



SECRETARY OF THE ARMY
WASHINGTON

07 DEC 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2018-26 (Enabling Modernization Through the Management of Intellectual Property)

1. More than ever before, the Army faces unprecedented challenges from emerging threats, proliferation of technology, and rapid innovation by our adversaries. We recognize that we cannot overcome these challenges with outdated weapons, equipment, and policies. Consequently, we have embarked on a number of modernization and acquisition reforms designed to enable the development and delivery of new warfighting capabilities more rapidly and cost-effectively than in the past. We started by identifying the six modernization priorities and establishing U.S. Army Futures Command. To help enable these reforms, we are now changing our approach to how we manage intellectual property.
2. Intellectual property plays a critical role in our ability to modernize weapons systems and maintain technological overmatch. We must be careful to ensure that the policies and practices governing intellectual property provide us with the necessary access to effectively support our weapons systems, but do not constrain delivery of solutions to the warfighter and do not dissuade commercial innovators from partnering with us. This partnership with the industrial base is critical to developing the capabilities we need to be successful during future conflicts. Appropriate safeguards and protections for industry investment have been and will remain a foundation of our approach.
3. Additionally, our approach must balance the goals of fostering private innovation with long-term sustainment considerations. Through early planning for sustainment and appropriate investment in intellectual property, we afford ourselves options over the life cycle of our systems. These options can improve readiness, reduce sustainment costs, and increase availability.
4. To achieve these goals, we must challenge our established practices. Our new approach will ensure flexibility by requiring that we identify early in the process the intellectual property needed in all phases of a Defense business system's or weapon system's life cycle. It will require transparency in articulating these requirements and our objectives with industry. We will seek tailored access to intellectual property appropriate to the circumstances. We must pursue creative, customized licenses and seek only the necessary—not all—intellectual property to meet our needs. Finally, we must aim to negotiate prices for deliverables and associated license rights early in the process when competition exists. Through these practices, the Army will become a more sophisticated customer and user of intellectual property.

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5. To this end, I direct Army organizations to implement the enclosed policy for managing intellectual property. This policy will be incorporated into Army Regulation (AR) 70-1 (Army Acquisition Policy), AR 70-57 (Army Technology Transfer), and AR 700-127 (Integrated Product Support) within 2 years from the date of this directive. I further direct the Assistant Secretary of the Army (Acquisition, Logistics and Technology) to issue detailed implementation guidance no later than January 2019. As intellectual property law and regulation continue to evolve, we will quickly adapt the policy accordingly.



Mark T. Esper

Encls

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SUBJECT: Army Directive 2018-26 (Enabling Modernization Through the Management of Intellectual Property)

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POLICY FOR MANAGING INTELLECTUAL PROPERTY

1. **Background.** Intellectual property (IP) plays an important role in the Army's ability to modernize its weapons systems, maintain technological overmatch, support long-term sustainment, and manage cybersecurity. A deliberate and balanced IP management policy is critical to foster private innovation, allow greater access to new technologies, and maintain readiness at an affordable cost. The policy balances the goals of fostering private innovation with considerations for long-term sustainment of weapon systems. The policy requires early planning for long-term IP requirements to ensure flexibility over the life cycle. It directs tailored IP strategies and encourages the Army to seek only the necessary IP to meet its needs. It encourages negotiation of prices for license rights early in the process when competition exists. Lastly, it urges communication with industry throughout the process. As IP law and regulation continue to evolve, the Army will quickly adapt the IP management policy accordingly.
2. **Purpose.** This directive establishes Army policy for the creation, acquisition, use, maintenance, and protection of data (technical data, computer software documentation, computer software, copyrights, patents, trademarks, and trade secrets subject to IP legal protections), and the associated license rights to use, modify, reproduce, release, perform, display, or disclose such data in support of acquisition and sustainment of Army materiel and non-materiel (solutions or systems).
3. **References.** Applicable references are at enclosure 2.
4. **Glossary.** A glossary of related terms is at enclosure 3.
5. **Applicability.** This policy applies to all research and development, requiring, acquisition, sustainment, and contracting activities across the Army. It applies to traditional Federal Acquisition Regulation (FAR)/Defense Federal Acquisition Regulation Supplement (DFARS)-based contracts. Where feasible, the principles of the policy should be applied to non-FAR/DFARS instruments (for example, grants, cooperative agreements, other transaction agreements, cooperative research and development agreements, agreements under Title 10, U.S. Code section 2539b (10 U.S.C. § 2539b), and patent licensing agreements), when follow-on production and sustainment requirements are likely.
6. **Research and Development, Requiring, Acquisition, Sustainment, and Contracting Activities.** These activities will:
 - a. foster an environment of open communication with industry, academia, and military laboratories early in the acquisition process. This communication will be characterized by:

(1) exchange of information early in the process consistent with FAR Part 15.201(c), which may include, but is not limited to, industry days, one-on-one meetings, and requests for information. Measures will be taken to protect any IP with industry-asserted restrictions discussed during this phase.

(a) Consistent with the intent of FAR Subpart 15.201(f), all contractor-owned IP discussed will be considered proprietary information and nonpublic contractor-owned IP will not be disclosed publicly. This includes IP the Government is privy to as a result of discussions, documentation, or demonstrations.

(b) Nondisclosure agreements may be used in the planning/pre-solicitation phase to protect both Government and industry IP.

(2) disclosure of as much detail as practicable about the Army's intended product support strategy. This should include information about the Army's intended sustainment needs and the broad categories of data required for reset, repair, and other maintenance of the system.

(3) disclosure of appropriate information about the Army's IP Strategy to encourage industry or academia to propose innovative approaches to licenses that will enable the Army to achieve desired outcomes. As applicable, discuss data and/or rights the Army might need for a specific purpose, for a limited time, or under a specific set of conditions.

(4) discussion regarding use of a modular open system approach in the system design and development, and associated effects on data and license rights.

(5) disclosure of as much detail as practicable about the Army's cybersecurity strategy and discussion of software compliance with cybersecurity standards. This may include reviewing any third party software license agreements and terms, allowing third party certification, or putting the source code in escrow.

b. conduct early planning for the data and license rights needed to acquire, sustain, and dispose of Army materiel and non-materiel (solutions or systems). At a minimum, planning will address considerations at paragraph 7b of this policy.

c. identify the Government's minimum needs for the technical data, computer software documentation, computer software, and license rights. Consider including availability and delivery of identified data and rights as a source selection evaluation factor.

d. negotiate appropriate license rights (through the applicable contracting or agreements officer) early in the process to obtain the technical data, computer software documentation, or computer software required to support the program and secure competitive prices. When negotiation is not appropriate, include in the IP Strategy a

written justification supporting that position. The Milestone Decision Authority will determine if the justification is sufficient. Consider the use of priced contract options. Use of priced options should occur while competitive leverage exists to obtain an economical price. Do not seek rights to more extensive data than is necessary.

e. ensure that contractors or subcontractors are fairly compensated for technical data, computer software documentation, computer software, and license rights for Government use of contractor-owned IP.

f. ensure the Army is fairly compensated for contractor use of Army-owned IP.

(1) In accordance with Army Regulation (AR) 70-57 (Army Technology Transfer), Army labs and centers can enter into exclusive, nonexclusive, and partially exclusive license agreements with industry partners to generate revenue for Army-owned IP.

(2) Army organizations, including labs, depots, arsenals, ammunition plants, and life-cycle software engineering centers, will develop an IP management approach for use of Army-owned IP generated by their organizations (for example, inventions, technical data packages, and software) so that the Army may receive royalties or discounts may be applied to systems bought by Government. The value of Government IP should be factored into contract negotiations as a form of consideration exchanged between parties, as appropriate.

7. Program Managers of Acquisition Category I through IV Programs. These managers will:

a. assess the short- and long-term needs for data and license rights consistent with the spirit of 10 U.S.C. § 2320(e) and Department of Defense Instructions 5000.02 (Operation of the Defense Acquisition System) and 5000.75 (Business Systems Requirements and Acquisitions). Document the assessment in the program's IP Strategy, which should be developed and updated before the issuance of a contract solicitation.

(1) The IP Strategy is part of the program's Acquisition Strategy. When using a Simplified Acquisition Management Plan in place of an Acquisition Strategy, the Simplified Acquisition Management Plan should include the IP Strategy.

(2) When an IP Strategy is not applicable or appropriate, include in the Acquisition Strategy or Simplified Acquisition Management Plan a written justification supporting that position. The Milestone Decision Authority will determine if the justification is sufficient or if an IP Strategy will be required.

b. customize the IP Strategy to meet the specific needs of the program. Articulate the custom set of data and rights needed to support the program, instead of assuming the need for broad data and rights. Consider how the Army's rights or IP Strategy

should change over time and over the program's life cycle. The IP Strategy must consider the following:

(1) Program-Specific and Product Sustainment Considerations

(a) The unique characteristics of the system and components.

(b) The product support strategy for the weapon system. Explain how the IP Strategy will support a change in the product support strategy, if needed. Consider the effect of future manufacturing capabilities on the program or product support strategy.

(c) The organic industrial base strategy of the Army.

(d) The commercial market.

(e) How a modular open system approach is to be used for the program, if applicable. Define and differentiate the major systems platforms, major systems components, major systems interfaces, and general interfaces.

(2) Data Deliverable Considerations. The IP Strategy must consider the particular data that is required, who paid for the development of which data, the purpose it will be used for, the level of detail necessary, whom the Government needs to share the data with, and the duration of the need for the data. When appropriate, the IP Strategy should capture how the Army can leverage data with new design methods and rapid manufacturing to enhance systems over time or tailor them to specific environments.

c. negotiate appropriate license rights (through the applicable contracting officer or agreements officer) to obtain the technical data, computer software documentation, or computer software required to support the program. When negotiation is not appropriate, include in the IP Strategy a written justification supporting that position. The Milestone Decision Authority will determine if the justification is sufficient. Do not seek rights to more extensive data than is necessary.

(1) Consistent with the spirit of 10 U.S.C. § 2320, the following framework will apply when negotiating technical data rights for an item or process:

(a) Developed by a contractor exclusively with Federal funds (other than in the case of Small Business Innovation Research): The Government will have unlimited rights to use the technical data, release or disclose the technical data to persons outside the Government, or permit such persons to use the technical data.

(b) Developed by a contractor exclusively at private expense: The contractor may restrict the right of the Government to release or disclose technical data to persons outside the Government or permit such persons to use the technical data.

(i) This does not apply to technical data that constitutes a correction or change to data the Government provided; relates to form, fit or function; is necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); is otherwise publicly available; or has been released by the contractor without restriction on further release or disclosure.

(ii) As an exception, the Government may release or disclose technical data to, or permit use by, persons outside the Government, if it is necessary for emergency repair and overhaul; pertains to an interface necessary for the segregation or the reintegration of an item or process with other items or processes; or is released or disclosed to, or used by, a foreign government that is in the best interest of the U.S. Government and is required for evaluation or information purposes. Such release, disclosure, or use must be made subject to a prohibition that the data may not be further released, disclosed, or used. The contractor asserting the restriction should be notified of such release, disclosure, or use.

(c) Developed in part with Federal funds and in part at private expense: The rights will be negotiated as early as possible (preferably during contract negotiations), except in any case where negotiations would not be practicable. The establishment of negotiated rights will be based on small business innovation, interest in increasing competition and lowering costs by developing alternative sources of supply, interest in encouraging contractors to develop at private expense for use by the Government, and other factors the Secretary of the Army identified.

(2) Consistent with the spirit of 10 U.S.C. § 2320, the following framework will apply when negotiating technical data rights for a general interface:

(a) Developed by a contractor exclusively with Federal funds (other than in the case of Small Business Innovation Research): The Government will have unlimited rights to use the technical data, release or disclose the technical data to persons outside the Government, or permit such persons to use the technical data.

(b) Developed by a contractor exclusively at private expense: The contractor may restrict the right of the Government to release or disclose technical data to persons outside the Government or permit such persons to use the technical data.

(c) Developed in part with Federal funds and in part at private expense: The Government will have Government purpose rights (GPR), unless it is determined that negotiation of different rights would be in the best interest of the Government.

(3) Consistent with the spirit of 10 U.S.C. § 2320, the following framework will apply when negotiating technical data rights for a major system interface:

(a) Developed by a contractor exclusively with Federal funds (other than in the case of Small Business Innovation Research): The Government will have unlimited

rights to use technical data, release or disclose the technical data to persons outside the Government, or permit such persons to use the technical data.

(b) Developed by a contractor either exclusively at private expense or in part with Federal funds, and is used in a modular open system approach: The Government will have GPR to use technical data unless it is determined that negotiation of different rights would be in the best interest of the Government. For a major system interface developed exclusively at private expense for which the Government asserts GPR, the Government will negotiate reasonable compensation with the contractor.

(4) Consistent with the spirit of DFARS 227.7203-5 and DFARS 252.227-7014, when negotiating data rights for noncommercial computer software and associated computer software documentation, the Government will have unlimited rights in software developed exclusively with Federal funds, restricted rights in software developed exclusively at private expense, and GPR in software developed in part with Federal funds and in part at private expense.

(a) Consistent with the spirit of 10 U.S.C. § 2222 and 10 U.S.C. § 2322a, any negotiations should consider acquisition of all software and materials necessary to reproduce, build, or recompile software from original source code and required libraries; conduct required software testing; and deploy working software system binary files on relevant system hardware.

(b) Any noncommercial computer software or related materials required to be delivered will include software delivered in a usable, digital format; will not rely on external or additional software code or data (unless such software code or data is included in the items to be delivered); and will include sufficient documentation to support maintenance and understanding of interfaces and software revision history.

(5) When acquiring commercial computer software and commercial computer software documentation, the Government will acquire rights customarily provided to the public; review the commercial license to ensure it meets the Army's desired acquisition and sustainment outcomes; and seek software source code only when the source code delivery is consistent with the license, the Army-funded development of the source code, or it is required for cybersecurity analysis.

(6) Emphasize use of specially negotiated licenses. This includes negotiating and contracting for a specially negotiated license for data to support the product support strategy.

(7) Consistent with the spirit of 10 U.S.C. § 2320, the Army may use deferred ordering to acquire data and data rights that were not known or identified for delivery under the current contract. Deferred ordering may be used only under specific circumstances and only up to 6 years after acceptance of the last item under a contract or the date of contract termination, whichever is later. The Army must compensate the

contractor only for reasonable costs incurred in having the data converted and delivered.

(8) Consistent with the spirit of DFARS 252.227-7026, the Army may use deferred delivery. Deferred delivery may be used to order data on the current contract for delivery of the data for up to 2 years after acceptance of all items to be delivered under the contract or termination of the contract, whichever is later.

d. negotiate (through the applicable contracting or agreements officer), wherever appropriate, early in the acquisition or procurement process for competitive prices.

(1) Consistent with the spirit of 10 U.S.C. § 2439, when appropriate, negotiate the price for IP and data before selecting a contractor for engineering and manufacturing development, production, or sustainment for Acquisition Category I and II programs.

(2) For industry IP the Government seeks to use, fairly compensate the contractor or subcontractor for technical data, computer software documentation, computer software, and the appropriate license rights. Consider the use of priced options for data and license rights early in the process while competitive leverage exists to obtain an economical price.

(3) When the Army seeks greater data or license rights than what is outlined in paragraph 7c of this policy, appropriately compensate the contractor or subcontractor.

(4) For Army-owned IP industry seeks to use, pursue fair compensation in accordance with paragraph 6f.

8. Contractor Rights. Consistent with 10 U.S.C. § 2320, a contractor or subcontractor may not be required to sell or relinquish to the Government any additional rights in technical data the Government is not already entitled to as a condition of being responsive to a solicitation or as a condition for award of a contract.

9. Legal Counsel. All interested Government parties should consult local legal offices for detailed advice on IP, data, and rights.

REFERENCES

- a. Title 10 United States Code, section 2222 (10 U.S.C. § 2222) (Defense business systems: business process reengineering; enterprise architecture; management).
- b. Title 10 U.S.C. § 2320 (Rights in technical data).
- c. Title 10 U.S.C. § 2322a (Requirement for consideration of certain matters during acquisition of non-commercial computer software).
- d. Title 10 U.S.C. § 2337 (Life cycle management and product support).
- e. Title 10 U.S.C. § 2439 (Negotiation of price for technical data before development or production of major weapon systems).
- f. Title 10 U.S.C. § 2446a (Requirement for modular open system approach in major defense acquisition programs; definitions).
- g. Title 10 U.S.C. § 2446b (Requirement to address modular open system approach in program capabilities development and acquisition weapon system design).
- h. Title 10 U.S.C. § 2539b (Availability of samples, drawings, information, equipment, materials, and certain services).
- i. Department of Defense Instruction (DoDI) 5000.02 (Operation of the Defense Acquisition System); January 7, 2015; Incorporating Change 3, August 10, 2017.
- j. DoDI 5000.75 (Business Systems Requirements and Acquisitions), February 2, 2017, Change 1 Effective August 31, 2018.
- k. DoDI 5535.08 (DoD Technology Transfer (T2) Program); May 14, 1999; Incorporating Change 1, September 1, 2018.
- l. Federal Acquisition Regulation (FAR) Part 15.201 (Exchanges With Industry Before Receipt of Proposals).
- m. FAR Part 15.201(f) (Exchanges with Industry before Receipt of Proposals).
- n. Defense Federal Acquisition Regulation Supplement (DFARS) Contract Clause 252.227-7026 (Deferred Delivery of Technical Data or Computer Software).
- o. DFARS Contract Clause 252.227-7027 (Deferred Ordering of Technical Data or Computer Software).

- p. Army Regulation (AR) 70-1 (Army Acquisition Policy), 10 August 2018.
- q. AR 70-57 (Army Technology Transfer), 12 June 2018.
- r. AR 700-127 (Integrated Product Support), 22 October 2018.

GLOSSARY

Computer Software. Computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that enable software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation. (DFARS) Clause 252.227-7014)

Contracting Activity. For the purposes of this policy, this term covers contract specialists, contracting officers, and agreements officers.

Cooperative Research and Development Agreement. These agreements include agreements between one or more Federal laboratories and one or more non-Federal parties under which the laboratory provides personnel, services, facilities, equipment, or other resources (but not funds), with or without reimbursement, and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts that are consistent with the missions of the Army research and development activity. The term does not include procurement contracts, grants, or cooperative agreements. (15 U.S.C. § 3710a(d)(1))

Data. Recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. It does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information. (FAR Clause 52.227-14)

Detailed Manufacturing or Process Data. Technical data that describes the steps, sequences, and conditions of manufacturing, processing, or assembly the manufacturer used to produce an item or component or to perform a process. (DFARS Clause 252.227-7013)

Form, Fit, and Function Data. Technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items. (DFARS Clause 252.227-7013)

Government Purpose Rights. The rights to:

- use, modify, reproduce, release, perform, display, or disclose technical data within the Government for a 5-year period, or such other period as may be negotiated, in technical data, without restriction;
- upon expiration of the 5-year or other negotiated period, the Government will have unlimited rights in the technical data;

- release or disclose technical data outside the Government, subject to the nondisclosure agreement at DFARS 227-7103-7 and/or the inclusion of DFARS 252.227-7025 (Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends), and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for U.S. Government purposes.

The contractor has the exclusive right to use or license others to use this technical data for commercial purposes. (DFARS 252.227-7013(a)(13) and 252.227-7013(b)(2))

Grant. A legal instrument which, consistent with 31 U.S.C. § 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(b) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant. (32 CFR 37.1295)

Intellectual Property. A product of the human mind which is protected by law. It includes, but is not limited to, patents, inventions, designs, copyrights, works of authorship, trademarks, service marks, technical data, trade secrets, computer software, unsolicited inventive proposals, and technical know-how. The intangible rights in such property are described as intellectual property rights. (AR 27-60 (Intellectual Property))

License Rights. The licensee is authorized to use the intellectual property.

Limited Rights. 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—

- a. The reproduction, release, disclosure, or use is—
 - (1) necessary for emergency repair and overhaul; or
 - (2) a release or disclosure to—

(a) a covered Government support contractor in the performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(b) 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 information purposes;

b. the recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

c. the contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use. (DFARS 252.227-7013)

Major System Component. A high-level subsystem or assembly, including hardware, software, or an integrated assembly of both, that can be mounted or installed on a major system platform through well-defined major system interfaces. It includes a subsystem or assembly that is likely to have additional capability requirements, is likely to change because of evolving technology or threat, is needed for interoperability, facilitates incremental deployment of capabilities, or is expected to be replaced by another major system component. (10 U.S.C. § 2446a)

Major System Interface. A shared boundary between a major system platform and a major system component, between major system components, or between major system platforms, defined by various physical, logical, and functional characteristics, such as electrical, mechanical, fluidic, optical, radio frequency, data, networking, or software elements. It is characterized clearly in terms of form, function, and the content that flows across the interface to enable technological innovation, incremental improvements, integration, and interoperability. (10 U.S.C. § 2446a)

Major System Platform. The highest level structure of a major weapon system that is not physically mounted or installed onto a higher level structure and on which a major system component can be physically mounted or installed. (10 U.S.C. § 2446a)

Modular Open System Approach. With respect to a major defense acquisition program, the modular open system approach is an integrated business and technical strategy that employs a modular design that:

a. uses major system interfaces between a major system platform and a major system component, between major system components, or between major system platforms;

b. is subjected to verification to ensure major system interfaces comply with, if available and suitable, widely supported and consensus-based standards;

c. uses a system architecture that allows severable major system components at the appropriate level to be incrementally added, removed, or replaced throughout the life cycle of a major system platform to afford opportunities for enhanced competition and innovation while yielding:

- (1) significant cost savings or avoidance;
- (2) schedule reduction; opportunities for technical upgrades;
- (3) increased interoperability, including system or systems interoperability and mission integration; or
- (4) other benefits during the sustainment phase of a major weapon system; and

d. complies with the technical data rights set forth in 10 U.S.C. § 2320. (10 U.S.C. § 2446a)

Requiring Activity. For the purposes of this policy, the term “requiring activity” covers Army individuals or organizations (for example, Science and Technology Reinvention Laboratories, program manager and program management offices, and sustainment commands) that generate and submit a requirement to the contracting activity for a FAR/DFARS or non-FAR/DFARS contract with another party.

Restricted Rights. These rights apply only to noncommercial computer software and mean the Government’s rights to:

a. 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 the contract permits otherwise;

b. 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;

c. make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

d. modify computer software provided that the Government may:

(1) use the modified software only as provided in paragraphs a and c of this definition; and

(2) not release or disclose the modified software except as provided in paragraphs b, e, and f of this definition;

e. permit contractors or subcontractors performing service contracts 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:

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

(2) such contractors or subcontractors are subject to the use and nondisclosure agreement at DFARS 227.7103-7 or are Government contractors receiving access to the software for performance of a Government contract that contains DFARS 252.227-7025.

(3) The Government will not permit the recipient to decompile, disassemble, or reverse engineer the software, or to use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph d of this definition for any other purpose; and

(4) such use is subject to the limitations of paragraphs a–c of this definition;

f. 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:

(1) the intended recipient is subject to the use and nondisclosure agreement at DFARS 227.7013-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains DFARS 252.227-7025;

(2) the Government will not permit the recipient to decompile, disassemble, or reverse engineer the software, or to use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph d of this definition for any other purpose; and

(3) such use is subject to the limitations of paragraphs a–c of this definition; and

g. permit covered Government support contractors in the performance of covered Government support contracts that contain DFARS 252.227-7025 to use, modify, reproduce, perform, display, release, or disclose the computer software to a person authorized to receive restricted rights computer software provided that:

(1) the Government will not permit the covered Government support contractor to decompile, disassemble, or reverse engineer the software, or to use software

decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph d of this definition for any other purposes; and

(2) such use is subject to the limitations in paragraphs a–d of this definition. (DFARS 252.227-7014)

Small Business Innovation Research (SBIR) Data Rights. The Government’s rights during the SBIR data protection period to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated under an SBIR award as follows:

- a. Limited rights in such SBIR technical data; and
- b. Restricted rights in such SBIR computer software. (DFARS 252.227-7018)

Technical Data. Recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and management information. (DFARS 252.227-7013)

Technology Transfer. The intentional communication or sharing of knowledge, expertise, facilities, equipment, and other resources for application to military and nonmilitary systems. Technology transfer includes spin-off, spin-on, and dual-use activities. (DoDI 5535.08)

Unlimited Rights

a. For noncommercial technical data, “unlimited rights” are the rights to use, modify, reproduce, perform, display, release, or disclose technical data, in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so. (DFARS 252.227-7013)

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