

TECHNICAL DATA (Nov 2000)

1. RIGHTS IN DATA – GENERAL

(a) Definitions. (1) "Computer data bases," as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) "Computer software," as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

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

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

(5) "Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) if incorporated into this clause.

(6) "Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software. The Government's rights to use, duplicate, or disclose Restricted Computer Software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) if incorporated into this clause.

(7) "Technical data," as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(8) "Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

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

- (i) Data first produced in the performance of this subcontract;
- (ii) Form, fit, and function data delivered under this subcontract;
- (iii) Data delivered under this subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this subcontract; and
- (iv) All other data delivered under this subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Seller shall have the right to:

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Seller in the performance of this subcontract, unless provided otherwise in paragraph (d) of this clause;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this subcontract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright. (1) Data first produced in the performance of this subcontract. Unless provided otherwise in subparagraph (d) of this clause, the Seller may establish, without prior approval of the Government, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this subcontract and published in academic, technical, or professional journals, symposia proceedings or similar works. The prior, express written permission of the Government is required to establish claim to copyright subsisting in all other data

first produced in the performance of this subcontract. When claim to copyright is made, the Seller shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including the number of the Company's prime Government contract and the number of this subcontract) to the data when such data are delivered to the Company, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Seller grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Seller grants to the Government and others acting in its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this subcontract. The Seller shall not, without prior written permission of the Company, incorporate in data delivered under this subcontract any data not first produced in the performance of this subcontract and which contains the copyright notice of 17 U.S.C. 401 and 402, unless the Seller identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this subcontract or as otherwise may be provided in a collateral agreement incorporated in or made part of this subcontract.

(3) Removal of copyright notices. The Company and the Government agree not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data. (1) The Seller shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Seller in the performance of this subcontract, except to the extent such data may be subject to Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this subcontract.

(2) The Seller agrees that to the extent it receives or is given access to data necessary for the performance of this subcontract which contain restrictive markings, the Seller shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Company.

(3) The Seller agrees not to assert copyright in computer software first produced in the performance of this subcontract without prior written permission of the Government. When such permission is granted, the Government shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the software. The Seller shall promptly deliver to the Company or to the Government a duly executed and approved instrument fully confirmatory of all rights to which the Company and the Government are entitled.

(e) Unauthorized Marking of Data. (1) Notwithstanding any other provisions of this subcontract concerning inspection or acceptance, if any data delivered under this subcontract are marked with the notices specified in subparagraphs (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this subcontract, the Company may at any time either return the data to the Seller, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Company shall make written inquiry to the Seller affording the Seller 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Seller fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Company for good cause shown), the Company shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Seller provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Company shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Company determines that the markings are authorized, the Seller shall be so notified in writing. If the Company determines that the markings are not authorized, the Company shall furnish the Seller a written determination, which determination shall become final regarding the appropriateness of the markings unless the Seller files suit in a court of competent jurisdiction within 90 days of receipt of the Company's decision. The Company shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Company's determination becoming final (in which instance the Company shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(f) Omitted or Incorrect Markings. (1) Data delivered to the Company without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Company and the Government assume no liability for disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Seller may request, within 6 months (or a longer time approved by the Company for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Seller's expense, and the Company may agree to do so if the Seller:

(i) Identifies the data to which the omitted notice is to be applied;
(ii) Demonstrates that the omission of the notice was inadvertent;
(iii) Establishes that the use of the proposed notice is authorized; and
(iv) Acknowledges that the Company and the Government have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

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

(g) Protection of Limited Rights Data and Restricted Computer Software. (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this subcontract and qualify as either limited rights data or restricted computer software, if the Seller desires to continue protection of such data, the Seller shall withhold such data and not furnish them to the Company under this subcontract. As a condition to this withholding, the Seller shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Company are to be treated as limited rights data and not restricted computer software.

(2) [Reserved.]

(3) [Reserved.]

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

(i) Relationship to Patents. Nothing contained in this clause shall imply a license to the Company or the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Company or the Government.

(j) The Seller agrees, except as may be otherwise specified in this subcontract for specific data items listed as not subject to this paragraph, that the Company, or an authorized representative may, up to three years after acceptance of all items to be delivered under this subcontract, inspect at the Seller's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Seller's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Seller whose data are to be inspected demonstrates to the Company that there would be a possible conflict of interest if the inspection were made by a particular representative, the Company shall designate an alternate inspector.

2. ADDITIONAL DATA REQUIREMENTS. *(Note: This clause does not apply to this subcontract if the subcontract is for the conduct of basic or applied research, as set out elsewhere in this subcontract, to be performed solely by a college or university, and the estimated cost is not in excess of \$500,000.)*

(a) In addition to the data (as defined in the Rights in Data - General clause included in this subcontract) specified elsewhere in this subcontract to be delivered, the Company may, at any time during subcontract performance or within a period of 3 years after acceptance of all items to be delivered under this subcontract, order any data first produced or specifically used in the performance of this subcontract.

(b) The Rights in Data - General clause included in this subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Seller to deliver any data the withholding of which is authorized by the Rights in Data - General clause of this subcontract, or data which are specifically identified in this subcontract as not subject to this clause.

(c) When data are to be delivered under this clause, the Seller will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Company may release the Seller from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.