARS solicitation provision and contract clauses to reflect the objectives of the SBIR/STTR Policy Directive: 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services; 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation; 252.227–7015, Technical Data—Commercial Products and Commercial Services; 252.227–7016, Rights in Bid or Proposal Information; 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions; 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program; and 252.227–7025, Limitation on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

DFARS clauses 252.227–7013, 252.227–7015, and 252.227–7037 will continue to apply to contracts at or below the SAT and for the acquisition of commercial products, including COTS items, and commercial services. In addition, DFARS 252.227–7018 applies to contracts at or below the SAT and for the acquisition of commercial products, including COTS items, and commercial services.

This rule also creates a new provision and a new clause: (1) DFARS 252.227–7040, Additional Preaward Requirements for Small Business Technology Transfer Program, and (2) DFARS 252.227–7041, Additional Postaward Requirements for Small Business Technology Transfer Program. The new provision and clause apply to

acquisitions at or below the SAT and to acquisitions of commercial products, including COTS items, and commercial services. Not applying this provision and clause to contracts at or below the SAT and for the acquisition of commercial products, including COTS items, and commercial services would exclude contracts intended to be covered by this rule and undermine the overarching purpose of the rule. Consequently, the rule applies to contracts at or below the SAT and for the acquisition of commercial products, including COTS items, and commercial services.

IV. Expected Impact of the Rule

The SBIR/STTR Policy Directive updates the SBIR/STTR data protection period to a single, non-extendable 20-year period, rather than an extendable 5-year period. The rule also provides the Government with perpetual government purpose rights license after the expiration of the SBIR/STTR data protection period, rather than unlimited rights. In addition, the rule implements STTR-unique requirements in the SBIR/STTR Policy Directive related to allocation of intellectual property rights between partnering institutions and contractors under the STTR program. The rule removes an alternate clause for DFARS 252.227–7018, which previously allowed the Government to elect not to exercise its right to publish or authorize others to publish SBIR data.

This rule therefore impacts the Government's license rights in SBIR/STTR data. The SBIR/STTR Policy Directive emphasizes the need to protect the intellectual property interests of small businesses. This rule provides a transparent and consistent framework that protects the intellectual property interests of our small-business industry partners.

V. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

DoD is amending the DFARS to implement the data-rights portions of the revised SBA Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directive. The final combined SBA SBIR/STTR Policy Directive became effective on May 2, 2019. The objectives of this rule are to implement the data-rights portions of the SBA SBIR/STTR Policy Directive. Accordingly, the rule provides the following:

• A single, non-extendable, 20-year SBIR/STTR data protection period, rather than a 5-year period that can be extended indefinitely;

• Perpetual government purpose rights license rights after the expiration of the SBIR/STTR data protection period, rather than unlimited rights; and

• Definitions that harmonize terminology used in the Policy Directive and the Federal Acquisition Regulation and DFARS implementations.

The rule provides a new DFARS solicitation provision and a contract clause applicable to STTR awards where no such coverage has existed. Further, the rule updates the following DFARS provision and clauses: 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services; 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation; 252.227–7015, Technical Data—Commercial Products and Commercial Services; 252.227–7016, Rights in Bid or Proposal Information; 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions; 252.227–7018, Rights in Other Than Commercial Technical Data and

Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program; 252.227–7019, Validation of Asserted Restrictions—Computer Software; and 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

The SBIR/STTR Policy Directive emphasizes the need to protect the intellectual property interests of small businesses. The rule provides a transparent and consistent framework that protects the intellectual property interests of our small-business industry partners.

DoD received no comments in response to the initial regulatory flexibility analysis.

This rule will apply to small entities that have contracts with DoD requiring delivery of data, including technical data and computer software. Based on data from Electronic Data Access for fiscal year (FY) 2022 through FY 2024, DoD estimates that 3,341 contractors may be impacted by the changes in this final rule. Of those entities, approximately 3,258 (98 percent) are small entities.

This rule imposes new reporting, recordkeeping, or other compliance requirements for small entities participating in the STTR program. This rule adds a requirement for offerors responding to solicitations under the STTR program to submit, to be eligible for award, both a written agreement and a written representation to the contracting officer for review. Further, the rule requires STTR contractors to submit both an updated written agreement and an updated written representation to the contracting officer as occasioned by postaward modifications of the written agreement. Based on data from SBA for FY 2022 through FY 2024, DoD estimates that an average of 618 unique small entities are awarded an average of 359 STTR contract actions on an annual basis. DoD estimates that senior employees are necessary to prepare the written agreement and written representation because of the complexity of the matter, and the written representation requires execution by an employee authorized to bind the company.

There are no known, significant, alternative approaches that would meet the requirements.

VIII. Paperwork Reduction Act

This final rule contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35).

This information collection requirement has been assigned OMB Control Number 0750–0010, Defense Federal Acquisition Regulation Supplement Part 227, Patents, Data, and Copyrights; Small Business Technology Transfer Program.

List of Subjects in 48 CFR Parts 212, 227, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 212, 227, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 212, 227, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 2. Amend section 212.301 by revising paragraph (f)(xii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(xii) *Part 227—Patents, Data, and Copyrights.* (A) Use the clause at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, as prescribed in 227.7102–4(b) and 227.7103–6(a). Use the clause with its Alternate I as prescribed in 227.7103–6(b)(1). Use the clause with its Alternate II as prescribed in 227.7103–6(b)(2), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq.*

(B) Use the clause at 252.227–7015, Technical Data—Commercial Products and Commercial Services, as prescribed in 227.7102–4(a)(1), to comply with 10 U.S.C. 3772(a). Use the clause with its Alternate I as prescribed in 227.7102–4(a)(2), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq.*

(C) Use the clause at 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, as prescribed in 227.7104–4(a)(1).

(D) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, as prescribed in 227.7102–4(c).

(E) Use the provision at 252.227–7040, Additional Preaward Requirements for Small Business

Technology Transfer Program, as prescribed in 227.7104–4(c)(1).

(F) Use the clause at 252.227–7041, Additional Postaward Requirements for Small Business Technology Transfer Program, as prescribed in 227.7104–4(c)(2).

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PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 3. Amend section 227.7103–5—
■ a. In paragraph (b)(4) introductory text, by removing "government may" and adding "Government may" in its place;
■ b. In paragraph (b)(4)(i), by removing "non-disclosure" and adding "nondisclosure" in its place;
■ c. By revising paragraphs (b)(5) and (6) and (c)(4).

The revisions read as follows:

227.7103–5 Government rights.

* * * * *

(b) * * *

(5) When technical data marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227–7025, the contract may be modified, prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and nondisclosure agreement.

(6) Contracting activities shall establish procedures to assure that technical data marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and nondisclosure restrictions. Public announcements in the System for Award Management or other publications must provide notice of the use and nondisclosure requirements. Class use and nondisclosure agreements (*e.g.,* agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights data. Documents transmitting government purpose rights data to persons under class agreements shall identify the technical data subject to government purpose rights and the class agreement under which such data are provided.

(c) * * *

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i), (ii), or

(iii) of this section, the intended recipient must complete the use and nondisclosure agreement at 227.7103–7, or receive the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, prior to release or disclosure of the limited rights data.

* * * * *

■ 4. Amend section 227.7103–6 in paragraph (a) by revising the second sentence and adding a new third sentence to read as follows:

227.7103–6 Contract clauses.

(a) * * * Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial products or commercial services developed exclusively at private expense (see 227.7102–4), existing works (see 227.7105), or special works (see 227.7106). When contracting under the Small Business Innovation Research (SBIR) Program or the Small Business Technology Transfer (STTR) Program, see 227.7104–4(a). * * *

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■ 5. Amend section 227.7103–7—
■ a. By revising the section heading and paragraph (a);
■ b. In paragraph (b) and paragraph (c) introductory text, by removing "non-disclosure" and adding "nondisclosure" in its place;
■ e. In the agreement "Use and Non-Disclosure Agreement", by revising the agreement heading, paragraphs (1) and (5) of the agreement, and the parenthetical clause at the end of the agreement.

The revisions read as follows:

227.7103–7 Use and nondisclosure agreement.

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

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data subject to limited rights or SBIR/STTR data rights, or computer software subject to restricted rights or SBIR/STTR data rights must be

stipulated in an attachment to the use and nondisclosure agreement.

(2) For an intended release, disclosure, or authorized use of technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and nondisclosure agreement in paragraph (c) of this section to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display, or disclosure of the data or software.

* * * * *

Use and Nondisclosure Agreement

* * * * *

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR/STTR data rights legends (after expiration of the SBIR/STTR data protection period provided in the SBIR/STTR data rights legend) only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the ''Contractor''), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and nondisclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights legends or SBIR/STTR data rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor's Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights or SBIR/STTR data

rights legends only in performance of Contract Number ____*[insert contract number(s)]*. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend. The Recipient shall promptly notify the software licensor of the execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends. *[To be completed by the contracting officer. See 227.7103–7(a)(2). Omit if none of the data requested is marked with special license rights legends.]*

* * * * *

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys' fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

* * * * *

(End of use and nondisclosure agreement)

■ 6. Revise section 227.7103–9 to read as follows:

227.7103–9   Copyright.

(a) *Copyright license.* (1) The clauses at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, require a contractor to grant or obtain for the Government license rights which permit the Government to reproduce data, distribute copies of the data, publicly perform or display the data or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies

for each of the standard data rights licenses obtained under the clauses. When non-standard license rights in technical data will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data.

(2) The clauses at 252.227–7013 and 252.227–7018 do not permit a contractor to incorporate a third party's copyrighted data into a deliverable data item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third-party copyrighted data in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third-party material or when the use of the third-party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—acquisition of existing and special works.* See 227.7105 or 227.7106 for copyright considerations when acquiring existing or special works that are not SBIR/STTR data.

■ 7. Amend section 227.7103–10—
■ a. In paragraph (a)(3), by revising the third sentence;
■ b. By revising paragraphs (a)(5) and (b);
■ c. In paragraph (c)(1), by removing ''subsection'' and adding ''section'' in its place;
■ d. In paragraph (c)(2) introductory text, by removing ''six months'' and adding ''6 months'' in its place; and
■ e. In paragraph (c)(2)(ii), by removing ''clause at 252.227–7013'' and adding ''clauses at 252.227–7013 and 252.227–7018'' in its place.

The revisions read as follows:

227.7103–10   Contractor identification and marking of technical data to be furnished with restrictive markings.

(a) * * *

(3) * * * Subsequent to contract award, the clauses at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, permit the contractor to make additional assertions under certain conditions. * * *

* * * * *

(5) Information provided by offerors in response to the solicitation provision may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose technical data. However, contracting officers shall not—

(i) Prohibit offerors from offering products for which the offeror is entitled to provide the technical data with restrictions; or

(ii) Require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish rights in technical data except for the standard rights specified in the applicable clauses.

(b) *Contractor marking requirements.* The clauses at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program—

(1) Require a contractor that desires to restrict the Government's rights in technical data to place restrictive markings on the data, provide instructions for the placement of the restrictive markings, and authorize the use of certain restrictive markings; and

(2) Require a contractor to deliver, furnish, or otherwise provide to the Government any technical data in which the Government has previously obtained rights with the Government's preexisting rights in that data unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired. When restrictions are still applicable, the contractor is permitted to mark the data with the appropriate restrictive legend for which the data qualified.

* * * * *

■ 8. Amend section 227.7103–11—
■ a. By revising paragraph (a); and
■ b. In paragraph (b), by removing "Technical Data requires" and adding "Technical Data, requires" in its place.

The revision reads as follows:

227.7103–11 Contractor procedures and records.

(a) The clauses at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program

and Small Business Technology Transfer Program, require a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data.

* * * * *

■ 9. Amend section 227.7103–12 by revising paragraph (a)(1) to read as follows:

227.7103–12 Government right to establish conformity of markings.

(a) * * *

(1) Authorized markings are identified in the clauses at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clauses at 252.227–7013 and 252.227–7018 is also a nonconforming marking.

* * * * *

227.7103–16 [Amended]

■ 10. Amend section 227.7103–16 in paragraph (b) by removing "non-disclosure" and adding "nondisclosure" in its place.

■ 11. Revise section 227.7104 to read as follows:

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

■ 12. Add sections 227.7104–1, 227.7104–2, 227.7104–3, and 227.7104–4 to read as follows:

* * * * *

Sec.
227.7104–1   Policy.
227.7104–2   Rights in SBIR or STTR data.
227.7104–3   STTR program requirements.
227.7104–4   Solicitation provisions and contract clauses.

* * * * *

227.7104–1 Policy.

(a) Do not require an offeror, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components, or processes developed under a SBIR/STTR contract or any rights in computer

software generated under a SBIR/STTR contract except for the standard rights identified at 227.7104–2.

(b) Do not prohibit contractors and offerors from furnishing or offering to furnish items, components, or processes developed under a SBIR/STTR contract or computer software generated under a SBIR/STTR contract solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose such computer software or technical data pertaining to those items, components, or processes may be restricted.

(c) Consistent with the guidance in this section, 227.7103–10(a)(5), 227.7203–10(a)(5), and other acquisition guidance applicable to SBIR/STTR solicitations, the Government may use information provided by offerors in response to a solicitation in the source selection process to evaluate the impact of proposed restrictions on the Government's ability to use or disclose technical data or computer software.

(d) SBIR/STTR data rights apply to SBIR/STTR data that are delivered, developed, or generated in the performance of a contract or agreement that is covered by SBIR/STTR policies, including contracts and subcontracts that include phase III work. Phase III work refers to work that derives from, extends, or completes an effort made under prior SBIR/STTR contracts or agreements, and is funded by sources other than SBIR/STTR programs (see PGI 227.7104–1).

(e) For SBIR/STTR data that is other than commercial technical data, and other than commercial computer software and computer software documentation, see—

(1) 227.7103–9 and 227.7203–9 for guidance on copyright licenses;

(2) 227.7103–10 and 227.7203–10 for guidance on contractor identification and marking of technical data and computer software to be furnished with restrictive markings;

(3) 227.7103–11 and 227.7203–11 for guidance on maintenance of contractor records; and

(4) 227.7103–12 and 227.7203–12 for guidance on nonconforming and unjustified markings.

227.7104–2 Rights in SBIR or STTR data.

(a) Under the clause at 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer 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 or generated under the phase I, II, or III SBIR/STTR contract or subcontract and marked with the SBIR/STTR data rights marking. SBIR/STTR data rights provide the Government limited rights in such technical data and restricted rights in such computer software during the SBIR/STTR data protection period commencing on the date of contract award and ending 20 years after that date unless, after award, the agency and the contractor negotiate for some other protection period for the SBIR/STTR data. Upon expiration of the SBIR/STTR data protection period, the Government has government purpose rights in the SBIR/STTR data. These government purpose rights do not expire. See 252.227–7018 for the definition of the SBIR/STTR data protection period and PGI 227.7104–2 for additional guidance on the SBIR/STTR data protection period.

(b) During the SBIR/STTR data protection period, the Government may not release or disclose technical data or computer software 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) The Government and contractor or subcontractor may negotiate special license rights only after contract award. The Government shall not make contract award conditional on the contractor or subcontractor negotiating or consenting to negotiate special license rights. Negotiation of special license rights is authorized only after contract award by mutual agreement of the parties.

(d) The Small Business Administration's SBIR and STTR Program Policy Directive (effective May 3, 2023) provides for special consideration regarding the handling (*e.g.,* disclosure, reverse engineering) of prototypes generated under SBIR and STTR awards, to avoid effects that may appear to be inconsistent with the SBIR and STTR program objectives and to allow the SBIR/STTR awardee to retain rights in SBIR/STTR data during the SBIR/STTR data protection period.

(e) The clause at 252.227–7018 governs the Government's license rights in SBIR/STTR data. However, the following clauses or guidance governs the Government's license rights in any data that are not SBIR/STTR data:

(1) For technical data pertaining to other than commercial products or commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense, the clause at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, governs such technical data in accordance with 227.7102–4(b).

(2) For technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense, the clause at 252.227–7015, Technical Data—Commercial Products and Commercial Services, governs such technical data, in accordance with 227.7102–4(b).

(3) For other than commercial computer software or computer software documentation, the clause at 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, governs such software and computer software documentation, in accordance with 227.7203–6(a)(1).

(4) For commercial computer software and computer software documentation, the license customarily provided to the public governs such software and documentation, in accordance with 227.7202–3.

227.7104–3 STTR program requirements.

(a) Before award of a contract under the STTR program requirements only, the provision at 252.227–7040, Additional Preaward Requirements for Small Business Technology Transfer Program, requires offerors to submit, as part of their proposal, a written agreement between the offeror and a research institution that allocates any rights in intellectual property and the offeror's written representation that the offeror is satisfied with the agreement. The contracting officer shall review the agreement to ensure it does not conflict with the requirements of the solicitation or any right to carry out follow-on research. If such conflicts exist and cannot be resolved, the submitted proposal is not eligible for award.

(b) At contract award for STTR program requirements, in accordance with the clause at 252.227–7041, Additional Postaward Requirements for Small Business Technology Transfer Program, the contracting officer shall attach to the contract the accepted written agreement and representation provided by the contractor pursuant to the provision at 252.227–7040.

(c) After contract award, for any modification to the written agreement between the contractor and research institution, the contracting officer shall review the agreement and representation to ensure the modified

agreement adheres to the requirements of 252.227–7041. If acceptable, the contracting officer shall attach the modified agreement to the contract.

227.7104–4 Solicitation provisions and contract clauses.

(a)(1) Use the clause at 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when SBIR/STTR data are delivered, developed, or generated during contract performance, and when any portion of contract performance is governed by SBIR or STTR policies (*e.g.,* performance of one or more subcontracts qualifies as a phase III SBIR or STTR award). See 227.7104–1(d) for guidance on contracts or subcontracts governed by SBIR or STTR policies.

(2) For the remainder of the technical data or computer software that is delivered, developed, or generated under the contract, use the following clauses as applicable, in accordance with the prescriptions for those clauses:

(i) 252.227–7013, Rights in Technical Data–Other Than Commercial Products and Commercial Services.

(ii) 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.

(iii) 252.227–7015, Technical Data—Commercial Products and Commercial Services.

(b) Use the following provision in solicitations and the following clauses in solicitations and contracts that include the clause at 252.227–7018, in accordance with the prescriptions for the provision and clauses:

(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.

(4) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government.

(6) 252.227–7030, Technical Data–Withholding of Payment.

(7) 252.227–7037, Validation of Restrictive Markings on Technical Data

(paragraph (e) of the clause contains information that must be included in a challenge).

(c)(1) Use the provision at 252.227–7040, Additional Preaward Requirements for Small Business Technology Transfer Program, in solicitations that contain the clause at 252.227–7041.

(2) Use the clause at 252.227–7041, Additional Postaward Requirements for Small Business Technology Transfer Program, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for acquisitions under the STTR program.

227.7108 [Amended]

■ 13. Amend section 227.7108 in paragraph (a)(5) by removing ''non-disclosure'' and adding ''nondisclosure'' in its place.
■ 14. Amend section 227.7203–5—
■ a. In paragraph (b)(5), by removing ''non-disclosure'' and adding ''nondisclosure'' in its place; and
■ b. By revising paragraph (b)(6) to read as follows:

227.7203–5 Government rights.

* * * * *

(b) * * *

(6) Contracting activities shall establish procedures to assure that computer software or computer software documentation marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and nondisclosure restrictions. Public announcements in the System for Award Management or other publications must provide notice of the use and nondisclosure requirements. Class use and non-disclosure agreements (*e.g.,* agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights software or documentation. Documents transmitting government purpose rights software or documentation to persons under class agreements shall identify the specific software or documentation subject to government purpose rights and the class agreement under which such software or documentation are provided.

* * * * *

■ 15. Amend section 227.7203–6 by revising the section heading to read as follows:

227.7203–6 Solicitation provisions and contract clauses.

* * * * *

■ 16. Amend section 227.7203–9—
■ a. In paragraph (a)(1), by revising the first sentence; and
■ b. By revising paragraphs (a)(2) and (b).

The revisions read as follows:

227.7203–9 Copyright.

(a) * * *

(1) The clauses at 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, require a contractor to grant, or obtain for the Government license rights which permit the Government to reproduce the software or documentation, distribute copies, perform or display the software or documentation and, through the right to modify data, prepare derivative works. * * *

(2) The clauses at 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, do not permit a contractor to incorporate a third party's copyrighted software into a deliverable software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third-party copyrighted software in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third-party material or when the use of the third-party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—special works.* See 227.7205 for copyright considerations when acquiring special works that are not SBIR/STTR data.

■ 17. Amend section 227.7203–10—
■ a. In paragraph (a)(3), by revising the third sentence;
■ b. By revising paragraphs (a)(5) and (b);
■ c. In paragraph (c)(1), by removing ''subsection'' and adding ''section'' in its place;

■ d. In paragraph (c)(2) introductory text, by removing ''six months'' and adding ''6 months'' in its place; and
■ e. In paragraph (c)(2)(ii), by removing ''clause at 252.227–7014'' and adding ''clauses at 252.227–7014 and 252.227–7018'' in its place.

The revisions read as follows:

227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.

(a) * * *

(3) * * * Subsequent to contract award, the clauses at 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, permit a contractor to make additional assertions under certain conditions. * * *

* * * * *

(5) Information provided by offerors in response to the solicitation provision at 252.227–7017 may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose computer software or computer software documentation. However, contracting officers shall not—

(i) Prohibit offerors from offering products for which the offeror is entitled to provide the computer software with restrictions; or

(ii) Require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish rights in computer software except for the standard rights specified in the applicable clauses.

(b) *Contractor marking requirements.* The clauses at 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program—

(1) Require a contractor who desires to restrict the Government's rights in computer software or computer software documentation to place restrictive markings on the software or documentation, provide instructions for the placement of the restrictive markings, and authorize the use of certain restrictive markings. When it is

anticipated that the software will or may be used in combat or situations which simulate combat conditions, do not permit contractors to insert instructions into computer programs that interfere with or delay operation of the software to display a restrictive rights legend or other license notice; and

(2) Require a contractor to deliver, furnish, or otherwise provide to the Government any computer software or computer software documentation in which the Government has previously obtained rights with the Government's preexisting rights in that software or documentation unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, produce, release, or disclose the software or documentation have expired. When restrictions are still applicable, the contractor is permitted to mark the software or documentation with the appropriate restrictive legend.

* * * * *

■ 18. Amend section 227.7203–11 by revising paragraph (a) to read as follows:

227.7203–11 Contractor procedures and records.

(a) The clauses at 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, require a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

* * * * *

■ 19. Amend section 227.7203–12 by revising paragraph (a)(1) to read as follows:

227.7203–12 Government right to establish conformity of markings.

(a) * * *

(1) Authorized markings are identified in the clauses at 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program.

All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clauses at 252.227–7014 and 252.227–7018 is also a nonconforming marking.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 20. Amend section 252.227–7013—
■ a. By revising the introductory text and clause date;
■ b. By revising paragraph (a);
■ c. By redesignating paragraphs (b) through (k) as paragraphs (c) through (l), respectively;
■ d. By adding a new paragraph (b);
■ e. By revising newly redesignated paragraphs (c) introductory text, (c)(2), (c)(3)(i) and (iv), and (c)(4) through (c)(6);
■ f. In newly redesignated paragraph (e), by removing ''paragraph (b)'' and adding ''paragraph (c)'' in its place;
■ g. In newly redesignated paragraph (f)(2), by removing ''(e)(3)'' and adding ''(f)(3)'' in its place;
■ h. In newly redesignated paragraph (f)(3)—
■ i. By removing ''Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.'';
■ ii. By adding a heading to the table; and
■ iii. In note 3, by removing ''SBIR'' and adding ''SBIR/STTR'' in its place;
■ j. In newly redesignated paragraph (f)(4), by removing ''of the Validation of Restrictive Markings on Technical Data'' and adding ''in the DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data,'' in its place;
■ k. By revising newly redesignated paragraph (g);
■ l. In newly redesignated paragraph (i)(1), by removing ''Validation of Restrictive Markings on Technical Data'' and adding ''DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data,'' in its place;
■ m. By revising newly redesignated paragraph (i)(2);
■ n. In newly redesignated paragraph (k)(2), by removing ''(j)(1)'' and adding ''(k)(1)'' in its place;
■ o. By revising newly redesignated paragraph (l);
■ p. In alternate I—
■ i. By revising the clause date and the introductory text;
■ ii. By redesignating paragraph (l) as paragraph (m);
■ iii. In newly redesignated paragraph (m)(2), by removing ''paragraph (l)'' and ''twenty-four (24)'' and adding

''paragraph (m)'' and ''24'' in their places, respectively;
■ q. In alternate II by—
■ i. Revising the clause date and the introductory text; and
■ ii. Redesignating paragraphs (a)(17) and (b)(7) as paragraphs (a) and (c)(7), respectively.

The revisions and additions read as follows:

252.227–7013 Rights in Technical Data— Other Than Commercial Products and Commercial Services.

As prescribed in 227.7102–4(b) and 227.7103–6(a), use the following clause:

Rights in Technical Data—Other Than Commercial Products or Commercial Services (JAN 2025)

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

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

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

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

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

Covered Government support contractor means a contractor (other than a litigation support contractor covered by 252.204–7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort, rather than to directly furnish an end item or service to accomplish a program or effort, provided that the contractor—

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

type developed or produced on the program or effort; and

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

Detailed manufacturing or process data means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

Developed means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof.

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

(2) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense.

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

Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

Form, fit, and function data means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

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

Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

Government purpose rights means the rights to—

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

(2) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

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

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

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to—

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

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

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

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

Small Business Innovation Research/ Small Business Technology Transfer (SBIR/STTR) data means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.

Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

Unlimited rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Applicability.* (1) Except as provided in paragraph (b)(2) of this clause—

(i) This clause governs all technical data pertaining to other than commercial products or commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense; and

(ii) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227–7015, Technical Data—Commercial Products and Commercial Services, governs the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(2) The clause at DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are SBIR/STTR data.

* * * * *

(c) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free,

worldwide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the DFARS 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this contract for rights in computer software documentation):

*   *   *   *   *

(2) *Government purpose rights.* (i) The Government shall have government purpose rights for a 5-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (c)(1)(ii) and (c)(1)(iv) through (c)(1)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The 5-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (c)(2)(i)(B) of this clause. Upon expiration of the 5-year or other negotiated period, the Government shall have unlimited rights in the technical data.

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

(A) Prior to release or disclosure, the intended recipient is subject to the nondisclosure agreement at DFARS 227.7103–7; or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227–7025, 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)(3) of this clause.

*   *   *   *   *

(3) * * *

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

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

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

*   *   *   *   *

(iv) The Contractor acknowledges that—

(A) Limited rights data are authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a nondisclosure agreement; and

(D) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(4) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (c)(1) through (c)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in the definition of "limited rights" of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Technical data that will be delivered, furnished, or otherwise provided to the Government

under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the preexisting rights, unless—

(i) The parties have agreed otherwise; or

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

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with the definition of "limited rights" or paragraph (c)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (c)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

*   *   *   *   *

(f) * * *
(3) * * *

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data

*   *   *   *   *

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

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data 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 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 transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Omitted markings.* (i) Technical data delivered or otherwise provided under this contract without restrictive markings will be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Contracting Officer will not release or disclose the technical data pending evaluation of the request.

(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data at its expense. The request must be received by the Contracting Officer within 6 months following the furnishing or delivery of such technical data, or any extension of that time approved by the Contracting Officer. The Contractor shall—

(A) Identify the technical data 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 contained in this clause; and

(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

(3) *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 Number _____
Contractor Name _____
Contractor Address _____
Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (c)(2) of the DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products or Commercial Services, clause contained in the above identified contract. No restrictions apply after the expiration date shown

above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

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

Limited Rights

Contract Number _____
Contractor Name _____
Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (c)(3) of the DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products or Commercial Services, clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(5) *Special license rights markings.* (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked as follows:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract Number *[Insert contract number],* License Number *[Insert license identifier].* Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (c)(5) of this clause).

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

follow the marking procedures in paragraph (g)(1) of this clause.

* * * * *

(i) * * *

(2) *Nonconforming technical data markings.* A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data, clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within 60 days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

* * * * *

(l) *Subcontractors or suppliers.* (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771–3775, 10 U.S.C. 3781–3786, 15 U.S.C. 638(j)(1)(B)(iii) and (v), and the identification, assertion, and delivery processes of paragraph (f) of this clause are recognized and protected.

(2) Whenever any technical data for other than commercial products or commercial services, or for commercial products or commercial services developed in any part at Government expense, are to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use the following clauses in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial products or commercial services, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties;

(i)(A) Except as provided in paragraph (l)(2)(ii) of this clause, use this clause to govern the technical data pertaining to other than commercial products and commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense.

(B) Use the clause at DFARS 252.227–7015, Technical Data—Commercial Products and Commercial Services, to govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense.

(ii) Use the clause at DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation

Research Program and Small Business Technology Transfer Program, to govern technical data that are 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.

(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.

(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.

(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 obligations to the Government.

* * * * *

Alternate I (JAN 2025). As prescribed in 227.7103–6(b)(1), add the following paragraph (m) to the basic clause:

* * * * *

Alternate II (JAN 2025). As prescribed in 227.7103–6(b)(2), add the following definition of ''Vessel design'' in alphabetical order to paragraph (a) and add paragraph (c)(7) to the basic clause:

* * * * *

■ 21. Amend section 252.227–7014—
■ a. By revising the clause date and paragraph (a);
■ b. By redesignating paragraphs (b) through (k) as paragraphs (c) through (l), respectively;
■ c. By adding a new paragraph (b);
■ d. By revising newly redesignated paragraphs (c)(2), (c)(3), (c)(4)(i), (c)(5) introductory text, and (c)(6);
■ e. In newly redesignated paragraph (e) introductory text, by removing ''paragraph (b)'' and adding ''paragraph (c)'' in its place;
■ f. In newly redesignated paragraph (f)(2), by removing ''paragraph (e)(3)'' and adding ''paragraph (f)(3)'' in its place;
■ g. In newly redesignated paragraph (f)(3)—
■ i. By removing ''Identification and Assertion of Restrictions on the

Government's Use, Release, or Disclosure of Technical Data.'';
■ ii. By revising newly redesignated paragraph (f)(3) table;
■ h. In newly redesignated paragraph (f)(4), by removing ''of the Validation of Asserted Restrictions—Computer Software'' and adding ''in the DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software,'' in its place;
■ i. By revising newly redesignated paragraph (g);
■ j. By revising newly redesignated paragraph (i);
■ k. In newly redesignated paragraph (k)(2), by removing ''(j)(1)'' and adding ''(k)(1)'' in its place;
■ l. By revising newly redesignated paragraph (l);
■ m. In alternate I—
■ i. By revising the clause date and the introductory text;
■ ii. By redesignating paragraph (l) as paragraph (m); and
■ iii. In newly redesignated paragraph (m)(2), by removing ''paragraph (l)'' and ''twenty-four (24)'' and adding ''paragraph (m)'' and ''24'' in their places, respectively.

The revisions and additions read as follows:

252.227–7014 Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation.

* * * * *

Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation (JAN 2025)

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

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

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

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

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

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

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

Computer program means a set of instructions, rules, or routines, recorded

in a form that is capable of causing a computer to perform a specific operation or series of operations.

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

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

Covered Government support contractor means a contractor (other than a litigation support contractor covered by 252.204–7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

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

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

Developed means that—

(1) 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;

(2) 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

(3) 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.

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

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

(2) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

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

Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

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

Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

Government purpose rights means the rights to—

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

(2) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

Minor modification means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

Other than commercial computer software means software that does not qualify as commercial computer software under the definition of ''commercial computer software'' of this clause.

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

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

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

(3) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs (1), (2), and (4) through (7) of this definition;

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

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

(ii) Not release or disclose the modified software except as provided in paragraphs (2), (5), (6), and (7) of this clause;

(5) Use, and 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—

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

(ii) Such contractors or subcontractors are subject to the use and nondisclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS) 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;

(iii) 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 (4) of this definition, for any other purpose; and

(iv) Such use is subject to the limitations in paragraphs (1) through (3) of this definition;

(6) Use, and 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 or overhaul, or to modify the computer software to reflect the emergency repairs or overhaul made, provided that—

(i) The intended recipient is subject to the use and nondisclosure 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;

(ii) 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 (4) of this definition, for any other purpose; and

(iii) Such use is subject to the limitations in paragraphs (1) through (3) of this definition; and

(7) Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 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—

(i) 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 paragraph (4) of this definition, for any other purpose; and

(ii) Such use is subject to the limitations in paragraphs (1) through (4) of this definition.

Small Business Innovation Research/ Small Business Technology Transfer (SBIR/STTR) data means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.

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 other than commercial computer software or other than commercial computer software documentation, except that the clause at DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, governs any computer software or computer software documentation that is SBIR/STTR data.

(c) * * *

(2) *Government purpose rights.*

(i) Except as provided in paragraph (c)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of 5 years unless a different period has been negotiated. Upon expiration of the 5-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at DFARS 227.7103–7; or

(B) The recipient is a Government contractor receiving access to the software or documentation 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.

(3) *Restricted rights.* (i) The Government shall have restricted rights in other than commercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in other than commercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All other than commercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (c)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a nondisclosure agreement; and

(D) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

(4) * * *

(i) The standard license rights granted to the Government under paragraphs (c)(1) through (3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in the definition of ''restricted rights'' of this clause, or lesser rights in computer software documentation than are enumerated in the definition of ''limited rights'' of the DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, clause of this contract.

* * * * *

(5) *Prior government rights.* Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the preexisting rights, unless—

* * * * *

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with the definition of ''restricted rights'' or paragraph (c)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (c)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

* * * * *

(f) * * *

(3) * * *

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

Computer software to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST)	(LIST)	(LIST)	(LIST)

[1] 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 computer software.

[2] Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

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

[4] Corporation, individual, or other person, as appropriate.

Date _____
Printed Name and Title _____
Signature _____

(End of identification and assertion)

*　　*　　*　　*　　*

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

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. 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 computer software, or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Omitted markings.* (i) Computer software or computer software documentation delivered or otherwise provided under this contract without restrictive markings will be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Contracting Officer will not release or disclose the software or documentation pending evaluation of the request.

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

(A) Identify the 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 computer software or computer software documentation contained in this clause; and

(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

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

Government Purpose Rights

Contract Number _____
Contractor Name _____
Contractor Address _____
Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (c)(2) of the DFARS 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

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

Restricted Rights

Contract Number _____
Contractor Name _____
Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (c)(3) of the DFARS 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(5) *Special license rights markings.* (i) Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked as follows:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract Number *[Insert contract number],* License Number *[Insert license identifier].* Any reproduction of computer software, computer software documentation, or portions thereof marked with this

marking must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (c)(5) of this clause).

(6) *Preexisting markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The Contractor shall follow the marking procedures in paragraph (g)(1) of this clause.

* * * * *

(i) *Removal of unjustified and nonconforming markings.* (1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the DFARS 252.227–7019, Validation of Asserted Restrictions— Computer Software, and the DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data, 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 procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings.* A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, or the DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data, clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within 60 days, the Government may ignore or, at the

Contractor's expense, remove or correct any nonconforming markings.

* * * * *

(l) *Subcontractors or suppliers.* (1)(i) Except as provided in paragraph (l)(1)(ii) of this clause, whenever any other than commercial 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 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, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, 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) 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.

* * * * *

Alternate I (JAN 2025). As prescribed in 227.7203–6(a)(2), add the following paragraph (m) to the basic clause:

* * * * *

■ 22. Amend section 252.227–7015—
■ a. By revising the clause date and paragraph (a);
■ b. By redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;
■ c. By adding a new paragraph (b);
■ d. In newly redesignated paragraph (c)(2) introductory text, by removing

''paragraph (b)(1)'' and adding ''paragraph (c)(1)'' in its place;
■ e. By revising newly redesignated paragraph (c)(3);
■ f. By revising newly redesignated paragraph (f);
■ g. In alternate I by—
■ i. Revising the clause date and the introductory text; and
■ ii. Redesignating paragraphs (a)(6) and (b)(4) as paragraphs (a) and (c)(4), respectively.

The revisions and addition read as follows:

252.227–7015 Technical Data— Commercial Products and Commercial Services.

* * * * *

Technical Data—Commercial Products and Commercial Services (JAN 2025)

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

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

Covered Government support contractor means a contractor (other than a litigation support contractor covered by 252.204–7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

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

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

Form, fit, and function data means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

Technical data means recorded information, regardless of the form or method of recording, of a scientific or

technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

(b) *Applicability.* This clause governs the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense. If the commercial product or commercial service was developed in any part at Government expense—

(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, governs technical data that are generated during any portion of performance that is covered under the Small Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program; and

(2) The clause at DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, governs the technical data pertaining to any portion of a commercial product or commercial service that was developed in any part at Government expense and is not covered under the SBIR or STTR program.

(c) * * *

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (c)(2) of this clause 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 (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a nondisclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a nondisclosure agreement; and

(iv) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information

Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

* * * * *

(f) *Subcontractors or suppliers.* (1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771–3775, 10 U.S.C. 3781–3786, and 15 U.S.C. 638(j)(1)(B)(iii) and (v).

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

(i) Use the clause at DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, to govern any technical data that are not generated during any portion of performance that is covered under the SBIR or STTR program.

(ii) Use the clause at 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, to govern technical data that are generated during any portion of performance that is covered under the SBIR or STTR program.

* * * * *

Alternate I (JAN 2025). As prescribed in 227.7102–4(a)(2), add the following definition of ''Vessel design'' in alphabetical order to paragraph (a) and add (c)(4) to the basic clause:

* * * * *

■ 23. Amend section 252.227–7016 by revising the introductory text and clause date and paragraphs (a) and (c)(2) to read as follows:

252.227–7016 Rights in Bid or Proposal Information.

As prescribed in 227.7103–6(e)(1), 227.7104–4(b)(1), or 227.7203–6(b), use the following clause:

Rights in Bid or Proposal Information (JAN 2025)

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

Computer software is defined in—

(1) The 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this contract; or

(2) If this is a contract awarded under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

Technical data is defined in—

(1) The 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, clause of this contract; or

(2) If this is a contract awarded under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

* * * * *

(c) * * *

(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 Defense Federal Acquisition Regulation Supplement (DFARS) 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services; DFARS 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation; or DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

* * * * *

■ 24. Amend section 252.227–7017 by—
■ a. Revising the introductory text and the provision date;
■ b. Revising paragraphs (a) and (b);

■ c. Removing from paragraph (d) introductory text ''suppliers shall'' and adding ''suppliers, shall'' in its place; and

■ d. Revising the paragraph (d) table.

The revisions read as follows:

252.227–7017 Identification and Assertion of Use, Release, or Disclosure Restrictions.

As prescribed in 227.7103–3(b), 227.7104–4(b)(2), or 227.7203–3(a), use the following provision:

Identification and Assertion of Use, Release, or Disclosure Restrictions (JAN 2025)

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

Computer software is defined in—

(1) The 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this solicitation; or

(2) If this solicitation contemplates a contract under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

SBIR/STTR data is defined in the 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

Technical data is defined in—

(1) The 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, clause of this solicitation; or

(2) If this solicitation contemplates a contract under the Small Business Innovation Research Program or Small Business Technology Transfer Program, the 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

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

*   *   *   *   *

(d) * * *

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical data or computer software to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST) [5]	(LIST)	(LIST)	(LIST)

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

[2] Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

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

[4] Corporation, individual, or other person, as appropriate.

[5] Enter "none" when all data or software will be submitted without restrictions.

Date _____
Printed Name and Title _____
Signature _____

(End of identification and assertion)

*   *   *   *   *

■ 25. Amend section 252.227–7018—

■ a. By revising the section heading, introductory text, clause title, and clause date;

■ b. By revising paragraph (a);

■ c. By redesignating paragraphs (b) through (k) as paragraphs (c) through (l), respectively;

■ d. By adding a new paragraph (b);

■ e. By revising newly redesignated paragraph (c);

■ f. In newly redesignated paragraph (e) introductory text, by removing ''paragraph (b)'' and adding ''paragraph (c)'' in its place;

■ g. In newly redesignated paragraph (f)(2), by removing ''paragraph (e)(3)'' and adding ''paragraph (f)(3)'' in its place;

■ h. By revising the newly redesignated paragraph (f)(3) table;

■ i. In newly redesignated paragraph (f)(4), by removing ''of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data'' and adding ''in the DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, and/ or DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data,'' in its place;

■ j. By revising newly redesignated paragraphs (g) and (i);

■ k. In newly redesignated paragraph (k)(2) introductory text, by removing ''(j)(1)'' and adding ''(k)(1)'' in its place;

■ l. By revising newly redesignated paragraph (l); and

■ m. By removing Alternate I.

The revisions and addition read as follows:

252.227–7018 Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program.

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

Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technlogy Transfer Program (JAN 2025)

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

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

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

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

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

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

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

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

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

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

Covered Government support contractor means a contractor (other than a litigation support contractor covered by 252.204–7014) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(1) Is not affiliated with the prime contractor or a first-tier subcontractor on

the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

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

Detailed manufacturing or process data means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

Developed means—

(1) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ''developed,'' the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

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

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

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

Developed exclusively at private expense means development was accomplished entirely with costs

charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

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

(2) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

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

Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

Form, fit, and function data means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

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

Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

Government purpose rights means the rights to—

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

(2) Release or disclose technical data or computer software outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

Limited rights means the rights to use, modify, reproduce, release, perform,

display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

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

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure to—

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

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

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

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

Minor modification means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

Other than commercial computer software means software that does not qualify as commercial computer software under the definition of ''commercial computer software'' of this clause.

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

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

(2) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer.

Transferred programs remain subject to the provisions of this clause;

(3) Make a reasonable number of copies of the computer software required for the purposes of safekeeping (archive), backup, modification, or other activities authorized in paragraphs (1), (2), and (4) through (7) of this definition;

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

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

(ii) Not release or disclose the modified software except as provided in paragraphs (2), (5), (6), and (7) of this definition;

(5) Use, and 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—

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

(ii) Such contractors or subcontractors are subject to the nondisclosure agreement at 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 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(iii) 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)(18)(iv) of this clause, for any other purpose; and

(iv) Such use is subject to the limitations in paragraphs (1) through (3) of this definition;

(6) Use, and 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 emergency repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(i) The intended recipient is subject to the nondisclosure agreement at

227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends;

(ii) 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 (4) of this definition, for any other purpose; and

(iii) Such use is subject to the limitations in paragraphs (1) through (3) of this definition; and

(7) Use, modify, reproduce, perform, display, or release or disclose computer software to a person authorized to receive restricted rights computer software for management and oversight of a program or effort, and permit covered Government support contractors in the performance of covered Government support contracts that contain the clause at 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—

(i) 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 paragraph (4) of this definition, for any other purpose; and

(ii) Such use is subject to the limitations in paragraphs (1) through (4) of this definition.

Small Business Innovation Research/ Small Business Technology Transfer (SBIR/STTR) data means all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.

SBIR/STTR data protection period means the time period during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR data protection period begins on the date of award of the contract under which the SBIR/STTR data are developed or generated and ends 20 years after that date unless, after the award, the agency and the Contractor negotiate for some other protection period for the SBIR/STTR data

developed or generated under that contract.

SBIR/STTR data rights means the Government's rights, during the SBIR/STTR data protection period, in SBIR/STTR data covered by paragraph (c)(5) of this clause, as follows:

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

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

Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

Unlimited rights means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Applicability.* This clause governs all SBIR/STTR data. For any data that are not SBIR/STTR data—

(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, governs the technical data pertaining to other than commercial products and commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense, and the clause at DFARS 252.227–7015, Technical Data—Commercial Products and Commercial Services, governs the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense;

(2) The clause at DFARS 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, governs other than commercial computer software and other than commercial computer software documentation; and

(3) A license consistent with DFARS 227.7202 governs commercial computer software and commercial computer software documentation.

(c) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, worldwide, nonexclusive, irrevocable license rights in technical data or other than commercial computer software. All

rights not granted to the Government are retained by the Contractor.

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

(i) Form, fit, and function data;

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

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

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

(v) Technical data or computer software in which the Government has acquired previously unlimited rights under another Government contract or as a result of negotiations

(vi) Technical data or computer software furnished to the Government, under this or any other Government contract or subcontract thereunder, with license rights for which all restrictive conditions on the Government have expired; and

(vii) Computer software documentation generated or required to be delivered under this contract.

(2) Government purpose rights.

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

(A) Not SBIR/STTR data, and are—

(*1*) Technical data 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 production of items, components, or processes; or

(B) SBIR/STTR data, upon expiration of the SBIR/STTR data protection period.

(ii)(A) For the non-SBIR/STTR data described in paragraph (c)(2)(i)(A) of this clause, the Government shall have government purpose rights for a period of 5 years, or such other period as may be negotiated. This period shall

commence upon award of the contract, subcontract, letter contract (or similar contractual instrument), or contract modification (including a modification to exercise an option) that required development of the items, components, or processes, or creation of the data described in paragraph (c)(2)(i)(A)(*2*) of this clause. Upon expiration of the 5-year or other negotiated period, the Government shall have unlimited rights in the data.

(B) For the SBIR/STTR data described in paragraph (c)(2)(i)(B) of this clause, the Government shall have government purpose rights perpetually. This Government purpose rights period commences upon the expiration of the SBIR/STTR data protection period.

(iii) The Government shall not release or disclose data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the nondisclosure agreement at DFARS 227.7103–7; or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227–7025, 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 marking prescribed in paragraph (g)(3) of this clause.

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

(4) *Restricted rights in computer software.* The Government shall have restricted rights in other than commercial computer software 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) *SBIR/STTR data rights.* Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (c)(1) of this clause, the Government shall

have SBIR/STTR data rights, during the SBIR/STTR data protection period of this contract, in all SBIR/STTR data developed or generated under this contract. This protection period is not extended by any subsequent SBIR/STTR contracts under which any portion of that SBIR/STTR data is used or delivered. The SBIR/STTR data protection period of any such subsequent SBIR/STTR contract applies only to the SBIR/STTR data that are developed or generated under that subsequent contract. The SBIR/STTR data protection period is governed by the version of this clause that is incorporated in the contract under which the SBIR/STTR data are developed or generated. If the SBIR/STTR data were developed or generated under a contract that included a previous version of this clause, then the SBIR/STTR data protection period is governed by that previous version of this clause.

(6) *Specifically negotiated license rights.* After contract award, the standard license rights granted to the Government under paragraphs (c)(1) through (5) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in the definition of ''limited rights'' of this clause or lesser rights in computer software than are enumerated in the definition of ''restricted rights'' of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

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

(i) The parties have agreed otherwise; or

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

(8) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with the definitions of ''Government purpose,'' ''other than commercial computer software,'' or paragraph (c)(5) of this clause, or in accordance with the terms of a license negotiated under paragraph (c)(6) 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) *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 nondisclosure 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 nondisclosure agreement; and

(iv) Any such nondisclosure agreement shall address the restrictions on the covered Government support contractor's use of the data or software as set forth in the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The nondisclosure agreement shall not include any additional terms and conditions unless mutually agreed to by the parties to the nondisclosure agreement.

*　　*　　*　　*　　*

(f) * * *

(3) * * *

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 [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST)	(LIST)	(LIST)	(LIST)

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

[2] Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

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

[4] Corporation, individual, or other person, as appropriate.

Date _____
Printed Name and Title _____
Signature _____

(End of identification and assertion)

*　　*　　*　　*　　*

(g) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (g)(8) of this clause, only the following markings are authorized under this contract: the government purpose rights marking at paragraph (g)(3) of this clause; the limited rights legend at paragraph (g)(4) of this clause; the restricted rights legend at paragraph (g)(5) of this clause; the SBIR/STTR data rights legend at paragraph (g)(6) of this clause; or the special license rights legend at paragraph (g)(7) of this clause; and a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer

software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Omitted markings.* (i) Technical data, computer software, or computer software documentation delivered or otherwise provided under this contract without restrictive markings shall be presumed to have been delivered with unlimited rights. To the extent practicable, if the Contractor has requested permission (see paragraph (g)(2)(ii) of this clause) to correct an inadvertent omission of markings, the Contracting Officer will not release or disclose the technical data, software, or documentation pending evaluation of the request.

(ii) The Contractor may request permission to have conforming and justified restrictive markings placed on unmarked technical data, computer software, or computer software documentation at its expense. The request must be received by the Contracting Officer within 6 months following the furnishing or delivery of such technical data, software, or documentation, or any extension of that time approved by the Contracting Officer. The Contractor shall—

(A) Identify the technical data, software, or documentation that should have been marked;

(B) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and

conforms with the requirements for the marking of technical data, computer software, or computer software documentation contained in this clause; and

(C) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data, software, or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) *Government purpose rights markings.* Technical data or computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

Government Purpose Rights

Contract Number _____
Contractor Name _____
Contractor Address _____
Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data or computer software are restricted by paragraph (c)(2) of the DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or computer software or portions thereof marked with this restrictive marking must also reproduce the markings.

(End of legend)

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

Limited Rights

Contract Number _____
Contractor Name _____
Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (c)(3) of the DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the

Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

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

Restricted Rights

Contract Number _____
Contractor Name _____
Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (c)(4) of the DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

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

SBIR/STTR Data Rights

Contract Number _____
Contractor Name _____
Contractor Address _____
Expiration of SBIR/STTR Data Protection Period _____
Expiration of the Government Purpose Rights Period _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (c)(5) of the DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause contained in the above identified contract. After the

SBIR/STTR data protection period expiration date shown above, the Government has perpetual government purpose rights as provided in paragraph (c)(4) of that clause, unless otherwise indicated by the government purpose rights expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(7) *Special license rights markings.* (i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked as follows:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract Number *[Insert contract number],* License Number *[Insert license identifier].* Any reproduction of technical data, computer software, or portions thereof marked with this marking must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (c)(7) of this clause).

(8) *Preexisting data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The Contractor shall follow the marking procedures in paragraph (g)(1) of this clause.

* * * * *

(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 DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data, and the DFARS 252.227–7019, 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 DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data, or the DFARS 252.227–7019, 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 60 days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

* * * * *

(l) *Subcontractors or suppliers.* (1) The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 3771–3775, 10 U.S.C. 3781–3786, 15 U.S.C. 638(j)(1)(B)(iii) and (v), and the identification, assertion, and delivery processes required by paragraph (f) of this clause are recognized and protected.

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

(i) Except as provided in paragraph (l)(2)(ii) of this clause, use this clause to govern SBIR/STTR data.

(ii) For data that are not SBIR/STTR data—

(A) Use the clause at DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, to govern the technical data pertaining to other than commercial products or commercial services or to any portion of a commercial product or commercial service that was developed in any part at Government expense, and use the clause at DFARS 252.227–7015, Technical Data—Commercial Products and Commercial Services, to govern the technical data pertaining to any portion of a commercial product or commercial service that was developed exclusively at private expense;

(B) Use the DFARS clause at 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, to govern other than commercial computer software and computer software documentation; and

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

(iii) No other clause shall be used to 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.

(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.

* * * * *

■ 26. Amend section 252.227–7019—
■ a. By revising the introductory text and clause date;
■ b. By revising paragraphs (a) and (d)(2)(i)(B);
■ c. In paragraph (e)(1), by revising the second sentence;
■ d. In paragraph (f)(1)(ii), by removing ''sixty (60) days'' and adding ''60 days'' in its place;
■ e. In paragraph (f)(1)(iv), by removing ''three-year'' and adding ''3-year'' in its place;
■ f. In paragraph (f)(7), by removing ''provides the contractor'' and adding ''provides the Contractor'' in its place; and

■ g. By revising paragraph (g).
The revisions read as follows:

252.227–7019 Validation of Asserted Restrictions—Computer Software.

As prescribed in 227.7104–4(b)(3) or 227.7203–6(c), use the following clause:

Validation of Asserted Restrictions—Computer Software (JAN 2025)

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

Contractor, unless otherwise specifically indicated, means the Contractor and its subcontractors or suppliers.

Other terms are defined in the 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, clause of this contract.

* * * * *

(d) * * *
(2) * * *
(i) * * *

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restrictions and return the corrected software to the Contracting Officer within 60 days following receipt of the software, the Contracting Officer may correct or strike the markings at the Contractor's expense;

* * * * *

(e) * * *

(1) * * * Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within 3 years after the date(s) the software is delivered or otherwise furnished to the Government, or 3 years following final payment under this contract, whichever is later.

* * * * *

(g) *Contractor appeal—Government obligation.* (1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—

(i) For a period of 90 days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of 1 year from the date of the Contracting Officer's final decision if, within the first 90 days following the Contracting Officer's final

decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has—

(A) Appealed to the Board of Contract Appeals or filed suit in an appropriate court within 90 days; or

(B) Submitted, within 90 days, a notice of intent to file suit in an appropriate court and filed suit within 1 year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within 90 days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within 90 days from such date; or

(iii) File suit within 1 year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within 90 days following the date of the Contracting Officer's final decision.

(3)(i) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with—

(A) Government purpose legends for any purpose, and authorize others to do so; or

(B) Restricted or special license rights for government purposes only.

(ii) The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at Defense Federal Acquisition Regulation Supplement (DFARS) 227.7103–7, or is a Government contractor receiving access to the 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. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its

asserted restrictions are ultimately upheld.

* * * * *

■ 27. Amend section 252.227–7025—
■ a. By revising the introductory text and clause date;
■ b. By adding paragraph (a) introductory text;
■ c. By revising paragraphs (a)(3) and (b)(1) through (4);
■ d. In paragraph (b)(5)(iii), by removing ''thirty (30) days'' and adding ''30 days'' in its place;
■ e. By revising paragraph (b)(5)(iv);
■ f. in paragraph (c)(2), by removing ''third party beneficiary'' and adding ''third-party beneficiary'' in its place;
■ g. In paragraph (d), by removing ''non-disclosure'' and adding ''nondisclosure'' in its place; and
■ h. By adding ''(End of clause)'' at the end of the clause.

The revisions and addition read as follows:

252.227–7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

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

Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (JAN 2025)

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

* * * * *

(3) For Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program contracts, the terms ''covered Government support contractor,'' ''government purpose rights,'' ''limited rights,'' ''restricted rights,'' and ''SBIR/STTR data rights'' are defined in the clause at 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program.

(b) * * *

(1) *GFI marked with limited rights, restricted rights, or SBIR/STTR data rights legends.* (i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR/STTR technical data or computer software received with SBIR/STTR data rights legends (during the SBIR/STTR data protection period) only in the performance of this contract. The Contractor shall not, without the

express written permission of the party whose name appears in the legend, release or disclose such data or software to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the nondisclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) *GFI marked with specially negotiated license rights legends.* (i) The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the nondisclosure agreement at DFARS 227.7103–7. The Contractor shall modify paragraph (1)(c) of the nondisclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(ii) If the Contractor is a covered Government support contractor, the Contractor may also be subject to some or all of the additional terms and conditions at paragraph (b)(5) of this clause, to the extent such terms and conditions are required by the specially negotiated license.

(4) *GFI technical data marked with commercial restrictive legends.* (i) The Contractor shall use, modify, reproduce, perform, or display technical data that are or pertain to a commercial product or commercial service and are received

from the Government with a commercial restrictive legend (*i.e.,* marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the technical data to manufacture additional quantities of the commercial products or commercial services, or release or disclose such data to any unauthorized person.

(ii) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(5) of this clause.

(5) * * *

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

* * * * *

(End of clause)

■ 28. Revise the section 252.227–7028 heading and introductory text to read as follows:

252.227–7028 Technical Data or Computer Software Previously Delivered to the Government.

As prescribed in 227.7103–6(d), 227.7104–4(b)(5), or 227.7203–6(e), use the following provision:

* * * * *

■ 29. Revise the section 252.227–7030 heading and introductory text to read as follows:

252.227–7030 Technical Data— Withholding of Payment.

As prescribed at 227.7103–6(e)(2) or 227.7104–4(b)(6), use the following clause:

* * * * *

■ 30. Revise the section 252.227–7037 introductory text to read as follows:

252.227–7037 Validation of Restrictive Markings on Technical Data.

As prescribed in 227.7102–4(c), 227.7103–6(e)(3), 227.7104–4(b)(7), or 227.7203–6(f), use the following clause:

* * * * *

■ 31. Add sections 252.227–7040 and 252.227–7041 to read as follows:

252.227–7040 Additional Preaward Requirements for Small Business Technology Transfer Program.

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

Additional Preaward Requirements for Small Business Technology Transfer Program (JAN 2025)

(a) *Definitions.* As used in this provision, the terms ''research institution'' and ''United States'' have the meaning given in the 252.227–7041, Additional Postaward Requirements for Small Business Technology Transfer Program, clause of this solicitation.

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

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

(i) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from the Small Business Technology Transfer (STTR) Program award;

(ii) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a STTR award; and

(iii) No terms or conditions that conflict with the requirements of the clause at 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this provision, including the rights of the United States, the Offeror, and the research institution regarding intellectual property, and regarding any right to carry out follow-on research.

(2) The Offeror's written representation that—

(i) The Offeror is satisfied with its written agreement with the research institution; and

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

(c) The Offeror shall submit the written representation required by paragraph (b)(2) of this provision as an attachment to its offer, dated and signed by an official authorized to contractually obligate the Offeror.

(d) The Offeror's failure to submit the written agreement or written representation required by paragraph (b) of this provision with its offer may render the offer ineligible for award.

(e) If the Offeror is awarded a contract, the Contracting Officer will include the written agreement and written representation required by

paragraph (b) of this provision in an attachment to that contract.

(End of provision)

252.227–7041 Additional Postaward Requirements for Small Business Technology Transfer Program.

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

Additional Postaward Requirements for Small Business Technology Transfer Program (JAN 2025)

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

Research institution means an institution or entity that—

(1) Has a place of business located in the United States;

(2) Operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; and

(3) Is either—

(i) A nonprofit institution that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual (section 4(3) of the Stevenson-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 guidance at Federal Acquisition Regulation 35.017.

United States means the 50 States and the District of Columbia, the territories and possessions of the Government, the Commonwealth of Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(b) *Preaward submissions.* Attached to this contract are the following documents, submitted by the Contractor pursuant to Defense Federal Acquisition Regulation Supplement (DFARS) 252.227–7040, Additional Preaward Requirements for Small Business Technology Transfer Program:

(1) The written agreement between the Contractor and a research institution.

(2) The Contractor's written representation that the Contractor is satisfied with that written agreement, which does not conflict with the clause at DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause.

(c) *Postaward updates.* The Contractor shall not allow any modification to its written agreement with the research institution, unless the written agreement, as modified, contains—

(1) A specific allocation of ownership, rights, and responsibilities for intellectual property (including inventions, patents, technical data, and computer software) resulting from performance of this contract;

(2) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a Small Business Technology Transfer Program award;

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

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

(ii) The written agreement, as modified, does not conflict with the clause at DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause; and

(4) No terms and conditions that conflict with the clause at DFARS 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software–Small Business Innovation Research Program and Small Business Technology Transfer Program, or this clause, including the rights of the United States, the Contractor, and the research institution regarding intellectual property, and regarding any right to carry out follow-on research.

(d) *Submission of updated agreement.* Within 30 days of execution of the modified written agreement described in paragraph (b)(1) of this clause, the Contractor shall submit a copy of that updated written agreement and the updated written representation described in paragraph (b)(2) of this clause to the Contracting Officer for review and attachment to this contract.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

[Docket DARS–2024–0023]

RIN 0750–AL80

Defense Federal Acquisition Regulation Supplement: Task Order and Delivery Order Contracting for Architectural and Engineering Services (DFARS Case 2023–D007)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2023 that provides directions for awarding architectural and engineering service task orders and delivery orders under multiple-award contracts.

DATES: Effective December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 89 FR 60853 on July 29, 2024, to implement section 802 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263), which amends 10 U.S.C. 3406. Section 802 added a requirement at 10 U.S.C. 3406(h)(1) for DoD contracting officers to use qualification-based selections when awarding task orders and delivery orders for architectural and engineering (AE) services in accordance with Federal Acquisition Regulation (FAR) subpart 36.6 and 40 U.S.C. chapter 11 (The Brooks Architect Engineer Act). Section 802 also added, at 10 U.S.C. 3406(h)(2), direction that prevents contracting officers from routinely requesting additional information regarding qualifications when awarding task orders or delivery orders under a multiple-award contract. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A