

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
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May 2, 2011

Ms. Amy G. Williams
OUSD(AT&L) DPAP/DARS
Room 3B855
3060 Defense Pentagon
Washington, D.C. 20301-3060

Re: DFARS Case 2009-D031, Government Support Contractor Access to Technical Data
CODSIA Case 05-11

Email: dfars@osd.mil

Dear Ms. Williams:

The Council of Defense and Space Industry Associations (CODSIA)¹ appreciates the opportunity to comment on the proposed rule, DFARS Case 2009-D031, "Government Support Contractor Access to Technical Data." We offer the following thoughts for your consideration:

INTRODUCTION

DFARS Case 2009—D031 sets forth an interim DoD rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub.L.111–84). Section 821 amended 10 U.S.C. 2320 to add a new statutory exception to the prohibition on the release or disclosure – outside the Government – of technical data pertaining to an item or process developed exclusively at private expense.

CODSIA recognizes that DoD contracts with many support contractors which furnish independent and impartial advice or technical assistance directly to DoD in support of DoD's management and oversight of its programs, and that situations arise in which DoD needs to provide such support contractors with access to and use of proprietary technical data and computer software owned by prime contractors and other third parties. We appreciate DoD's efforts to establish a simple approach to implement the statutory changes. However, additional

¹ "CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy at the suggestion of the Department of Defense that industry should unite their efforts to present a single voice to issues impacting the broader government acquisition community. CODSIA currently consists of six industry trade associations and thus represents the comments of thousands of federal government contractors and hundreds of thousands of contractor employees nationwide on acquisition policy issues. A CODSIA comment letter is thus not a letter from a single organizational entity, but from thousands of affected stakeholders. This unique status as the conveyor of regulatory comments for some of the largest trade associations working on acquisition policy also represents the collective expertise of these associations and the companies they represent."

DFARS changes are necessary to clarify limitations on “covered Government support contractors” use, modification, reproduction, performance, display, release or disclosure of proprietary technical data and computer software (e.g., “limited rights data” and “restricted rights software”). Below, please find CODSIA’s specific comments and suggested DFARS changes.

COMMENTS

a. Clarify Limitations on Covered Government Support Contractors’ Release or Disclosure of Limited Rights Data and Restricted Rights Software

As modified in the interim rule, DFARS 252.227-7013 and 252.227-7014 provide the Government with the right to permit covered Government support contractors to release or disclose limited rights data and restricted rights software to “authorized person(s)” in the performance of Government contracts that contain DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends [see DFARS 252.227-7013(a)(14)(i)(B)(1) and 252.227-7014(a)(15)(vii)]. However, the interim regulations do not explain who or what an “authorized person” is, why the term “access” is introduced in the regulations, nor why release outside of the support contractor’s organization is necessary. At a minimum, the regulations should limit the support contractor’s right to release or disclose the technical data or computer software to within the support contractor’s organization, and only for the performance of the support contract. In addition, the term “access” should be removed from the regulations since it is an unnecessary and undefined term.

b. Clarify Limitations on Covered Government Support Contractors’ Use and Reproduction of Restricted Rights Software

Although 10 U.S.C. 2320 applies only to technical data, and not to computer software (which is expressly excluded from the definition of technical data), the DAR Council made analogous revisions to the DFARS coverage for noncommercial software in the interim rule. While industry appreciates the consistency with which the DAR Council has made analogous revisions to the DFARS coverage for technical data and noncommercial computer software, further changes to the DFARS coverage for noncommercial computer software are necessary to: (1) clarify the limitations on covered Government support contractors’ use and reproduction of restricted rights software, consistent with the limitations on the scope of the Government’s restricted rights license, and (2) address the unique differences between technical data and computer software.

DFARS 252.227-7014(a)(15)(i) through (iv) set forth certain limitations on the scope of the Government’s restricted rights license. For example, the Government is authorized to use computer programs furnished with restricted rights with only one computer at a time [see DFARS 252.227-7014(a)(15)(i)], and the Government is not authorized to reproduce an unlimited number of copies of restricted rights software. Instead, the Government may make only a minimum number of copies required for archival, backup or modification purposes [see DFARS 252.227-7014(a)(15)(iii)]. These scope limitations are necessary due to the unique differences between technical data and computer software.

While technical data often pertains to items which are manufactured by contractors and delivered to the Government, computer software most often is the item developed (*i.e.*,

manufactured) by contractors and delivered to the Government. Reproducing copies of computer software is analogous to manufacturing additional quantities of items to which technical data pertain. Further, computer software is unique in that additional copies can be reproduced or manufactured quickly and at a nominal cost, regardless of the time, private investment and resources required to first develop or create such software. While there is no limitation on the Government's right to reproduce "limited rights" data, the Government cannot use limited rights data to *manufacture* items to which such data pertain [see DFARS 252.227-7013(a)(14)]. Similarly, the Government cannot reproduce (*i.e.*, manufacture) an unlimited number of copies of restricted rights software.

As currently written, the interim DFARS rule permits covered Government support contractors to "reproduce" restricted rights software. As a practical matter, it is difficult to reconcile this right to reproduce restricted rights software with the scope limitations on the Government's restricted rights license, described above. This greatly increases the risk that the Government, or covered Government support contractors acting on its behalf, will: (1) reproduce additional copies of restricted rights software for purposes other than as specifically authorized in DFARS 252.227-7014, or (2) use computer programs with more than one computer at a time. Industry questions whether the Government can reasonably ensure that its use of restricted rights software, and potentially the simultaneous use by covered Government support contractors, complies with the scope limitations on the Government's restricted rights license. The Government should consider further limiting the circumstances under which covered Government support contractors may reproduce restricted rights software, in order to best protect the rights of the software owners.

Industry encourages DoD to modify DFARS 252.227-7014(a)(15), as shown in Enclosure (2), in order to expressly limit covered Government support contractors' use, modification and reproduction of "restricted rights" software in accordance with the scope limitations set forth in DFARS 252.227-7014(a)(15)(i) through (iv). The suggested changes are similar to the manner in which DoD expressly limits service contractors' use of restricted rights software [see DFARS 252.227-7014(a)(15)(v)]. Without these clarifying changes, the revised language set forth at DFARS 252.227-7014(a)(15)(vii) could be interpreted as granting covered Government support contractors rights to use, modify and reproduce restricted rights software that exceed the scope of the Government's restricted rights license, which was surely not DoD's intent.

c. Clarify Language Requiring Mutual Agreement to Additional Terms and Conditions

The interim rule states that non-disclosure agreements (NDAs) between Contractors (or parties asserting restrictions) and covered Government support contractors shall address the restrictions on covered Government support contractors' use of limited rights data, restricted rights software, and technical data pertaining to commercial items, as set forth in DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and that such NDAs "shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement" [see DFARS 252.227-7013(b)(3)(iv), 252.227-7014(b)(3)(iii), 252.227-7015(b)(3)(iv), and 252.227-7025(b)(1)(ii)(D)]. As a practical matter, the negotiation of every NDA requires mutual agreement by the parties to the NDA, and so language requiring such mutual agreement is unnecessary. Further, language prohibiting additional terms and conditions absent such mutual agreement may lead covered Government support contractors to balk at signing Industry-

standard NDAs which most often include terms and conditions that aren't in DFARS 252.227-7025. Rather than prohibit additional terms and conditions absent mutual agreement, the DFARS should include permissive language which anticipates the inclusion of additional terms and conditions. In this regard, CODSIA recommends that DFARS 252.227-7013(b)(3)(iv), 252.227-7014(b)(3)(iii), 252.227-7015(b)(3)(iv), 252.227-7025(b)(1)(ii)(D) be modified as shown in Enclosures (1), (2), (3), and (4) so as to include such anticipatory, permissive language. The suggested changes will best contribute to successful NDA negotiations.

The negotiation of individual NDAs between Contractors and Support Contractors may become administratively burdensome. It would be useful if the contractor whose data or software is being disclosed may, as an alternative to waiving its rights to require a separate NDA or negotiating a separate NDA, also waive its rights to require a separate NDA between itself and the Support Contractor contingent upon the requirement that the Support Contractor executes a Use and Non-Disclosure Agreement generally corresponding to the NDA provided for in DFARS 227.7103-7 and that as to Software, the Government is responsible to ensure that all the limitations in the Restricted Rights definition apply to the Support Contractor. Approved uses b Support Contractors should be expressly limited to "support of Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort)."

d. Correct Drafting Errors Pertaining to the Minimum Rights Granted to the Government in Specifically Negotiated License Rights Provisions for Noncommercial Technical Data and Computer Software

It is longstanding DFARS policy that Specifically Negotiated License Rights (SNLR) provisions must not grant the Government lesser rights than "limited rights" in noncommercial technical data and "restricted rights" in noncommercial computer software. This results in the negotiation of SNLR provisions that fall somewhere between "government purpose rights" and either "limited rights" (for technical data) or "restricted rights" (for computer software). As described below, a drafting error in the Interim Rule puts this longstanding DFARS policy in jeopardy.

To implement the statutory changes, DoD added a new definition for "covered Government support contractor" in DFARS 252.227-7013(a) and 252.227-7014(a). The addition of this new definition caused a necessary renumbering of all subsequent definitions in both clauses, such that the definition of "limited rights" in 252.227-7013(a) was changed from subparagraph (a)(13) to (a)(14) and the definition of "restricted rights" in 252.227-7014 was changed from subparagraph (a)(14) to (a)(15). Further, the definition of "government purpose rights" in 252.227-7013(a) was changed from subparagraph (a)(12) to (a)(13)—the subparagraph number which previously set forth the definition of "limited rights." However, DoD did not make the necessary corresponding changes to 252.227-7013(b)(4) and 252.227-7014(b)(4), which referenced the definitions of "limited rights" and "restricted rights" (formerly subparagraphs (a)(13) and (a)(14), respectively) in order to set forth the minimum rights which must be granted to the Government in SNLR provisions.

As a result of this drafting error, 252.227-7013(b)(4) and 252.227-7014(b)(4) now say that SNLR provisions for noncommercial technical data shall not provide the Government with lesser rights than government purpose rights – instead of limited rights – which marks a significant departure from longstanding DoD policy for negotiating SNLR provisions. Before making any such significant policy change, DoD is required to provide the public with an

opportunity to provide comments via a proposed rule. This drafting error is unrelated to the stated purpose and scope of this Interim Rule, and, if interpreted literally, may impact the near-term negotiation of SNLR provisions between DoD and Industry. In fact, CODSIA is aware that this drafting error has already caused confusion in recent SNLR negotiations. Accordingly, CODSIA urges DoD to issue an immediate administrative change, as shown in Enclosures (1) and (2), in order to restore longstanding DoD SNLR policy.

Finally, the Performance Assessments and Root Cause Analysis (PARCA) function within DoD is attempting to develop a process for handling disclosure of Proprietary Earned Value Management Data to Support Contractors. While such data may largely be proprietary financial, business, and contract performance data and not Limited Rights Technical Data or Restricted Rights Software, it would be most beneficial to ensure consistency in the processes for disclosing both types of data. The process being considered by PARCA (master NDA between the Government and the Support Contractor covering all data provided thereunder can be enforced by the contractor whose data is being disclosed as a third party beneficiary) is contrary to the process contemplated by the Interim Rule. We strongly suggest that there be an internal DoD coordination effort to eliminate inconsistencies.

CONCLUSION

In conclusion, while the interim rule sets forth a simple approach to implement the statutory changes, additional DFARS changes are needed to clarify limitations on "covered Government support contractors" use, modification, reproduction, performance, display, release or disclosure of proprietary technical data and computer software. CODSIA appreciates the opportunity to provide comments. If you have questions or require further information, please contact the CODSIA project officer at 703-358-1045 or richard.sylvester@aia-aerospace.org.

Sincerely,



Richard Sylvester
Vice President, Acquisition Policy
Aerospace Industries Association



Richard L. Corrigan
Policy Committee Representative
American Council of Engineering Companies



Peter Steffes
Vice President, Government Policy
National Defense Industrial Association



Alan Chvotkin
Executive Vice President & Counsel
Professional Services Council

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A handwritten signature in black ink that reads "AR Hodgkins". The signature is stylized, with the "A" and "R" being large and bold, and the "Hodgkins" part written in a cursive, flowing script. There is a small mark below the "H" that looks like a checkmark or a stylized "2".

A.R. "Trey" Hodgkins, III
Senior Vice President, National Security and
Procurement Policy
TechAmerica

Enclosures (4)

Enclosure 1

252.227-7013 Rights in Technical Data--Noncommercial Items.

As prescribed in 227.7103-6(a), use the following clause:

RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (MAR 2011)

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

(XX) “Covered Government support contract” means a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort).

(5) “Covered Government support contractor” means a contractor performing a covered Government support contract, provided that the contractor –

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to technical data or computer software for performance of a covered Government support contract that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(14) “Limited rights” means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(i) The reproduction, release, disclosure, or use is—

(A) Necessary for emergency repair and overhaul; or

(B) A release or disclosure to—

(1) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to within the covered Government support contractor’s organization in performance of a covered Government support contract, **provided that such use, modification, reproduction, performance, display, or release or disclosure is subject to the limitations in paragraph (b)(1) of the clause at DFARS 252.227-7025** or

(2) United States; or

~~(2)~~ (3) A foreign government, of technical data (other than detailed manufacturing or process data when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(ii) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(3) *Limited rights.*

(iv) The Contractor acknowledges that—

(A) Limited rights data is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the limited rights data as set forth in the clause at 252.227-7025, and **may shall not** include **any** additional terms and conditions **unless mutually agreed to by the parties to the non-disclosure agreement**; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights

than are enumerated in paragraph (a)~~(13)~~**(14)** of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(End of clause)

Enclosure 2

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 (MAR 2011)

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

***** (XX) *“Covered Government support contract” means a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government’s management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort).*

(6) *“Covered Government support contractor” means a contractor performing a covered Government support contract, provided that the contractor –*

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives ~~access to~~ technical data or computer software for performance of a *covered Government support contract* that contains the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(15) *“Restricted rights” apply only to noncommercial computer software and mean the Government’s rights to—*

(i) 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;

(ii) 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;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(15)(ii), (v), ~~and~~ (vi) **and (vii)** of this clause;

(v) 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—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure 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 Marked with Restrictive Legends;

(C) 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 (a)(15)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(15)(i) of this clause;

(vi) 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—

(A) The intended recipient is subject to the use and non-disclosure 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 Marked with Restrictive Legends; and

(B) 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 (a)(15)(iv) of this clause, for any other purpose; and

(vii) Permit a covered Government support contractor to use, modify, reproduce, perform, display, or release or disclose the computer software within the covered Government support contractor's organization in the performance of covered Government support contract ~~that contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, provided that—~~

(A) 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 (a)(15)(iv) of this clause, for any other purpose; and

(B) Such use, modification, reproduction, performance, display, or release or disclosure is subject to the limitations in paragraphs (a)(15)(i), (iii) and (iv) of this clause and paragraph (b)(1) of the clause at DFARS 252.227-7025.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(3) *Restricted rights.*

(iii) The Contractor acknowledges that—

(A) Restricted rights computer software is authorized to be released or disclosed to covered Government support contractors;

(B) The Contractor will be notified of such release or disclosure;

(C) The Contractor (or the party asserting restrictions, as identified in the restricted rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such software, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(D) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the restricted rights software as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and **may shall not** include ~~any~~ additional terms and conditions ~~unless mutually agreed to by the parties to the non-disclosure agreement~~; and

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(4) Specifically negotiated license rights.

(i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(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 paragraph (a)~~(14)~~**(15)** of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)~~(13)~~**(14)** of the Rights in Technical Data--Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(End of clause)

Enclosure 3

252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

As prescribed in 227.7103-6(c), 227.7104(f)(1), or 227.7203-6(d), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAR 2011)

(b) Technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited or restricted rights legends.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(ii) If the Contractor is a covered Government support contractor, the Contractor further agrees and acknowledges that—

(A) The data or software will be used only for the purposes stated in this contract and shall not be used to compete for any Government or non-Government contract;

(B) The Contractor will take all reasonable steps to protect the technical data or computer software against any unauthorized release or disclosure;

(C) The Contractor will ensure that the party whose name appears in the legend is notified of the Contractor's use of such data or software;

(D) The Contractor will enter into a non-disclosure agreement with the party whose name appears in the legend, if required to do so by that party, and that any such non-disclosure agreement will implement the restrictions on the Contractor's use of such data or software as set forth in this clause, and ~~may shall not~~ include ~~any~~ additional terms and conditions ~~unless mutually agreed to by the parties to the non-disclosure agreement;~~

(E) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request; and

(F) That a breach of these obligations or restrictions may subject the Contractor to—

(1) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(2) Civil actions for damages and other appropriate remedies by the party whose name appears in the legend.

(End of clause)

Enclosure 4

252.227-7015 Technical Data--Commercial Items.

As prescribed in 227.7102-3(a)(1), use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (MAR 2011)

(b) *License.*

(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by covered Government support contractors.

(3) The Contractor acknowledges that—

(i) Technical data covered by paragraph (b)(2) of this clause is authorized to be released or disclosed to covered Government support contractors;

(ii) The Contractor will be notified of such release or disclosure;

(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding

the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement;

(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and ~~may shall not~~ include ~~any~~ additional terms and conditions ~~unless mutually agreed to by the parties to the non-disclosure agreement~~; and

(v) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.

(End of clause)