1852.227-88 Government-furnished computer software and related technical data.

As prescribed in 1827.409(m)(1), insert the following clause:

GOVERNMENT-Furnished Computer Software and Related Technical Data (APR 2015)

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

"*Government-furnished computer software*" or "*GFCS*" means computer software:

(1) In the possession of, or directly acquired by, the Government whereby the Government has title or license rights thereto; and

(2) Subsequently furnished to the Contractor for performance of a Government contract.

"*Computer software,*" "*data*" and "*technical data*" have the meaning provided in the Federal Acquisition Regulations (FAR) Subpart 2.1—Definitions or the Rights in Data—General clause (FAR 52.227-14).

(b) The Government shall furnish to the Contractor the GFCS described in this contract or in writing by the Contracting Officer. The Government shall furnish any related technical data needed for the intended use of the GFCS.

(c) *Use of GFCS and related technical data.* The Contractor shall use the GFCS and related technical data, and any modified or enhanced versions thereof, only for performing work under this contract unless otherwise provided for in this contract or approved in writing by the Contracting Officer.

(1) The Contractor shall not, without the express written permission of the Contracting Officer, reproduce, distribute copies, prepare derivative works, perform publicly, display publicly, release, or disclose the GFCS or related technical data to any person except for the performance of work under this contract.

(2) The Contractor shall not modify or enhance the GFCS unless this contract specifically identifies the modifications and enhancements as work to be performed. If the GFCS is modified or enhanced pursuant to this contract, the Contractor shall provide to the Government the complete source code, if any, and all related documentation of the modified or enhanced GFCS.

(3) Allocation of rights associated with any GFCS or related technical data modified or enhanced under this contract shall be defined by the FAR Rights in Data clause(s) included in this contract (as modified by any applicable NASA FAR Supplement clauses). If no Rights in Data clause is included in this contract, then the FAR Rights in Data—General (52.227-14) as modified by the NASA FAR Supplement (1852.227-14) shall apply to all data first produced in the performance of this contract and all data delivered under this contract.

(4) The Contractor may provide the GFCS, and any modified or enhanced versions thereof, to subcontractors as necessary for the performance of work under this contract. Before release of the

GFCS, and any modified or enhanced versions thereof, to such subcontractors (at any tier), the Contractor shall insert, or require the insertion of, this clause, including this paragraph (c)(4), suitably modified to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause.

(d) The Government provides the GFCS in an “AS-IS” condition. The Government makes no warranty with respect to the serviceability and/or suitability of the GFCS for contract performance.

(e) The Contracting Officer may by written notice, at any time—

(1) Increase or decrease the amount of GFCS under this contract;

(2) Substitute other GFCS for the GFCS previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract;

(3) Withdraw authority to use the GFCS or related technical data; or

(4) Instruct the Contractor to return or dispose of the GFCS and related technical data.

(f) *Title to or license rights in GFCS.* The Government shall retain title to or license rights in all GFCS. Title to or license rights in GFCS shall not be affected by its incorporation into or attachment to any data not owned by or licensed to the Government.

(g) *Waiver of Claims and Indemnification.* The Contractor agrees to waive any and all claims against the Government and shall indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorney's 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 the GFCS and related technical data by the Contractor, a subcontractor, or by any person to whom the Contractor has released or disclosed such GFCS or related technical data.

(h) *Flow-down of Waiver of Claims and Indemnification.* In the event a contract includes this NASA FAR Supplement clause 1852.227-88, the Contractor shall include the foregoing clause 1852.227-88(g), suitably modified to identify the parties, in all subcontracts, regardless of tier, which involve use of the GFCS and/or related technical data in any way. At all tiers, the clause shall be modified to define GFCS as it is defined herein and to identify the parties as follows: references to the Government are not changed, and in all references to the Contractor the subcontractor is substituted for the Contractor so that the subcontractor has all rights and obligations of the Contractor in the clause. In subcontracts, at any tier, the Government, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause 1852.227-88 constitute a contract between the subcontractor and the Government with respect to the matters covered by the clause.

(End of clause)

Parent topic: Subpart 1852.2—Texts of Provisions and Clauses