

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 212, 227 and 252**

[Docket DARS–2020–0033]

RIN 0750–AK71

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

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend 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. DoD will hold a public meeting to hear the views of interested parties.

DATES: *Comment due date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before February 17, 2023, to be considered in the formation of a final rule.

Public meeting date: A virtual public meeting will be held on February 2, 2023, from 1 p.m. to 5 p.m., Eastern time. The public meeting will end at the stated time, or when the discussion ends, whichever comes first.

Registration date: Registration to attend the public meeting must be received no later than close of business on January 26, 2023. Information on how to register for the public meeting may be found under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: *Public Meeting:* A virtual public meeting will be held using Zoom video conferencing software.

Submission of Comments: Submit comments identified by DFARS Case 2019–D043, using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “DFARS Case 2019–D043.” Select “Comment” and follow the instructions provided to submit a comment. Please include “DFARS Case 2019–D043” on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2019–D043 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any

personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

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

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is proposing to revise the DFARS to implement the intellectual property (e.g., data rights) portions of the revised Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program Policy Directives. The Small Business Administration (SBA) published in the **Federal Register** proposed amendments to the SBIR Program and STTR Program Policy Directives, which included combining the two directives in a single document, on April 7, 2016, at 81 FR 20483. The final combined SBIR/STTR Policy Directive was published on April 2, 2019, at 84 FR 12794, and became effective on May 2, 2019.

DoD published an advance notice of proposed rulemaking (ANPR) on August 31, 2020, at 85 FR 53758, providing draft DFARS revisions and requesting written public comments. DoD hosted public meetings to obtain the views of interested parties regarding the ANPR on January 14, 2021, and January 15, 2021.

The preamble to the ANPR provided detailed explanations of revisions related to—

- 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 (GPR) 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 (FAR) and DFARS implementations.

Eight respondents submitted public comments in response to the ANPR.

II. Public Meeting

DoD is interested in continuing a dialogue with experts and interested parties in Government and the private sector regarding amending the DFARS to implement the SBIR/STTR Policy Directive.

Registration: Individuals wishing to participate in the virtual meeting must register by January 26, 2023, to facilitate entry to the meeting. Interested parties

may register for the meeting by sending the following information via email to osd.dfars@mail.mil and including “Public Meeting, DFARS Case 2019–D043” in the subject line of the message:

- Full name.
- Valid email address, which will be used for admittance to the meeting.
- Valid telephone number, which will serve as a secondary connection method. Registrants must provide the telephone number they plan on using to connect to the virtual meeting.
- Company or organization name.
- Whether the individual desires to make a presentation.

Pre-registered individuals will receive instructions for connecting using the Zoom video conferencing software not more than one week before the meeting is scheduled to commence.

Presentations: Presentations will be limited to 5 minutes per company or organization. This limit may be subject to adjustment, depending on the number of entities requesting to present, in order to ensure adequate time for discussion. If you wish to make a presentation, please submit an electronic copy of your presentation via email to osd.dfars@mail.mil no later than the registration date for the specific meeting. Each presentation should be in PowerPoint to facilitate projection during the public meeting and should include the presenter’s name, title, organization affiliation, telephone number, and email address on the cover page.

Correspondence, Comments, and Presentations: Please cite “Public Meeting, DFARS Case 2019–D043” in all correspondence related to the public meeting. There will be no transcription at the meeting. The submitted presentations will be the only record of the public meeting and will be posted to the following website at the conclusion of the public meeting: https://www.acq.osd.mil/dpap/dars/technical_data_rights.html.

III. Discussion and Analysis

DoD reviewed the public comments in the development of the proposed rule. A discussion of the comments and the changes made to the proposed rule in response to those comments is provided, as follows:

A. Summary of Significant Changes from the ANPR

Edits are made to the proposed rule based on the public comments. The proposed rule clarifies DFARS 227.7104–1, 227.7104–2, and 227.7104–3, and the following DFARS contract clauses to reflect the objectives of the SBIR/STTR Policy Directive—

- 252.227–7013, Rights in Technical Data—Noncommercial Items;
- 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation;
- 252.227–7015, Technical Data—Commercial Items;
- 252.227–7016, Rights in Bid or Proposal Information; and
- 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

Edits are made to the guidance at DFARS 227.7104–1 that mirror the policies at DFARS 227.7103–1(c) and (d). These instructions prohibit contracting officers from requiring offerors to relinquish SBIR/STTR data rights or from rejecting offerors solely due to SBIR/STTR data rights restrictions. Similar to the guidance at DFARS 227.7103–10(a)(5), the proposed rule 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.

DFARS 252.227–7018 and the associated guidance to contracting officers are revised to indicate that the term SBIR/STTR data encompasses all technical data or computer software developed or generated in the performance of a phase I, II, or III SBIR/STTR contract or subcontract.

The proposed rule also deletes the Alternate I clause for DFARS 252.227–7018. The clause is directed to the Government's publication of technical data or software with a perpetual GPR license, which conflicts with the scope of that license.

In addition, the proposed rule updates the marking requirements in DFARS 252.227–7018 to require an “unlimited rights” marking for technical data or software furnished to the Government without restrictions. Because the current marking paradigm does not include an “unlimited rights” marking, Government personnel may be unsure whether technical data or computer software with no restrictive markings has been provided with an “unlimited rights” license or the restrictive marking was inadvertently omitted. The SBIR/STTR Policy Directive emphasizes the need to protect the intellectual property (IP) interests of small businesses. To achieve this goal, DoD has updated its marking requirements to resolve a long-standing gap that may negatively impact the IP interests of small businesses. The

proposed rule provides a transparent and consistent framework that permits the Government to easily identify and resolve inadvertently omitted restrictive markings. To ensure consistency between DFARS 252.227–7018 and the other noncommercial technical data and software rights clauses, this revision has also been applied to DFARS 252.227–7013 and DFARS 252.227–7014 for noncommercial technical data and software. For similar reasons, the “omitted markings” procedures in DFARS 252.227–7018 (which are discussed in the guidance at DFARS 227.7103–10 and 227.7203–10) have been applied to DFARS 252.227–7013 and DFARS 252.227–7014. This allows DoD to better protect the IP interests of all of its industry partners.

Lastly, the proposed rule includes revisions to the requirements governing restrictive markings to address concerns raised in the public comments and recent case precedent (see, e.g., *The Boeing Co. v. Secretary of the Air Force*, 983 F.3d 1321 (Fed. Cir. 2020)). The proposed revisions clarify the long-standing intent of the DFARS marking requirements to limit restrictive markings on noncommercial technical data and software to those specified in the clauses (including prohibiting restrictive markings directed to non-Governmental third parties) and add an unlimited rights marking to mitigate against the risk of loss of IP rights by an inadvertent omission of restrictive markings. The prohibition of nonstandard markings, including restrictive markings directed to third-party recipients, will reduce confusion for Government personnel seeking to understand the Government's rights, and avoids the need to make case-by-case determinations regarding whether a nonstandard marking—

- Must be corrected as nonconforming;
- Can be ignored as marking the contractor intended to apply only to non-Governmental third parties; or
- Otherwise is not intended to identify and restrict the Government's rights.

This revision facilitates the Government's review of technical data and software deliverables by increasing standardization of noncommercial restrictive markings throughout all DoD contracts. In addition, these simplified marking procedures may be more understandable to small businesses that are unfamiliar with DoD's marking requirements.

For similar reasons to avoid confusion regarding the Government's license rights, the proposed rule also clarifies the more open-ended marking

requirement for commercial technical data at DFARS 252.227–7015. The revisions preserve the long-standing approach allowing contractor discretion to choose and use its favored restrictive marking, consistent with commercial practices or other contractor preferences, while clarifying only that the restrictive marking used must accurately reflect the Government's license rights. The proposed revision will prevent confusing restrictive markings that do not comport with the Government's license rights, while preserving flexibility for commercial contractors in how they elect to mark their technical data.

The proposed rule bolsters the existing standards for marking requirements while fostering efficiency, transparency, and consistency for both DoD and its contractors.

B. Analysis of Public Comments

1. Virtual Public Meetings

Comment: One respondent recommended that the DAR Council host a virtual public meeting to discuss the substance of the ANPR.

Response: DoD hosted virtual public meetings on January 14, 2021, and January 15, 2021. The meetings received positive feedback, and DoD plans to host additional virtual public meetings in the future.

2. Clarifying Definitions in DFARS 252.227–7018 and Related Clauses

a. Clarifying the Definition of “Data”

Comment: A respondent asserted that the definition of the term “data” implies that the scope is broader than technical data and computer software. The respondent recommended removing this term and replacing all instances of the term “data” with technical data, computer software, or both (as applicable).

Response: DoD has adopted the respondent's recommendation.

b. Clarifying the Definition of “SBIR/STTR Data”

Comment: Several respondents recommended revising the definition of SBIR/STTR data. The respondents recommended referencing SBIR subcontracts in the definition. The respondents also recommended emphasizing that SBIR/STTR data applies in the context of phase I, II, and III contracts. Furthermore, the respondents recommend referencing agreements that are not governed by the FAR, such as other transaction agreements, grants, cooperative agreements, and cooperative research and development agreements. In

addition, the respondents recommended referencing instruments such as task orders, delivery orders, and blanket purchase agreements.

Response: DoD partially adopted the respondents' recommendations by referencing phase I, II, and III SBIR/STTR contracts in the definition of SBIR/STTR data in DFARS 252.227-7018 and the guidance at DFARS 227.7104-2(a)(2). Because the DFARS governs FAR-based procurement contracts only, DoD has not revised the definition of SBIR/STTR data to include references to instruments that are not procurement contracts.

c. Clarifying Definitions in DFARS 252.227-7016

Comment: One respondent stated that there are portions of paragraph (a) of DFARS 252.227-7016 where the subject of these sentences is unclear, and recommended revising the clause to resolve these ambiguities.

Response: DoD reviewed DFARS 252.227-7016, paragraph (a), and made clarifying changes in response to the comment.

d. Definition of "Form, Fit, and Function Data"

Comment: A respondent recommended revising the definition of the term "form, fit, and function data" in DFARS 252.227-7018 to encompass technical data identifying source, functional characteristics, and performance requirements for computer software.

Response: This recommended revision is related to DFARS Case 2021-D005, which implements recent statutory amendments in 10 U.S.C. 2320 and 2446a related to modular open systems approaches. To ensure thorough and consistent application of this revision throughout DFARS 252.227-7013, DFARS 252.227-7015, and DFARS 252.227-7018, this revision will be addressed in DFARS Case 2021-D005.

e. Consistent Use of the Terms "Generated" and "Developed"

Comment: One respondent noted that the term "generated" is referenced in DFARS 252.227-7013, but the term is not defined. Therefore, the respondent recommended revising DFARS 252.227-7013 to incorporate the definition of "generated" in DFARS 252.227-7018. Some respondents recommended revising DFARS 252.227-7018(c)(5) and the associated guidance at DFARS 227.7104 to reference technical data or software "developed" under SBIR/STTR contracts, to ensure consistent use of this term through this clause. Lastly, a

respondent recommended revising the definition of the term "SBIR/STTR data" to reference technical data or computer software "first or originally" developed or generated under SBIR/STTR contracts.

Response: DoD adopted these suggested revisions except for the last one, revising the definition of the term "SBIR/STTR data". DoD did not adopt this suggested revision because it could create confusion (e.g., "first created" is already included in the definition of the term "generated").

3. Resolving Inconsistencies with the Perpetual Government Purpose Rights License in DFARS 252.227-7018

In the ANPR, DoD revised DFARS 252.227-7018(c) to indicate that the Government is granted a perpetual GPR license after the SBIR/STTR protection period has expired. Various respondents noted ambiguities or inconsistencies that resulted from this revision.

a. Alternate I Clause for DFARS 252.227-7018

Comment: One respondent asserted that the Alternate I clause for DFARS 252.227-7018 encourages publication of the SBIR/STTR data, inducing SBIR/STTR firms to publish its data as a requirement for the award. For this reason, the respondent recommended deletion of the Alternate I clause. Another respondent recommended revising the Alternate I clause to specify the Government's license rights after the SBIR/STTR protection period expires.

Response: The perpetual GPR license does not permit publication of SBIR/STTR data after the SBIR/STTR protection period expires. Because the Alternate I clause no longer comports with the Government's license rights in the proposed rule, DoD has proposed to remove the Alternate I clause for DFARS 252.227-7018 in this proposed rule.

b. Clarifying the Scope of DFARS 252.227-7018(c)(1)(vi)

Comment: A respondent asserted that the scope of the technical data and software referenced in DFARS 252.227-7018(c)(1)(vi) is unclear, in view of the Government's perpetual GPR license after the SBIR/STTR protection period expires.

Response: DoD has clarified the scope of DFARS 252.227-7018(c)(1)(vi) to reference "[t]echnical 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."

4. Restrictive Markings

a. Applicability of the Marking Requirements to Prototypes and Other Products

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

Response: As discussed in the ANPR, the proposed rule recognizes and references 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 proposed revision to part 227 and the associated clauses.

b. Clarifying References to Restrictive Markings in DFARS 227.7104-1

Comment: One respondent asserted that it is unclear whether the word "appropriately" in the phrase "appropriately marked with the SBIR/STTR data rights legend" in DFARS 227.7104-1(a)(2) implies that the marking: (1) conforms with the marking requirements; or (2) is justified under the license terms in DFARS 252.227-7018. The respondent recommended resolving this ambiguity by removing the word "appropriately" in DFARS 227.7104-1(a)(2).

Response: DoD has adopted the recommended revision to remove the word "appropriately" in DFARS 227.7104-2(a)(2).

c. Protecting the IP Rights of Contractors by Reducing the Risk of Inadvertent Omission of Restrictive Markings

Comment: A respondent noted that the SBIR/STTR program is intended to foster innovation from small businesses. The respondent asserted the current marking requirements penalize small businesses for making inadvertent marking omissions, and the respondent indicated that the proposed marking requirements will discourage new entrants from entering the SBIR/STTR program. The respondent recommended deletion of the "Omitted Markings" procedures in DFARS 252.227-7018(g)(2), and suggested that the Government provide templates for guidance on restrictive markings on technical data and software.

Response: Restrictive markings provide a critical tool for protection of the IP interests of DoD contractors, facilitating proper handling of technical data and software by the Government. The "omitted markings" procedures in DFARS 252.227-7018 provide contractors with a mechanism for

correcting inadvertently omitted markings, to ensure that contractors have ample opportunities to identify restrictions on technical data or software. These procedures are based on the guidance on “Terms of Agreement Under SBIR/STTR Awards” in the SBIR/STTR Policy Directive, and are consistent with long-standing DFARS policy and procedures for omitted markings on noncommercial technical data and computer software (see DFARS 227.7103–10(c) and DFARS 227.7203–10(c)). Deletion of these procedures would be inconsistent with the guidance in the Policy Directive and established DoD noncommercial marking policy and procedure.

DoD acknowledges the respondent’s concerns about the risk of a contractor unintentionally losing protection for its IP rights by inadvertently omitting a required restrictive legend. The risk of inadvertent omission may also be increased by the current lack of a requirement for an “unlimited rights” marking, relying on the absence of a restrictive marking to indicate that the Government has unlimited rights. Under this approach, contractor and Government personnel may be unsure whether technical data or computer software delivered with no restrictive markings has been intentionally provided with “unlimited rights,” or whether a restrictive marking was inadvertently omitted. The proposed rule resolves this long-standing issue with the marking requirements by adding an unlimited rights marking, similar to an approach previously proposed in DFARS Case 2010–D001 (see 75 FR 59412, 59448 September 27, 2010). The revisions establish a marking requirement for all delivered technical data and computer software governed by the SBIR/STTR data rights clause, eliminating the potential confusion regarding whether unmarked data or software is provided with unlimited rights or whether a restrictive marking was inadvertently omitted. The proposed rule provides a transparent and consistent framework that permits both Government and contractor personnel to easily identify and avoid inadvertently omitted restrictive markings, which improves protections for contractors’ IP interests. To ensure consistency and address this same concern in the markings required for all noncommercial technical data and computer software, the unlimited rights marking requirement has also been applied to DFARS 252.227–7013 and DFARS 252.227–7014. To minimize administrative burdens for contractors,

the unlimited rights marking is identical in all of these clauses.

5. Narrowing or Clarifying the Scope of Certain Categories of License Rights

a. Narrowing the Scope of the GPR License and SBIR/STTR Data Rights License

Comment: One respondent recommended narrowing the GPR license to only allow distribution to covered Government support contractors. Another respondent recommended narrowing the scope of the SBIR/STTR data rights license to prohibit uses of SBIR/STTR data within the Government that would “undermine the small business concern or successor firm’s future commercialization of the associated technology.”

Response: DoD has not adopted the respondent’s recommended revisions because the current scope of the SBIR/STTR data rights comports with the guidance set forth in the 2019 SBIR/STTR Policy Directive. Furthermore, the respondent’s recommendation does not provide a clear scope of uses permitted within the Government.

b. Clarifying the Scope of the GPR License

Comment: A respondent recommended that the proposed rule provide examples of “competitive procurements” to clarify the scope of the GPR license.

Response: DoD has not adopted the recommended revision because this term is well known and is used in various clauses. In addition, examples of competitive procurements may be misconstrued to narrow the scope of the GPR license.

c. Restrictions on Third-Party Recipients of SBIR/STTR Data

Comment: One of the respondents recommended emphasizing restrictions on third-party use of SBIR/STTR data in DFARS 252.227–7018(a)(16)(ii).

Response: DoD has not adopted the respondent’s recommended revisions because the restrictions on use of SBIR/STTR data by third-party recipients are already specified in DFARS 252.227–7018(c)(2)(iii).

d. Royalty-Free License Rights

Comment: A respondent recommended revising the scope of the SBIR/STTR data rights license to grant a royalty-free license only upon expiration of the SBIR/STTR data protection period. The respondent also recommended clarifying DFARS 252.227–7018(c) to describe how the royalty-free license rights differ or complement the Government’s license

rights after the SBIR/STTR data protection period expires.

Response: In DFARS 252.227–7018(c), the grant of “royalty-free, worldwide, nonexclusive, irrevocable license rights” applies to all of the categories of license rights in paragraph (c) of the clause. DoD has not adopted the recommended revisions, because the Government’s license rights under this clause comport with the guidance provided in the 2019 SBIR/STTR Policy Directive; and the scope of the Government’s license rights, during and after the SBIR/STTR protection period, are already defined in DFARS 252.227–7018 paragraphs (c)(2)(ii)(B) and (c)(5).

6. Restructuring Clauses and Revising the Scope of the Applicability of Clauses

Comment: A respondent recommended removing any revisions to the guidance at DFARS 227.7104 related to SBIR/STTR data that later is considered commercial. The respondent also recommended deleting the applicability section in DFARS 252.227–7015(b); revising the applicability sections in DFARS 252.227–7013(b) and DFARS 252.227–7018(b); and retaining the original order of the paragraphs in DFARS 252.227–7013 and 252.227–7018. The respondent also recommended adding an alternate version of DFARS 252.227–7015 that would recognize funding contributions of the Government and the contractors. Other respondents recommended restructuring DFARS 252.227–7018 to combine it with other license rights clauses. One respondent recommended clarification of the scope of the clauses (as discussed in paragraph (b) of these clauses) and the further explanation of application of the prescribed license rights.

Response: DoD added applicability sections to 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 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. In response to recommendations related to substantial restructuring of the aforementioned clauses and allocation of licenses in DFARS 252.227–7015 based on funding contributions, these revisions are out of scope for the current case.

7. Narrowing the Flowdown Requirements in DFARS 252.227–7018 and Applicability of the Assertion Requirements in DFARS 252.227–7017

a. Assertion Requirements

Comment: One respondent asserted that the identification and assertion requirements in DFARS 252.227–7017 should not be applied to SBIR/STTR data. The respondent provides the following assertions to support this position: (1) technical data and software requirements are not known prior to contract award; (2) the assertions requirement is redundant because Contract Data Requirements Lists (CDRLs) already specify the applicable distribution statement; and (3) some details of software deliverables (such as the software name and version) are unknown prior to contract award.

Response: The assertion requirements are necessary to identify and protect the IP interests of contractors and subcontractors under SBIR/STTR contracts, because they provide a practical document that specifically identifies SBIR/STTR technical data and software furnished with restrictions. CDRLs (which should be included with the solicitation) provide the technical data and software requirements that will allow contractors to identify SBIR/STTR data with restrictions and provide information to the Government on license restrictions. This assertion requirement allows the Government to ask offerors or contractors questions about assertions to efficiently resolve any misconceptions about the Government's license rights. The assertions should clearly identify the technical data or software furnished with restrictions so the Government can understand what deliverables are being referenced and cross-reference the assertions table and the restrictive markings on the deliverables. Assertions tables and CDRLs are not redundant, because distribution statements do not provide specifics of license restrictions, and assertions tables allow contracting officer technical representatives to cross-reference the asserted restrictions with technical data and software deliverables to ensure that they are properly marked. DFARS 252.227–7018 permits 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.

b. Flowdown Requirements

Comment: A respondent asserted that the flowdown requirements may significantly increase administrative burden on small businesses. Another respondent recommended revising DFARS 252.227–7013 and 252.227–7014 to indicate that DFARS 252.227–7018 will govern technical data that is SBIR/STTR data. Some respondents recommended revising the flowdown requirements to require contractors to insert DFARS 252.227–7018 in any SBIR/STTR subcontracts as defined by the SBA SBIR/STTR Policy Directive.

Response: These flowdown requirements ensure that subcontractors, including small businesses, are afforded the same protections as prime contractors. If there are no subcontracts for the small business prime contractor or the subcontractors are not delivering technical data, then the flowdown requirements are not applicable. Regardless of the flowdown requirements, the prime contractor is obligated to ensure that the Government is granted the standard license rights under the applicable clauses. The flowdown requirement provides a mechanism to facilitate this license grant.

The DFARS 252.227–7013 definition of “unlimited rights” in paragraph (a), DFARS 252.227–7013 paragraph (b)(2), the associated guidance for contracting officers, and the mandatory flowdown requirements in DFARS 252.227–7018 already include the suggested revisions. The proposed rule instructs contracting officers to use DFARS 252.227–7018 when SBIR/STTR data is delivered, developed, or generated during contract performance. In addition, the proposed rule indicates that when a portion of contract performance is governed by the SBIR or STTR program (e.g., performance of one or more subcontracts qualifies as a phase III SBIR or STTR award), the clause at 252.227–7018 applies to the technical data or computer software that is governed by the SBIR or STTR program. Furthermore, DFARS 252.227–7013(b)(2) already indicates that DFARS 252.227–7018 governs SBIR/STTR data, and the flowdown requirements in DFARS 252.227–7018 already require flowdown to subcontracts. For these reasons, DoD has not adopted the respondent's recommendations.

8. Application of the SBIR/STTR Protection Period

Comment: Some respondents recommended clarification on application of the 20-year SBIR/STTR

data protection period. One of the respondents recommended clarification on how the SBIR/STTR data protection period is applied for SBIR/STTR contracts that predate the SBIR/STTR Policy Directive, contracts that were awarded with DFARS 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program (MAR 2020) (DEVIATION 2020–O0007), and contracts that are extensions or derivations from work performed under those previous contracts.

Response: The proposed rule indicates that the SBIR/STTR data “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.” However, DoD has adopted the respondent's recommendation by further clarifying application of the SBIR/STTR protection period in DFARS 252.227–7018(c)(5).

9. STTR Solicitation and Clause Regarding Agreements Between Contractors and Partnering Research Institutions Allocating IP Rights

Comment: A respondent recommended revising 252.227–70XX and 252.227–70YY to only require draft allocation agreements or agreements to negotiate in good faith.

Response: The Government cannot and should not rely upon a draft agreement that is not legally binding or an agreement to simply negotiate with no contractual obligations. Therefore, DoD has not adopted the respondent's recommendation.

10. Additional Comments and Recommendations

a. Negative Impacts of the Updated SBIR/STTR Data Protection Period

Comment: A respondent asserted that the 20-year SBIR/STTR data protection period negatively impacts the Government's use of software related to large systems developed by DoD program managers and laboratories.

Response: DoD notes that the updated SBIR/STTR data protection period limits extension of the protection period. Such limitations do not exist in the extant version of DFARS 252.227–7018. Furthermore, notwithstanding license restrictions on SBIR/STTR data, DoD regularly achieves its technology transition goals using SBIR/STTR data.

b. Guidance on Source Selection Procedures Related to SBIR/STTR Data Rights

Comment: One respondent recommended prescriptive guidance for contracting officers that prohibits deeming an offeror ineligible for contract award due to license restrictions on SBIR/STTR data.

Response: DoD adopted the respondent's recommendation in DFARS 227.7104–1, which mirrors existing language in DFARS 227.7103–1(c) and (d) and 227.7103–10(a)(5).

c. Recommendations Addressed by Existing DFARS Guidance, Recommendations Not Directed to Contracting Officers, and Recommendations Unrelated to License Rights

Comment: A respondent recommended specific language that prohibits preferences or requirements related to collaboration with Federal laboratories or DoD sponsored or funded entities. The respondent also recommended revising the proposed rule to include guidance that is directed to policy or regulatory decision-makers (rather than contracting officers). In addition, the respondent recommended prescriptive guidance that indicates that the SBIR/STTR Policy Directive supersedes DFARS prescriptive guidance, provisions, and clauses. The respondent also recommended prescriptive guidance regarding contractor copyright ownership; patent rights for small businesses; prohibitions against preaward license negotiations related to SBIR/STTR data; and improper uses of interagency acquisitions that circumvent the DFARS prescriptive guidance on SBIR/STTR contracts.

Response: The respondent's first recommendation is related to technical evaluation factor requirements that are not related to license rights, which is beyond the scope of this rule. In response to the respondent's second recommendation, the DFARS should only include guidance or requirements for contracting officers rather than guidance that is intended for policy or regulatory decision-makers. In response to the respondent's third comment, the proposed rule includes guidance, provisions, and clauses that are intended to fully implement IP portions of the SBIR/STTR Policy Directive. However, the SBIR/STTR Policy Directive does not supersede DFARS guidance for contracting officers, provisions, and clauses. The respondent's other recommendations are already addressed in existing

guidance and clauses related to postaward license negotiations regarding SBIR/STTR data in DFARS 227.7104–2(a)(2); retention of rights by the contractor in DFARS 252.227–7018(c); patent rights for small businesses in FAR 52.227–11; and interagency acquisitions in FAR subpart 17.7. For these reasons, DoD has not adopted the respondent's recommendations.

d. Liability and Reimbursement Obligations

Comment: One respondent recommended revising the “release from liability” section in DFARS 252.227–7018 to impose liability and reimbursement obligations for the Government related to damages caused by unauthorized disclosure of technical data or software.

Response: The Disputes clause and the Contracts Disputes statute govern claims related to breach of contract. In addition, the recommended revisions create open-ended funding obligations for reimbursement of “all costs and reasonable attorney fees”, which are not authorized by any existing policy, statute, or regulation. For these reasons, DoD has not adopted the respondent's recommendation.

e. Potential Topic for DoD Guidance and Training

Comment: A respondent recommended that DoD develop guidance and workforce training on examples of modifications or changes to preexisting commercial and noncommercial items made in the performance of a DoD contract.

Response: Although DoD is continuously improving its guidance and training, this recommendation is outside the scope of this rule.

C. Other Changes

Because the terms “legends” and “markings” are interchangeable, the proposed rule changes all instances of “legends” to “markings” in part 227 and the associated solicitations and clauses for the sake of consistency. A minor change is also made at DFARS 212.301(f)(xii)(A) for DFARS clause 252.227–7013 to add a cross-reference to 227.7102–4(b).

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

The proposed 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-Noncommercial Items; 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; 252.227–7015, Technical Data-Commercial Items; 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 Noncommercial 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 items, including COTS items. In addition, DFARS 252.227–7018 will apply to contracts at or below the SAT and for the acquisition of commercial items, including COTS items.

This rule also proposes to create a new provision and a new clause: (1) DFARS 252.227–70XX, Additional Preaward Requirements for Small Business Technology Transfer Program, and (2) DFARS 252.227–70YY, Additional Postaward Requirements for Small Business Technology Transfer Program. The new provision and clause will apply to acquisitions at or below the SAT and to acquisitions of commercial items, including COTS items. Not applying this provision and clause to contracts below the SAT and for the acquisition of commercial items, including COTS items, would exclude contracts intended to be covered by this rule and undermine the overarching purpose of the rule. Consequently, DoD plans to apply the rule to contracts below the SAT and for the acquisition of commercial items, including COTS items.

V. 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 proposed rule also provides the Government with perpetual GPR license rights after the expiration of the SBIR/STTR data protection period, rather than unlimited rights. In addition, the proposed rule implements STTR-unique requirements in the SBIR/STTR Policy Directive related to allocation of IP rights between partnering institutions and contractors under the STTR program. The proposed

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. Lastly, the proposed rule updates the marking requirements in DFARS 252.227–7013, 252.227–7014, and 252.227–7018 to require an “unlimited rights” marking for technical data or software furnished to the Government without restrictions. The updated marking requirements permit contractors to use only the restrictive markings specified in the clause. The proposed rule also revises DFARS 252.227–7015 to indicate that restrictive markings on commercial technical data must accurately reflect the Government’s license rights.

The proposed rule therefore impacts the Government’s license rights in SBIR/STTR data and the contractor’s marking obligations. The SBIR/STTR Policy Directive emphasizes the need to protect the IP interests of small businesses. The proposed rule provides a transparent and consistent framework that permits the Government to easily identify and resolve inadvertently omitted restrictive markings, which allows DoD to better protect the IP interests of our small-business industry partners.

VI. Executive Orders 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, dated September 30, 1993.

VII. 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**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VIII. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily benefits small entities by emphasizing protection of small entities’ intellectual property, therefore balancing any additional compliance requirements under the rule. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend 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 the 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 the extant 5-year period that can be extended indefinitely;
- Perpetual government purpose rights (GPR) 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 (FAR) 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 DFARS provision and clauses 252.227–7013, Rights in Technical Data—Noncommercial Item; 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; 252.227–7015, Technical Data—Commercial Items, 252.227–7016; 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions; 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) 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. To achieve this goal, DoD has updated its marking requirements to resolve a long-standing gap that may negatively impact the intellectual property interests of small businesses. The proposed rule provides a transparent and consistent framework that permits the Government to easily identify and resolve inadvertently omitted restrictive markings, which allows DoD to better protect the intellectual property interests of our small-business industry partners.

The legal basis for the rule is 41 U.S.C. 1303.

This proposed 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) 2018 through FY 2020, DoD estimates that 23,771 contractors may be impacted by the changes in this proposed rule. Of those entities, approximately 15,718 (66 percent) are small entities.

This proposed rule imposes new reporting, recordkeeping, or other compliance requirements for small entities participating in the STTR program. The changes in this proposed rule add 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 proposed rule requires STTR contractors to submit both an updated written agreement and an updated written representation to the contracting officer as occasioned. Based on data from SBA for FY 2018 through FY 2020, DoD estimates that an average of 302 unique small entities are awarded an average of 444 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.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives which would accomplish the stated objectives of this proposed rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C.

610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D043), in correspondence.

IX. Paperwork Reduction Act

This rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning DFARS Case 2019–D043, Small Business Innovation Research Program Data Rights, to the Office of Management and Budget.

A. Estimated Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 302.

Responses per respondent: 1.5.

Total annual responses: 453.

Preparation hours per response: 20 hours.

Total response burden hours: 9,060.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Susan Minson at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Susan_M_Minson@omb.eop.gov*, with a copy to the Defense Acquisition Regulations System, Attn: David E. Johnson at *osd.dfars@mail.mil*. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice. Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether DoD's estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, through

the use of appropriate technological collection techniques or other forms of information technology.

To obtain a copy of the supporting statement and associated collection instruments, please email *osd.dfars@mail.mil*. Include DFARS Case 2019–D043 in the subject line of the message.

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

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 227, and 252 are proposed to be amended 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 ITEMS

■ 2. Amend section 212.301 by—

■ a. Revising paragraph (f)(xii)(A);

■ b. Redesignating paragraph (f)(xii)(C) as paragraph (f)(xii)(D);

■ c. Adding a new paragraph (f)(xii)(C) and paragraphs (f)(xii)(E) and (F).

The revision and additions read as follows:

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

* * * * *

(f) * * *

(xii) * * * (A) Use the clause at 252.227–7013, Rights in Technical Data-Noncommercial Items, 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.*

* * * * *

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

* * * * *

(E) Use the provision at 252.227–70XX, Additional Preaward Requirements for Small Business Technology Transfer Program, as prescribed in 227.7104–4(c)(1).

(F) Use the clause at 252.227–70YY, Additional Postaward Requirements for Small Business Technology Transfer

Program, as prescribed in 227.7104–4(c)(2).

* * * * *

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7103–5 [Amended]

■ 3. Amend section 227.7103–5—

■ a. In paragraph (b)(4) introductory text, by removing the words “government” and “legends” and adding “Government” and “markings” in their places, respectively;

■ b. In paragraph (b)(4)(i), by removing “non-disclosure” and adding “nondisclosure” in its place;

■ c. In paragraph (b)(4)(ii), by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place;

■ d. In paragraph (b)(5), by removing “legends”, “252–227–7025”, and “non-disclosure” and adding “markings”, “252.227–7025”, and “nondisclosure” in their places, respectively;

■ e. In paragraph (b)(6), by removing “legends” and “non-disclosure” wherever it appears, and adding

“markings” and “nondisclosure” in their places, respectively; and removing “Commerce Business Daily” and adding “System for Award Management” in its place; and

■ f. In paragraph (c)(4) by removing “non-disclosure” and “Information Marked with Restrictive Legends” and adding “nondisclosure” and “Information with Restrictive Markings” in their places, respectively.

■ 4. Amend section 227.7103–6—

■ a. In paragraph (a), by revising the second sentence and adding a new third sentence; and

■ b. In paragraph (c), by removing “Information Marked with Restrictive Legends” and “legend(s)” and adding “Information with Restrictive Markings” and “marking(s)” in their places, respectively.

The revision reads 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 items 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). * * *

* * * * *

■ 5. Amend section 227.7103–7—

■ a. By revising the section heading;

■ b. In paragraph (a) introductory text, by removing “subsection”, “parties”,

and “non-disclosure” and adding “section”, “parties,” and “nondisclosure” in their places;

■ c. Revising paragraphs (a)(1) and (2);

■ d. In paragraph (b), by removing “non-disclosure” and “Information Marked with Restrictive Legends” and adding “nondisclosure” and “Information with Restrictive Markings” in their places, respectively;

■ e. In paragraph (c) introductory text by removing “non-disclosure” and adding “nondisclosure” in its place;

■ f. In the agreement “Use and Non-Disclosure Agreement”, by revising the agreement title, and 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) * * *

(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 markings or SBIR/STTR data rights markings (after expiration of the SBIR/STTR data protection period provided in the SBIR/STTR data rights marking) 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 marking (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 or SBIR/STTR data rights markings 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 markings 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 marking. 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 markings. *[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 markings.]*

* * * * *

(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 markings by the Recipient or any person to whom the Recipient has released or disclosed the Data.

* * * * *

(End of use and nondisclosure agreement)

227.7103–10 [Amended]

■ 6. Amend section 227.7103–10—

■ a. In paragraph (b)(2), by removing “pre-existing” and “legend” and adding “preexisting” and “marking” in their places, respectively;

■ b. In paragraph (c)(2), by removing “legends” and “six months” and adding “markings” and “6 months” in their places, respectively; and

■ c. In paragraph (c)(3), by removing “use or disclosure” and adding “use or disclosure that are consistent with the proposed restrictive marking” in its place.

227.7103–12 [Amended]

■ 7. Amend section 227.7103–12 paragraph (b)(1) by removing “legends” and adding “markings” in its place.

227.7103–15 [Amended]

■ 8. Amend section 227.7103–15—

■ a. In paragraph (c) introductory text, by removing “non-commercial” and adding “noncommercial” in its place; and

■ b. In paragraph (c)(2), by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place.

227.7103–16 [Amended]

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

■ 10. Revise section 227.7104. to read as follows:

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

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

227.7104–1 Policy.

(a) Contracting officers shall 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 software generated under a SBIR/STTR contract except for

the technical data and computer software identified at 227.7104–2.

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

(c) In a manner consistent with the guidance in this section and acquisition preferences applicable to SBIR/STTR offerors, 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. However, contracting officers shall not prohibit offerors from offering products for which the offeror is entitled to provide the technical data or computer software with restrictions. Contracting officers also shall not require offerors, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish any greater rights in technical data or computer software when the offeror is entitled to provide the technical data or computer software with restrictions.

227.7104–2 Rights in SBIR or STTR data.

(a) Under the clause at 252.227–7018, Rights in Noncommercial 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, subsequent to the 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 Small Business Administration's SBIR and STTR Program Policy Directive (effective May 2, 2019) 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.

227.7104–3 STTR program requirements.

(a) Before award of a contract under the STTR program requirements only, the provision at 252.227–70XX, 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 partnering research institution that allocates any rights in intellectual property and the offeror's written representation that it 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 252.227–70YY, 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 252.227–70XX.

(c) After contract award, for any modification to the written agreement between the contractor and partnering research institution, the contracting officer shall review the agreement and representation to ensure the modified agreement adheres to the requirements of 252.227–70YY. 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 Noncommercial 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 items, when SBIR/STTR data are delivered, developed, or generated during contract performance, and when any portion of contract performance is governed by the SBIR or STTR program (e.g., performance of one or more subcontracts qualifies as a phase III SBIR or STTR award).

(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–Noncommercial Items.

(ii) 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

(iii) 252.227–7015, Technical Data–Commercial Items.

(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 with Restrictive Markings.

(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 252.227–70XX, Additional Preaward Requirements for Small Business Technology Transfer Program, in solicitations that contain the clause at 252.227–70YY.

(2) Use the clause at 252.227–70YY, 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 items, for acquisitions under the STTR Program.

227.7108 [Amended]

- 12. Amend section 227.7108—
- a. In paragraph (a)(5), by removing “non-disclosure” and adding “nondisclosure” in its place; and
- b. In paragraphs (c) and (d), by removing “legends” and adding “markings” in their places.

227.7203–5 [Amended]

- 13. Amend section 227.7203–5—
- a. In paragraph (b)(4) introductory text, by removing “legends” and adding “markings” in its place;
- b. In paragraph (b)(4)(ii), by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place;
- c. In paragraph (b)(5), by removing “legends” and “non-disclosure” and adding “markings” and “nondisclosure” in their places, respectively; and
- d. In paragraph (b)(6), by removing “legends” and “non-disclosure” wherever it appears and adding “markings” and “nondisclosure” in their places, respectively; and removing “Commerce Business Daily” and adding “System for Award Management” in its place.

227.7203–6 [Amended]

- 14. Amend section 227.7203–6—
- a. In the section heading, by removing “Contract clauses” and adding “Solicitation provisions and contract clauses” in its place; and
- b. In paragraph (d), by removing “Information Marked with Restrictive Legends” and “legend(s)” and adding “Information with Restrictive Markings” and “marking(s)” in their places, respectively.

227.7203–10 [Amended]

- 15. Amend section 227.7203–10—
- a. In paragraph (b)(1), by removing “legend” and adding “marking” in its place; and
- b. In paragraph (b)(2), by removing “pre-existing” and “legend” and adding “preexisting” and “marking” in their places, respectively;
- c. In paragraph (c)(2) introductory text, by removing “legends” and “six months” and adding “markings” and “6 months” in their places, respectively; and
- d. In paragraph (c)(3), by removing “use or disclosure” and adding “use or disclosure that are consistent with the proposed restrictive marking” in its place.

227.7203–12 [Amended]

- 16. Amend section 227.7203–12 in paragraph (a)(1) by removing “legend” and adding “marking” in its place.

227.7203–15 [Amended]

- 17. Amend section 227.7203–15 in paragraph (c)(3) by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 18. Amend section 252.227–7013—
- a. By revising the section heading, introductory text, and clause date;
- b. In paragraph (a)—
- i. Removing the designations for paragraphs (a)(1) through (16) and placing the definitions in alphabetical order;
- ii. In the defined term “Covered Government support contractor”—
- A. In the introductory text, by removing “effort (rather than to directly furnish an end item or service to accomplish a program or effort)” and adding “effort, rather than to directly furnish an end item or service to accomplish a program or effort” in its place;
- B. By redesignating paragraphs (i) and (ii) as (1) and (2) respectively; and
- C. In newly redesignated paragraph (2) by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place;
- iii. In the defined term “Developed exclusively at private expense”
- A. introductory text, by removing “government” and adding “Government” in its place, and
- B. By redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
- iv. In the defined term “Developed exclusively with government funds”, by removing “government” and adding “Government” in its place;
- v. By adding, in alphabetical order, the definition of “Generated”;
- vi. By revising the definition of “Government purpose rights”;
- vii. In the defined term “Limited rights” by—
- A. Redesignating paragraphs (i) introductory text, (ii), and (iii) as paragraphs (1) introductory text, (2), and (3), respectively;
- B. In the newly redesignated paragraph (1) by redesignating paragraphs (1)(A) and (B) introductory text as paragraphs (1)(i) and (ii) introductory text, respectively; and
- C. In the newly redesignated paragraph (1)(ii) by redesignating

paragraphs (1)(ii)(1) and (2) as paragraphs (1)(ii)(A) and (B), respectively;

- viii. By adding, in alphabetical order, the definition of “Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data”;
- c. By redesignating paragraphs (b) through (k) as paragraphs (c) through (l), respectively;
- d. By adding a new paragraph (b);
- e. In newly redesignated paragraph (c) introductory text, by removing “the Rights in Noncommercial Computer Software and Noncommercial Software Documentation” and adding “the DFARS 252.227–7014, Rights in Noncommercial Computer Software Documentation,” in its place;
- f. In newly redesignated paragraph (c)(2)(i) introductory text, by removing “five-year” and adding “5-year” in its place;
- g. In newly redesignated paragraph (c)(2)(i)(A), by removing “(b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix)” and adding “(c)(1)(ii) and (c)(1)(iv) through (c)(1)(ix)” in its place;
- h. In newly redesignated paragraph (c)(2)(ii), by removing “five-year”, wherever it appears, and “(b)(2)(i)(B)” and adding “5-year” and “(c)(2)(i)(B)” in their places, respectively;
- i. In newly redesignated paragraph (c)(2)(iii)(A), by removing “non-disclosure” and “227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS)” and adding “nondisclosure” and “DFARS 227.7103–7” in their places, respectively;
- j. In newly redesignated paragraph (c)(2)(iii)(B), by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place;
- k. In newly redesignated paragraph (c)(2)(iv), by removing “legend” and “(f)(2)” and adding “marking” and “(g)(2)” in their places, respectively;
- l. In newly redesignated paragraph (c)(3)(i) introductory text, by removing “(b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix)” and adding “(c)(1)(ii) and (c)(1)(iv) through (c)(1)(ix)” in its place;
- m. In newly redesignated paragraph (c)(3)(i)(A), by removing “legend” and “(f)” and adding “marking” and “(g)” in their places, respectively;
- n. In newly redesignated paragraph (c)(3)(iv)(C), by removing “legend” and “non-disclosure” wherever it appears and adding “marking” and “nondisclosure” in their places, respectively;
- o. In newly redesignated paragraph (c)(3)(iv)(D), by removing “non-disclosure” wherever it appears,

“252.227–7025”, and “Information Marked with Restrictive Legends” and adding “nondisclosure”, “DFARS 252.227–7025”, and “Information with Restrictive Markings” in their places, respectively;

■ p. In newly redesignated paragraph (c)(4), by removing “(b)(1) through (b)(3)” and “in paragraph (a)(14)” and adding “(c)(1) through (c)(3)” and “in the definition of “limited rights”” in their places, respectively;

■ q. In newly redesignated paragraph (c)(5) introductory text, by removing “pre-existing” and adding “preexisting” in its place;

■ r. In newly redesignated paragraph (c)(6), by removing “paragraph (a)(14) or (b)(2)(iii)”, “(b)(4)”, and “legends” and adding “the definition of “limited rights” or paragraph (c)(2)(iii)”, “(c)(4)”, and “markings” in their places, respectively;

■ s. In newly redesignated paragraph (e), by removing “paragraph (b)” and adding “paragraph (c)” in its place;

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

■ u. In newly redesignated paragraph (f)(3), by —

■ A. Adding a heading to the table; and

■ B. In note 3, by removing “SBIR” and adding “SBIR/STTR” in its place;

■ v. In paragraph (f)(4), 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;

■ w. By revising newly redesignated paragraph (g);

■ x. In newly redesignated paragraph (i)(1) and (2), 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;

■ y. In newly redesignated paragraph (k)(2), by removing “(j)(1)” and adding “(k)(1)” in its place;

■ z. By revising newly redesignated paragraph (l) heading and paragraphs (l)(1) and (2);

■ aa. By redesignating paragraphs (l)(3), (l)(4), and (l)(5) as paragraphs (l)(4), (l)(5), and (l)(6), respectively;

■ bb. By adding a new paragraph (l)(3);

■ cc. In alternate I—

■ i. By revising the clause date and in the introductory text removing “paragraph (l)” and adding “paragraph (m)” in its place;

■ ii. In newly redesignated paragraph (m)(2), by removing “paragraph (l)” and “twenty-four (24)” and adding “paragraph (m)” and “24” in their places, respectively;

■ dd. 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—Noncommercial Items.

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

Rights In Technical Data—Noncommercial Items (Date)

(a) * * *

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

* * * * *

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.

* * * * *

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.

* * * * *

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

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

* * * * *

(f) * * *

(3) * * *

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

* * * * *

(g)(1) *Marking requirements.* The Contractor, and its subcontractors or suppliers, shall apply asserted restrictions on technical data delivered under this contract only by marking such technical data. Except as provided in paragraph (g)(9) of this clause, only the following restrictive markings are authorized under this contract:

(i) The unlimited rights markings at paragraph (g)(5) of this clause.

(ii) The government purpose rights marking at paragraph (g)(6) of this clause.

(iii) The limited rights marking at paragraph (g)(7) of this clause.

(iv) The special license rights marking at paragraph (g)(8) of this clause.

(v) A notice of copyright in the format prescribed under 17 U.S.C. 401 or 402.

(2) *Other restrictive markings.* Any other restrictive markings, including markings that describe restrictions placed on third-party recipients of the technical data, are not authorized and are nonconforming markings governed by paragraph (i)(2) of this clause.

(3) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate restrictive marking on all technical data that qualify for such markings. The authorized restrictive markings 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.

(4) *Omitted markings.* (i) Technical data 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)(4)(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.

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

Unlimited Rights

Contract Number _____
 Contractor Name _____
 Contractor Address _____

The Government has unlimited rights in this technical data or computer software pursuant to DFARS 252.227–7013, Rights in Technical Data—Noncommercial Items; DFARS 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; or DFARS 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of the above identified contract, as applicable. This marking must be included in any reproduction of this technical data, computer software, or portions thereof.

(End of marking)

(6) *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—Noncommercial Items, 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 marking must also reproduce the markings.

(End of marking)

(7) *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—Noncommercial Items, clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this marking 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 marking)

(8) *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 marking must also reproduce the markings.

(End of marking)

(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).

(9) *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 marking 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.

* * * * *

(l) Subcontractors or suppliers.

(1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, 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 noncommercial items, or for commercial items 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 clause(s) in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties:

(i)(A) Except as provided in paragraph (l)(2)(ii) of this clause, use this clause to govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense.

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

(ii) Use the clause at DFARS 252.227–7018, Rights in Noncommercial 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.

* * * * *

Alternate I (Date)

* * * * *

Alternate II (Date)

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:

* * * * *

■ 19. Amend section 252.227–7014—

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

■ b. In paragraph (a)—

■ i. By removing the designations for paragraphs (a)(1) through (16) and placing the definitions in alphabetical order;

■ ii. In the defined term “Commercial computer software”, by—

■ A. Redesignating paragraphs (i) through (iv) as paragraphs (1) through (4), respectively; and

■ B. In newly redesignated paragraph (4) by removing “(a)(1)(i), (ii), or (iii) of this clause” and adding “(1), (2), or (3) of this definition” in its place;

■ iii. In the defined term “Covered Government support contractor”, by—

■ A. Redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

■ B. In newly redesignated paragraph (2) by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place;

■ iv. In the defined term “Developed”, by redesignating paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3), respectively;

■ v. In the defined terms “Developed exclusively at private expense” and “Government purpose rights”, by redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

■ vi. In the defined term “Noncommercial computer software”, by removing “under paragraph (a)(1) of this clause” and adding “under the definition of “commercial computer software” of this clause” in its place;

■ vii. By revising the defined term “Restricted rights”;

■ viii. By adding, in alphabetical order, the definition “Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data”;

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

■ d. By adding a new paragraph (b);

■ e. In newly redesignated paragraph (c) introductory text, by removing “worldwide” and adding “worldwide” in its place;

■ f. In newly redesignated paragraph (c)(2)(i), by removing “(b)(1)” and adding “(c)(1)” in its place;

■ g. In newly redesignated paragraph (c)(2)(ii), by removing “five years” and “five-year” and adding “5 years” and “5-year” in their places, respectively;

■ h. In newly redesignated paragraph (c)(2)(iii)(A), by removing “non-

disclosure” and adding “nondisclosure” in its place;

■ i. In newly redesignated paragraph (c)(2)(iii)(B), by removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place;

■ j. In newly redesignated paragraph (c)(3)(ii), by removing “(b)(4)” and adding “(c)(4)” in its place;

■ k. In newly redesignated paragraph (c)(3)(iii)(C), by removing “legend” and “non-disclosure” wherever it appears and adding “marking” and “nondisclosure” in their places, respectively;

■ l. In newly redesignated paragraph (c)(3)(iii)(D), by removing “non-disclosure” wherever it appears, “252.227–7025”, and “Information Marked with Restrictive Legends” and adding “nondisclosure”, “DFARS 252.227–7025” and “Information with Restrictive Markings”, in their places, respectively;

■ m. By revising paragraph (c)(4)(i);

■ n. In paragraph (c)(5) introductory text, by removing “pre-existing” and adding “preexisting” in its place;

■ o. By revising paragraph (c)(6);

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

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

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

■ s. In newly redesignated paragraph (f)(4), by removing “Validation of Asserted Restrictions—Computer Software” and adding “DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software,” in its place;

■ t. By revising newly redesignated paragraph (g);

■ u. In newly redesignated paragraph (i)(1), by removing “Validation of Asserted Restrictions—Computer Software and the Validation of Restrictive Markings on Technical Data” and adding “DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, and the DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data,” in its place;

■ v. In newly redesignated paragraph (i)(2), by removing “Validation of Asserted Restrictions—Computer Software, or the Validation of Restrictive Markings on Technical Data” and “sixty (60) days” and adding “DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, or the DFARS 252.227–7037, Validation of Restrictive Markings on

Technical Data,” and “60 days” in their places, respectively;

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

■ x. In newly redesignated paragraph (l), by revising the heading and paragraph (1);

■ y. In newly redesignated paragraph (l)(3), by removing “(e)” and adding “(f)” in its place;

■ z. In alternate I—

■ i. By revising the clause date;

■ ii. In the introductory text, by removing “(l)” and adding “(m)” in its place;

■ iii. By redesignating paragraph (l) as paragraph (m);

■ iv. In newly redesignated paragraph (m)(2), by removing “(l)” and “twenty-four (24) months” and adding “(m)” and “24 months” in their places, respectively.

The revisions and additions read as follows:

252.227–7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

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

Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Date)

(a) * * *

Restricted rights apply only to noncommercial 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 the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(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) 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 a 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 with Restrictive Markings;

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

(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 with Restrictive Markings;

(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) 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 with Restrictive Markings, 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.

* * * * *

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

(c) * * *

(4) * * *

(i) 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 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—Noncommercial Items, clause of this contract.

* * * * *

(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 markings.

* * * * *

(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)(1) *Marking requirements.* The Contractor, and its subcontractors or suppliers, shall apply asserted restrictions on computer software or computer software documentation delivered under this contract only by marking such software or documentation. Except as provided in paragraph (g)(9) of this clause, only the following restrictive markings are authorized under this contract:

- (i) The unlimited rights marking at paragraph (g)(5) of this clause;
- (ii) The government purpose rights marking at paragraph (g)(6) of this clause;
- (iii) The restricted rights marking at paragraph (g)(7) of this clause;
- (iv) The special license rights marking at paragraph (g)(8) of this clause; or
- (v) A notice of copyright in the format prescribed under 17 U.S.C. 401 or 402.

(2) *Other restrictive markings.* Any other restrictive markings, including markings that describe restrictions placed on third-party recipients of the computer software or computer software documentation, are not authorized and shall be deemed nonconforming markings governed by paragraph (i)(2) of this clause.

(3) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate restrictive marking on all computer software that qualify for such markings. The authorized restrictive marking 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 marking 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.

(4) *Omitted markings.* (i) 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)(4)(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.

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

Unlimited Rights

Contract Number _____

Contractor Name _____

Contractor Address _____

The Government has unlimited rights in these technical data or this computer software pursuant to the DFARS 252.227–7013, Rights in Technical Data—Noncommercial Items; DFARS 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; or DFARS 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of the above identified contract, as applicable. This marking must be included in

any reproduction of these technical data, computer software, or portions thereof.

(End of marking)

(6) *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 Noncommercial Computer Software and Noncommercial 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 marking must also reproduce the markings.

(End of marking)

(7) *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 Noncommercial Computer Software and Noncommercial Computer Software Documentation, clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this marking 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 marking)

(8) *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 marking)

(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).

(9) *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 marking 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.

* * * * *

(l) *Subcontractors or suppliers.*

(1)(i) Except as provided in paragraph (l)(1)(ii) of this clause, whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this 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 Noncommercial 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.

* * * * *

Alternate I (Date)

* * * * *

■ 20. Amend section 252.227–7015—

■ a. By revising the section heading and the clause date;

■ b. In paragraph (a)—

■ i. By removing the designations of paragraphs (a)(1) through (5) and placing in alphabetical order;

■ ii. In the defined term “Covered Government support contractor”, by —

■ A. Redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

■ B. In newly redesignated paragraph (2) removing “Information Marked with Restrictive Legends” and adding “Information with Restrictive Markings” in its place;

■ iii. In the defined term “The term item”, by removing “The term item” and adding “Item” in its place;

■ c. By redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively;

■ d. By adding a new paragraph (b);

■ e. In newly redesignated paragraph (c)(2) introductory text, by removing “(b)(1)” and adding “(c)(1)” in its place;

■ f. In newly redesignated paragraph (c)(3)(i), by removing “(b)(2)” and adding “(c)(2)” in its place;

■ g. In newly redesignated paragraph (c)(3)(iii), by removing “restrictive legend”, “non-disclosure” and “an non-disclosure” and adding “restrictive marking”, “nondisclosure”, and “a nondisclosure” in their places, respectively;

■ h. In newly redesignated paragraph (c)(3)(iv), by removing “non-disclosure” wherever it appears and “252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends” and adding “nondisclosure” and “DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Markings” in their places, respectively;

■ i. In newly redesignated paragraph (e), by adding a new sentence at the end of the paragraph;

■ j. By revising newly redesignated paragraph (f);

■ k. 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 additions read as follows:

252.227–7015 Technical Data—Commercial Items.

* * * * *

Technical Data—Commercial Items (Date)

* * * * *

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

(1) The clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, will govern 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—Noncommercial Items, will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense and is not covered under the SBIR or STTR program.

* * * * *

(e) * * * The Contractor shall ensure that restrictive markings on technical data accurately reflect the rights granted to the Government.

(f) *Subcontractors or suppliers.*

(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10

U.S.C. 2321, and 15 U.S.C. 638(j)(1)(B)(iii) and (v).

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

(i) Use the clause at DFARS 252.227-7018, Rights in Noncommercial 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.

(ii) Use the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, to govern any technical data that are not generated during any portion of performance that is covered under the SBIR or STTR program.

* * * * *

Alternate I (Date)

As prescribed in 227.7102-4(a)(2), add the following definition of “Vessel design” in alphabetical order to paragraph (a) and add paragraph (c)(4) to the basic clause:

- 21. Amend section 252.227-7016 by—
- a. Revising the section heading, introductory text, and clause date;
- b. Revising paragraph (a); and
- c. Revising paragraph (c)(2).

The revisions 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 (Date)

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

(1) Is defined in the 252.227-7014, Rights in Noncommercial Computer Software and

Noncommercial 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 term is defined in the 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

Technical data—

(1) Is defined in the 252.227-7013, Rights in Technical Data—Noncommercial Items, 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 term is defined in the 252.227-7018, Rights in Noncommercial 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—Noncommercial Items; DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; or DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this contract.

* * * * *

■ 22. Amend section 252.227-7017 by—

- a. Revising the section heading, introductory text, and clause 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 (Date)

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

(1) Is defined in the 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial 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 term is defined in the 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of this solicitation.

Technical data—

(1) Is defined in the 252.227-7013, Rights in Technical Data—Noncommercial Items, 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 term is defined in the 252.227-7018, Rights in Noncommercial 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 (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)

¹For 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 item, 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)

* * * * *

■ 23. Amend section 252.227–7018—

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

■ b. In paragraph (a)—

■ i. By removing designations for paragraphs (a)(1) through (16) and placing in alphabetical order;

■ ii. In the defined term "Commercial computer software", by:

■ A. Redesignating paragraphs (i) through (iv) as paragraphs (1) and (4), respectively; and

■ B. In newly redesignated paragraph (4) by removing "(a)(1)(i) or (iii) of this clause" and adding "(1), (2), or (3) of this definition" in its place;

■ iii. In the defined term "Covered Government support contractor", by:

■ A. Redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and

■ B. In newly redesignated paragraph (2) by removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Markings" in its place;

■ iv. In the defined term "Developed", by redesignating paragraphs (i) through (iv) as paragraphs (1) through (4), respectively;

■ v. In the defined term "Developed exclusively at private expense", by redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;

■ vi. Adding, in alphabetical order, the definition of "Government purpose rights";

■ vii. In the defined term "limited rights", by:

■ A. Redesignating paragraphs (i) through (iii) as paragraphs (1) through (3), respectively;

■ B. In newly redesignated paragraph (1) by redesignating paragraphs (1)(A) and (B) as paragraphs (1)(i) and (ii), respectively;

■ C. In newly redesignated paragraph (1)(ii) by redesignating paragraphs (1)(ii)(1) and (2) as paragraphs (1)(ii)(A) and (B), respectively;

■ viii. In the defined term "Noncommercial computer software", by removing "paragraph (a)(1) of this clause" and adding "the "commercial

computer software" definition of this clause" in its place;

■ ix. By revising the defined term "Restricted rights";

■ x. By adding, in alphabetical order, definitions for "Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) data" and "SBIR/STTR data protection period";

■ xi. By removing the defined term "SBIR data rights" and adding, in alphabetical order, the definition of "SBIR/STTR data rights";

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

■ d. By adding a new paragraph (b);

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

■ f. In newly redesignated paragraph (c)(1), by removing "data, including computer software documentation, or computer software generated under this contract" and adding "data or computer software, including such data generated under this contract," in its place;

■ g. In newly redesignated paragraph (c)(1)(iv), by removing "use, release" and adding "use, release," in its place.

■ h. By revising newly redesignated paragraph (c)(1)(v);

■ i. By redesignating newly redesignated paragraph (c)(1)(vi) as paragraph (c)(1)(vii);

■ j. By adding a new paragraph (k)(1)(vi);

■ k. By revising newly redesignated paragraph (c)(1)(vii);

■ l. By redesignating newly redesignated paragraphs (c)(2) through (8) as paragraphs (c)(3) through (9), respectively;

■ m. By adding a new paragraph (c)(2);

■ n. In newly redesignated paragraph (c)(3), by removing "(f)(1)", "legend", and "(f)(2)" and adding "(g)(1)", "restrictive marking", and "(g)(3)" in their places, respectively;

■ o. By revising newly redesignated paragraphs (c)(5) and (c)(6);

■ p. In newly redesignated paragraph (c)(7) introductory text, by removing "pre-existing" and adding "preexisting" in its place;

■ q. By revising newly redesignated paragraph (c)(8);

■ r. In newly redesignated paragraph (c)(9)(iii), by removing "non-disclosure", "legend", and "an non-disclosure" and adding "nondisclosure", "marking", and "a nondisclosure" in their places, respectively;

■ s. In newly redesignated paragraph (c)(9)(iv), by removing "non-disclosure" wherever it appears, "252.227–7025", and "Information Marked with Restrictive Legends" and adding "nondisclosure", "DFARS 252.227–7025", and "Information with Restrictive Markings" in their places, respectively;

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

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

■ v. By revising the paragraph (f)(3) table;

■ w. In newly redesignated paragraph (f)(4), by removing "Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data" and adding "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;

■ x. By revising paragraph (g);

■ y. In newly redesignated paragraph (i)(1), by removing "Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software" and adding "DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data, and the DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software," in its place;

■ z. In newly redesignated paragraph (i)(2), by removing "Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software" and "(sixty (6)) days" and adding "DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data, or the DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software," and "60 days" in their places, respectively;

■ aa. In newly redesignated paragraph (k)(2), by removing “(j)(1)” and adding “(k)(1)” in its place;

■ bb. In newly redesignated paragraph (l), by revising the heading and paragraphs (l)(1) and (2); and

■ cc. By removing Alternate I.

The revisions and additions read as follows:

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

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

Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program (Date)

(a) * * *

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.

* * * * *

Restricted rights apply only to noncommercial 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 the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(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) 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 a 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 with Restrictive Markings;

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

(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 with Restrictive Markings;

(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) Permit covered Government support contractors in the performance of Government contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Markings, 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 period of time during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR 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, subsequent to 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.

* * * * *

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

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

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

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

* * * * *

(c) * * *

(1) * * *

(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 or for such other period as may be negotiated. This Government purpose rights period commences upon the expiration of the SBIR/STTR data protection period. Upon expiration of any such negotiated government purpose rights period, the Government shall have unlimited rights in the data.

(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 with Restrictive Markings.

(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)(2) of this clause.

(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.* The standard license rights granted to the

Government under paragraphs (c)(1) through (c)(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 the definition of “restricted rights” of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

* * * * *

(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,” “noncommercial 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 markings.

* * * * *

(f) * * *

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) ⁵	(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 accomplished 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, government purpose rights, or government purpose license rights from a prior contract, SBIR/STTR data rights under this or another contract, or specifically negotiated licenses).

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

Date _____
Printed Name and Title _____
Signature _____
(End of identification and assertion)

* * * * *

(g)(1) *Marking requirements.* The Contractor, and its subcontractors or suppliers, shall apply asserted restrictions on technical data or computer software delivered under this contract only by marking such technical data or software. Except as provided in paragraph (g)(11) of this clause, only the following restrictive markings are authorized under this contract:

(i) The unlimited rights marking at paragraph (g)(5) of this clause.

(ii) The government purpose rights marking at paragraph (g)(6) of this clause.

(iii) The limited rights marking at paragraph (g)(7) of this clause.

(iv) The restricted rights marking at paragraph (g)(8) of this clause.

(v) The SBIR/STTR data rights marking at paragraph (g)(9) of this clause.

(vi) The special license rights marking at paragraph (g)(10) of this clause.

(vii) A notice of copyright in the format prescribed under 17 U.S.C. 401 or 402.

(2) *Other restrictive markings.* Any other restrictive markings, including markings that describe restrictions placed on third-party recipients of the technical data or computer software, are not authorized and shall be deemed nonconforming markings governed by paragraph (i)(2) of this clause.

(3) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate restrictive marking to all technical data and computer software that qualify for such markings. The authorized restrictive markings 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 marking 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.

(4) *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)(4)(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.

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

Unlimited Rights

Contract Number _____

Contractor Name _____

Contractor Address _____

The Government has unlimited rights in these technical data or this computer software pursuant to DFARS 252.227–7013, Rights in Technical Data—Noncommercial Items; DFARS 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; or DFARS 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program, clause of the above identified contract, as applicable. This marking must be included in any reproduction of these technical data, computer software, or portions thereof. (End of marking)

(6) *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 Noncommercial 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 marking)

(7) *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 Noncommercial 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 restrictive marking 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 marking)

(8) *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 Noncommercial 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 restrictive marking 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 marking)

(9) *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 marking:

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 restrictive marking are restricted during the period shown as provided in paragraph (c)(5) of the DFARS 252.227–7018, Rights in Noncommercial 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 restrictive marking must also reproduce the markings.

(End of marking)

(10) *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 restrictive marking must also reproduce the markings.

(End of marking)

(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).

(11) *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 marking 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.

* * * * *

(l) *Subcontractors or suppliers.* (1) The Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, 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 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 DFARS clause at 252.227-7013, Rights in Technical Data—Noncommercial Items, to govern the technical data pertaining to noncommercial items or to any portion of a commercial item that was developed in any part at Government expense, and use the DFARS clause at 252.227-7015, Technical Data—Commercial Items, to govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense;

(B) Use the DFARS clause at 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, to govern noncommercial computer software and computer software documentation; and

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

(iii) 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.

* * * * *

■ 24. Amend section 252.227-7019—

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

■ b. By revising paragraph (a);

■ c. In paragraph (d)(2)(i)(B) by removing “sixty (60) days” and the period at the end of the paragraph and adding “60 days” and a semicolon in their places, respectively;

■ d. In paragraph (e)(1) by removing “three years” wherever it appears and adding “3 years” in its place;

■ e. In paragraph (f)(1)(ii) by removing “sixty (60) days” and adding “60 days” in its place;

■ f. In paragraph (f)(1)(iv) by removing “three-year” and adding “3-year” in its place;

■ g. In paragraph (f)(7) by removing “provides the contractor” and adding “provides the Contractor” in its place;

■ h. In paragraph (g)(1)(i), by removing “ninety (90) days” and adding “90 days” in its place;

■ i. In paragraph (g)(1)(ii), by removing “one year” and “ninety (90) days” and adding “1 year” and “90 days” in their places, respectively;

■ j. Revising paragraph (g)(1)(iii);

■ k. In paragraphs (g)(2)(i) and (ii), by removing “ninety (90) days” and adding “90 days” in its place;

■ l. In paragraph (g)(2)(iii), by removing “one year” and “ninety (90) days” and adding “1 year” and “90 days” in their places, respectively; and

■ m. Revising paragraph (g)(3).

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 (Date)

(a) *Definitions.* As used in this clause—
Contractor, unless otherwise specifically indicated, means the Contractor and its subcontractors or suppliers.

Other terms used in this clause are defined in the 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, clause of this contract.

* * * * *

(g) * * *

(1) * * *

(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.

* * * * *

(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 markings 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 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 with Restrictive Markings. 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.

* * * * *

■ 25. Amend section 252.227-7025—

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

■ b. By adding paragraph (a) introductory text and revising paragraph (a)(3);

■ c. By revising paragraph (b)(1) heading, paragraphs (b)(1)(i), (b)(2), (3) and (4);

■ d. In paragraph (b)(5) introductory text, by removing “legends” and adding “markings” in its place;

■ e. In paragraph (b)(5)(iii), by removing “legend” and “thirty (30) days” and adding “marking” and “30 days” in their places, respectively;

■ f. In paragraph (b)(5)(iv), by removing “non-disclosure” wherever it appears and “legend” and adding “nondisclosure” and “marking” in their places, respectively;

■ g. In paragraph (b)(5)(v)(B), by removing “legend” and adding “marking” in its place;

■ h. In paragraph (c)(1), by removing “legends” and adding “markings” in its place”;

■ i. In paragraph (c)(2), by removing “legend” and “legends” and adding “marking” and “markings” in their places, respectively; and

- j. In paragraph (d), by removing “non-disclosure” and adding “nondisclosure” in its place; and
- k. 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 with Restrictive Markings.

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 With Restrictive Markings (Date)

(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 Noncommercial 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 markings.* (i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights markings, computer software received with restricted rights markings, or SBIR/STTR technical data or computer software received with SBIR/STTR data rights markings (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 marking, release or disclose such data or software to any unauthorized person.

* * * * *

(2) *GFI marked with government purpose rights markings.* The Contractor shall use technical data or computer software received from the Government with government purpose rights markings for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive marking, 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 markings.* (i) The Contractor shall use, modify, reproduce, release,

perform, or display technical data or computer software received from the Government with specially negotiated license markings 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.

* * * * *

(4) *GFI technical data marked with commercial restrictive markings.* (i) The Contractor shall use, modify, reproduce, perform, or display technical data that are or pertain to a commercial item and are received from the Government with a commercial restrictive marking (*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 marking, use the technical data to manufacture additional quantities of the commercial items, or release or disclose such data to any unauthorized person.

* * * * *

(End of clause)

■ 26. Revise 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:

* * * * *

■ 27. Revise 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:

* * * * *

252.227–7037 [Amended]

■ 28. Amend section 252.227–7037 introductory text by removing “227.7104(c)(5)” and adding “, 227.7104–4(b)(7)” in its place.

■ 29. Add new sections 252.227–70XX and 252.227–70YY to read as follows:

252.227–70XX 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 (Date)

(a) *Definitions.* As used in this provision, the terms *research institution* and *United States* have the meaning given in the 252.227–70YY, 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 partnering 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 provisions that conflict with the requirements of this solicitation, including the rights of the United States and the Offeror regarding intellectual property, and regarding any right to carry out follow-on research.

(2) The Offeror’s written representation that—

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

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

(c) The Offeror 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)

252.227–70YY 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 (Date)

(a) *Definitions.* As used in this clause—*Research institution* means an institution or entity that—

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

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

(3) Is either—

(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 Federal Acquisition Regulation (FAR).

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

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

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

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

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

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

(2) Identification of which party to the written agreement may obtain United States or foreign patents or otherwise protect any inventions that result from a 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 partnering research institution, as modified; and

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

(4) No provisions that conflict with the requirements of this contract, including the rights of the United States and the Contractor regarding intellectual property, and regarding any right to carry out follow-on research.

(d) *Submission of updated agreement*. Within 30 days of execution of the modified 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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