52.227-14 Rights in Data-General.

As prescribed in 27.409(b)(1), insert the following clause with any appropriate *alternates*:

Rights in *Data*-General (*May* 2014)

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

Computer database or "database means" a collection of recorded information 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*.

Computer software-

(1) Means

(i) Computer programs that comprise 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) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

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

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

Data 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.

Form, fit, and function data means *data* relating to items, *components*, or processes that are sufficient to enable physical and functional interchangeability, and *data* identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For *computer software* it means *data* identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of the Government in *limited rights data* as set forth in the *Limited Rights* Notice of paragraph (g)(3) if included in this clause.

Limited rights data means *data*, other than *computer software*, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such *data* pertain to items, *components*, or processes developed at private expense, including minor modifications.

Restricted computer software means *computer software* developed at private expense and that is a

trade secret, is commercial or financial and confidential or privileged, or is copyrighted *computer software*, including minor modifications of the *computer software*.

Restricted rights, as used in this clause, means the rights of the Government in *restricted computer software*, as set forth in a *Restricted Rights* Notice of paragraph (g) if included in this clause, or as otherwise *may* be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such *computer software*.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including *computer databases* and *computer software documentation*). This term does not include *computer software* or financial, administrative, cost or *pricing*, or management *data* or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in *computer databases* (See 41 U.S.C. 116).

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

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government *shall* have *unlimited rights* in-

(i) *Data* first produced in the performance of this contract;

(ii) *Form, fit, and function data* delivered under this contract;

(iii) *Data* delivered under this contract (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 contract; and

(iv) All other *data* delivered under this contract unless provided otherwise for *limited rights data* or *restricted computer software* in accordance with paragraph (g) of this clause.

(2) The Contractor *shall* have the right to-

(i) Assert copyright in *data* first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any *data* first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the 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) Protect from unauthorized disclosure and use those *data* that are *limited rights data* or *restricted computer software* to the extent provided in paragraph (g) of this clause.

(c) Copyright-

(1) *Data* first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor *may*, without prior approval of the *Contracting Officer*, assert copyright in scientific and technical articles based on or containing *data* first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the *Contracting Officer* is required to assert copyright in all other *data* first produced in the performance of this contract.

(ii) When authorized to assert copyright to the *data*, the Contractor *shall* affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For *data* other than *computer software*, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license 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 Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted *computer software* to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor *shall* not, without the prior written permission of the *Contracting Officer*, incorporate in *data* delivered under this contract any *data* not first produced in the performance of this contract unless the Contractor-

(i) Identifies the *data*; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such *data* are *restricted computer software*, the Government *shall* acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

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

(d) *Release, publication, and use of data*. The Contractor *shall* have the right to use, release to others, reproduce, distribute, or publish any *data* first produced or specifically used by the Contractor in the performance of this contract, except-

(1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to *data* necessary for the performance of this contract that contain restrictive markings, the Contractor *shall* treat the *data* in accordance with such markings unless specifically authorized otherwise *in writing* by the *Contracting Officer*.

(e) Unauthorized marking of *data*.

(1) Notwithstanding any other provisions of this contract concerning *inspection* or acceptance, if any *data* delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the *data* bears any other restrictive or limiting markings not authorized by this contract, the *Contracting Officer may* at any time either return the *data* to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures *shall* apply prior to canceling or ignoring the markings.

(i) The *Contracting Officer* will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-*day* period (or a longer time approved *in writing* by the *Contracting Officer* for good cause shown), the Government *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 Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the *Contracting Officer* will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the *Contracting Officer* determines that the markings are authorized, the Contractor will be so notified *in writing*. If the *Contracting Officer* determines, with concurrence of the *head of the contracting activity*, that the markings are not authorized, the *Contracting Officer* will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the *Contracting Officer*'s decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the *Contracting Officer*'s determination becoming final (in which instance the Government will 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 paragraph (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) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a *claim*, in accordance with the Disputes clause of this contract, that *may* arise as the result of the Government removing or ignoring authorized markings on *data* delivered under this contract.

(f) Omitted or incorrect markings.

(1) *Data* delivered to the Government without any restrictive markings *shall* be deemed to have been furnished with *unlimited rights*. The Government is not liable for the disclosure, use, or reproduction of such *data*.

(2) If the unmarked *data* has not been disclosed without restriction outside the Government, the Contractor *may* request, within 6 months (or a longer time approved by the *Contracting Officer in*

writing for good cause shown) after delivery of the *data*, permission to have authorized notices placed on the *data* at the Contractor's expense. The *Contracting Officer may* agree to do so if the Contractor-

(i) Identifies the *data* to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any *data* made prior to the addition of the notice or resulting from the omission of the notice.

(3) If *data* has been marked with an incorrect notice, the *Contracting Officer may*-

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the *data* 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) The Contractor *may* withhold from delivery qualifying *limited rights data* or *restricted computer software* that are not *data* identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor *shall*-

(i) Identify the *data* being withheld; and

(ii) Furnish *form, fit, and function data* instead.

(2) *Limited rights data* that are formatted as a *computer database* for delivery to the Government *shall* be treated as *limited rights data* and not *restricted computer software*.

(3) [Reserved]

(h) *Subcontracting.* The Contractor *shall* obtain from its subcontractors all *data* and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor *shall* promptly notify the *Contracting Officer* of the refusal and *shall* not proceed with the subcontract award without authorization *in writing* from the *Contracting Officer*.

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

(End of clause)

Alternate I (Dec 2007). As prescribed in 27.409 (b)(2), substitute the following definition for "*limited rights data*" in paragraph (a) of the basic clause:

Limited rights data means *data*, other than *computer software*, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (Dec 2007). As prescribed in 27.409 (b)(3), insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract *may* identify and specify the delivery of *limited rights data*, or the *Contracting Officer may* require by written request the delivery of *limited rights data* that has been withheld or would otherwise be entitled to be withheld. If delivery of that *data* is required, the Contractor *shall* affix the following "*Limited Rights* Notice" to the *data* and the Government will treat the *data*, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (Dec 2007)

(a) These *data* are submitted with *limited rights* under *Government Contract No.* _____ (and *subcontract* _____, if appropriate). These *data may* be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government *may* disclose these *data* outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: *[Agencies may list additional purposes as set forth in 27.404-2(c)(1) or if none, so state.]*

(b) This notice *shall* be marked on any reproduction of these *data*, in whole or in part.

(End of notice)

Alternate III (Dec 2007). As prescribed in 27.409 (b)(4), insert the following paragraph (g)(4) in the basic clause:

(g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract *may* identify and specify the delivery of *restricted computer software*, or the *Contracting Officer may* require by written request the delivery of *restricted computer software* that has been withheld or would otherwise be entitled to be withheld. If delivery of that *computer software* is required, the Contractor *shall* affix the following "*Restricted Rights* Notice" to the *computer software* and the Government will treat the *computer software*, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (Dec 2007)

(a) This *computer software* is submitted with *restricted rights* under *Government Contract No.* _____ (and *subcontract* _____, if appropriate). It *may* not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This *computer software may* be-

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) *may* be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other *computer software*, *provided* that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered,

restricted computer software shall be subject to the same *restricted rights*;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this *computer software* is copyrighted *computer software*, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this *computer software* are to be expressly stated in, or incorporated in, the contract.

(e) This notice *shall* be marked on any reproduction of this *computer software*, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the *Restricted Rights* Notice on *restricted computer software*, the following short-form notice *may* be used instead:

Restricted Rights Notice Short Form (Jun 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in *Contract No.* _____ *(and subcontract, if appropriate) with* _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If *restricted computer software* is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (Dec 2007). As prescribed in 27.409 (b)(5), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) *Copyright*-(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor *may* assert copyright in any *data* first produced in the performance of this contract. When asserting copyright, the Contractor *shall* affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the *data* when such *data* are delivered to the Government, 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 Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such *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 Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such *computer software* to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (Dec 2007). As prescribed in 27.409 (b)(6), add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as *may* be otherwise specified in this contract for specific *data*

deliverables listed as not subject to this paragraph, that the *Contracting Officer may*, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor's facility any *data* withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion of *limited rights* or *restricted rights* status of the *data* or for evaluating work performance. When the Contractor whose *data* are to be inspected demonstrates to the *Contracting Officer* that there would be a possible conflict of interest if a particular representative made the *inspection*, the *Contracting Officer shall* designate an *alternate* inspector.

Parent topic: 52.227 [Reserved]