



Understanding and Leveraging Data Rights in DoD Acquisitions

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“Data Rights” → Government License Rights in TD and CS

“Data Rights” is a shorthand way to refer to the Government’s license rights in two major categories of valuable intellectual property:

- Technical Data (TD) includes any recorded information of a scientific or technical nature (e.g., product design or maintenance data, and computer software documentation (CSD)).
- Computer software (CS) includes executable code, source code, code listings, design details, processes, flow charts, and related material.

Anticipating the Need for Data and Data Rights

An Intellectual Property Strategy should help a Program Manager to ensure that all TD, CS, and associated license rights required for procurement and sustainment of a system are available throughout the system’s life cycle.

- Sustainment activities include reprocurement, maintenance, repair, modifications or interfacing/ interoperability activities, and upgrades or technology insertion.
- A priced option may be used to address uncertainty regarding data deliverables or data rights that may be needed in the future but that are not ordered up front.
- The deferred delivery clause (DFARS 252.227-7026) and necessary CDRLs are used to delay delivery, when the specific data requirements are known, until the Government determines **when** the data deliverables should be provided.
- The deferred ordering clause (DFARS 252.227-7027) is used to delay the ordering of data generated in the performance of a contract until the Government determines what and when **additional data** is needed.
- The Data Accession List (DAL) is a useful tool to facilitate deferred ordering.

Data Delivery and Data Rights Issues

Data deliverables and data rights issues may be identified and resolved by:

- Requiring Offerors to assert all restrictions on deliverable TD and CS—both commercial and noncommercial—up front, in their proposals,
- Evaluating the data deliverables and data rights being offered, and
- Negotiating for mutually agreeable special license rights where standard license categories do not meet both parties’ needs.

Data Rights Granted to the Government

The Government’s license rights to a contractor’s TD and CS generally depend upon the extent to which the Government funded the development of the technology, whether the technology is commercial or noncommercial, and any negotiations for mutually agreeable “special” license agreements.

Some types of data qualify for Unlimited Rights regardless of development funding source, such as “form, fit, and function data” (FFF), and data necessary for operation, maintenance, installation, and training (OMIT) purposes (excluding detailed manufacturing and process data).

Data Delivery Requirements

The DFARS clauses do not require delivery of TD or CS—the Government must include specific delivery requirements in each contract. Mere access may not protect the Government’s interests. Consider a priced option when needs for data delivery or data rights are uncertain.



Rights Category	Applies to These Types of TD or CS	Rights Criteria	Permitted Uses Within the Government	Permitted Uses by Third Parties Outside the Government ¹
Unlimited Rights (UR)	Noncommercial TD and CS	Developed exclusively at Government expense, and certain types of data (e.g., FFF, OMIT, CSD)	All uses; no restrictions	
Government Purpose Rights (GPR)	Noncommercial TD and CS	Developed with mixed funding	All uses; no restrictions	For "Government Purposes" only; no commercial use ¹
Limited Rights (LR)	Noncommercial TD only	Developed exclusively at private expense	Unlimited; except may not be used for manufacture	Emergency repair or overhaul ^{1,2}
Restricted Rights (RR)	Noncommercial CS only	Developed exclusively at private expense	Only one computer at a time; minimum backup copies; modification ³	Emergency repair/overhaul; certain service/maintenance contracts ^{1,2}
Specifically Negotiated License Rights	Any/all TD and CS—including commercial TD and CS	Mutual agreement of the parties; use whenever the standard categories do not meet both parties' needs	As negotiated by the parties; however, must not be less than LR in noncommercial TD and must not be less than RR in noncommercial CS (consult with legal counsel as other limits apply)	
SBIR Data Rights	Noncommercial TD and CS	All TD or CS generated under an SBIR contract	The equivalent of Unlimited Rights (UR) in OMIT and FFF data; the equivalent of Limited Rights (LR) in all other delivered TD; the equivalent of Restricted Rights (RR) in CS	
Commercial TD License Rights	Commercial TD only	TD related to commercial items (developed exclusively at private expense) ⁴	The equivalent of Unlimited Rights (UR) in OMIT and FFF data; the equivalent of Limited Rights (LR) in all other delivered TD	
Commercial CS Licenses	Commercial CS only	Any commercial CS or CS documentation	As specified in the commercial license customarily offered to the public ⁵	

¹ All third party use under Government's license is subject to Government authorization. For rights categories other than UR, releases or disclosures to third parties must be accompanied by either the Non-Disclosure Agreement (NDA) from DFARS 227.7103-7 or must occur under a contract containing DFARS 252.227-7025. A notice requirement also applies to releases of LR data and RR software.

² In addition to footnote 1 NDA and notice requirements, all authorized Covered Government Support Contractors with access to LR data or RR software must sign an NDA directly with the owner of the data/software, if required by the owner.

³ See DFARS 252.227-7014(a) for more information.

⁴ Commercial items are presumed to have been developed exclusively at private expense, except in the case of major systems [see DFARS 227.7103-13(c)(2) and 252.227-7037(b)]. However, when the Government has paid for any portion of development, then the noncommercial TD clause (252.227-7013) is used for TD pertaining to those portions, and the commercial TD clause (-7015) is used for TD relating to the portions developed exclusively at private expense [227.7103-6(a)].

⁵ Such licenses must be consistent with Federal procurement law and satisfy user needs.

Data Rights and Intellectual Property Strategy Resources

Laws, Regulations, and Policies

- Title 10, U.S. Code, Sections 2320 and 2321
- Defense Federal Acquisition Regulation Supplement (DFARS):
 - 227.71 (Rights in Technical Data)
 - 227.72 (Rights in Computer Software and Computer Software Documentation)
 - 252.227-7013, -7014, -7015, -7017, -7018, -7019, -7026, -7027, -7029, -7030, and -7037
- Better Buying Power

Additional Guidance

- <https://acc.dau.mil/osa>
- Army Guide for the Preparation of a Program Product Data Management Strategy (Under Revision)
- DoD Open Systems Architecture Contract Guidebook for Program Managers
- Acquiring and Enforcing the Government's Rights in Technical Data and Computer Software Under Department of Defense Contracts, Air Force Space and Missile Systems Center

