

SPECIAL PROVISIONS - RIGHTS IN DATA
SP-7 REV. 0 11/10/08

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1.0 PREAMBLE 1

 Rights in Data-Technology Transfer Activities (Acquisition Letter No. 91-7) (Modified)1

 Restricted Rights Notice--Long Form.....7

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1.0 PREAMBLE

These Special Provisions are requirements of any contract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Contract and are in addition to the General Provisions and other Special Provisions that apply to this Contract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.

2.0 FEDERAL ACQUISITION CLAUSES

Rights in Data-Technology Transfer Activities (Acquisition Letter No. 91-7) (Modified)

A. Definitions

Computer software, as used in this Clause, means computer programs, computer databases, and documentation thereof.

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.

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.

Technical data, as used in this Clause, means data (other than computer software) that are of a scientific or technical nature.

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.

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, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

Limited rights, as used in this Clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph G. in this Clause.

Restricted rights, as used in this Clause, means the rights of the Government in restricted computer software, including minor modifications of such computer software, as set forth in a Restricted Rights Notice of paragraph H. in this Clause.

B. Allocation of rights

1. Except as may be otherwise expressly provided or directed in writing by the DOE Patent Counsel, the Government shall have:
 - a. Ownership of all technical data and computer software first produced in the performance of this Contract;
 - b. The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times (for which inspection of the proper facilities shall be afforded DOE by the Contractor and its subcontractors);
 - c. The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as Buyer may from time to time direct during the progress of the work or in any event as Buyer shall direct upon completion or termination of this Contract, provided that nothing contained in this paragraph shall require the Contractor to actually deliver any technical data or computer software, the delivery of which is excused by this Rights in Data Clause;
 - d. Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, and except for technical data and computer software pertaining to items of standard commercial design, and further, subject to the withholding provisions for protected CRADA information in accordance with Technology Transfer actions under this Contract; the Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by Buyer; provided, that if such data are limited rights data or restricted computer software the rights of the Government in such data shall be governed solely by the provisions of paragraph G. hereof ("Rights in Limited Rights Data") or paragraph H. hereof ("Rights in Restricted Computer Software"); and
 - e. The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by Buyer or DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case Buyer or DOE will notify the Contractor of the action taken.
2. The Contractor shall have:
 - a. The right to withhold its limited rights data and restricted computer software in accordance with the provisions of this Clause;
 - b. The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and
 - c. The right to assert copyright subsisting in scientific and technical articles as provided in paragraph D. of this Clause and the right to request permission to assert copyright in works subsisting in works other than scientific and technical articles as provided in paragraph E. of this Clause.

The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE contractor or subcontractor, and for technical data or

computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

Nothing contained in this Clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

C. Copyright (General)

1. The Contractor agrees not to mark, register or otherwise assert a copyright in any data in a published or unpublished work, other than as set forth in paragraphs D. and E. below.
2. Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph D. or E. hereof, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph D. below. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer through the Buyer to include such material in the data prior to its delivery.

D. Copyrighted works (scientific and technical articles)

The Contractor shall have the right to assert, without prior approval of the Contracting Officer, copyright subsisting 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. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including Contract number) on 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. 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.

E. Copyrighted Works (other than scientific and technical articles)

1. The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:
 - a. Contractor Request to Assert Copyright
 - i. For data other than scientific and technical articles, the Contractor shall submit in writing to Patent Counsel (with notification to the Buyer) its request to assert copyright in data first produced in the performance of this Contract pursuant to this Clause. Each request by the Contractor to be complete must include: (1) the identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes, (2) the program under which it was funded, (3) whether the data is subject to an international treaty or agreement, (4) whether the data is subject to export control, (5) a statement that the Contractor plans to commercialize the data within five (5) years of obtaining permission to assert copyright, and (6) for data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization. For data that is developed using other funding sources in addition to Buyer or DOE funding, the permission to assert copyright in accordance with this Clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to

Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

- ii. Permission for the Contractor to assert copyright in excepted categories of data as determined by DOE is expressly withheld. Such excepted categories include data whose release (1) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (2) would not enhance the appropriate transfer or dissemination and commercialization of such data, (3) would have a negative impact on U.S. industrial competitiveness, (4) would prevent DOE from meeting its obligation under treaties and international agreements, or (5) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by the Assistant General Counsel for Intellectual Property. Where data are determined to be under an export control restriction, the Contractor may still obtain permission to assert copyright in such restricted data for purposes of limited commercialization within the constraints provided by the export control statutes and regulations subject to the provisions of this Clause. However, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within the above-excepted categories and permission to assert copyright will not be granted by DOE for those data. Additionally, the rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this Contract as well as those additional treaties and international agreements which Buyer may from time to time identify by unilateral amendment to the Contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this Contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the Contract without first obtaining the advanced written permission of the Contracting Officer.
- b. DOE Review and Response to Contractor's Request

The Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this Clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond and the reasons therefore.

c. Permission for Contractor to Assert Copyright

- i. For computer software, the Contractor shall furnish to the Contractor designated by DOE to serve as the DOE centralized software distribution and control point, at the time permission to assert copyright is given under E. 1. b. above: (1) an abstract describing the software suitable for publication, (2) the source code for each software program, and (3) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Contractor acknowledges that the above-identified DOE-designated Contractor may provide a technical description of the software in an announcement identifying its availability from the copyright holder.
- ii. Unless otherwise directed by the Contracting Officer through the Buyer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph E. 1. b. above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) (with notification to Buyer) a copy of such data as well as an abstract of the data suitable for dissemination purposes.

The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its Contractors and to the public identifying its availability from the copyright holder.

- iii. For a period of five (5) years beginning on the date the Contractor is given permission to assert copyright in data, 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, and perform publicly and display publicly, by or on behalf of the Government. Subject to DOE approval, the five-year period is renewable for successive five-year periods. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.
- iv. After the five (5) year period set forth in E. 1. C. iii. above, or if, prior to the end of such period, the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, 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, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
- v. Whenever the Contractor obtains permission to assert copyright in data, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs E. 1. C. iii. and iv. above. Such action shall be taken when the data are delivered to the Government, published, licensed, or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

NOTICE: The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after (date permission to assert copyright was obtained) the Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR BUYER, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES AND LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

- vi. With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the 5-year period set forth in paragraph E. 1. C. iii. above, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in paragraph E. 1. a. above. Before licensing under this paragraph (E. 1. c. vi.), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 - "Appeals."
- vii. No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee and which exceeds DOE Program needs, except as expressly provided in writing by the Contracting Officer through the Buyer. The Contractor may use its net royalty income to affect such maintenance costs.

- viii. At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this Clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

F. Subcontracting

1. The Contractor agrees to use a Right in Data clause as directed by the Contracting Officer through the Buyer in subcontracts having as a purpose the conduct of research, development, and demonstration work and in subcontracts for supplies, where needed.
2. It is the responsibility of the Contractor to obtain from its subcontractor's data and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
 - a. Promptly submit written notice to the Contracting Officer through the Buyer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and
 - b. Not proceed with the subcontract without the written authorization of the Contracting Officer through the Buyer.

G. Rights in Limited Rights Data

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice":

LIMITED RIGHTS NOTICE

These data contain "limited rights data", furnished under Contract No. _____ with the Buyer (and Purchase Order/Subcontract No. _____ if applicable) which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

1. This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
2. This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
3. This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.
4. This Notice shall be marked on any reproduction of this data in whole or in part.

(END OF NOTICE)

H. Rights in Restricted Computer Software

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice--Long Form

- A. This computer software is submitted with restricted rights under Buyer 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.
- B. This computer software may be:
1. Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 2. Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 3. Reproduced for safekeeping (archives) or backup purposes;
 4. Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 5. Disclosed to and reproduced for use by Contractors under a service Contract (of the type defined in FAR 37.101) in accordance with paragraphs B. 1. through 4. of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- C. Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- D. This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(END OF NOTICE)

Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following Short-Form Notice may be used in lieu thereof:

Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. (Subcontract No. _____ if appropriate) with _____ (name of Contractor or subcontractor).

- A. If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr] may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the Contract number must also be cited.
- B. If restricted rights computer software is delivered with the copyright notice of 17 U.S.C 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with unlimited rights, unless the Contractor includes the following statement with such copyright notice: "Unpublished -- rights reserved under the Copyright Laws of the United States."