

3.5-18 Commercial Computer Software - Restricted Rights (February 2003)

(a) As used in this clause, "restricted computer software" means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted.

(b) Notwithstanding any provisions to the contrary contained in any Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, vendor agrees that the Government may have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with applicable Federal laws.

(c)(1) The restricted computer software delivered under this contract shall not be used, reproduced or disclosed by the Government except as provided in subparagraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be-

(i) 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;

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

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

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the vendor does not, the Government has the right to do so: "Notice-Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the

Government regarding its use, reproduction and disclosure are as set forth in Government Contract No. _____."

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the Government in accordance with subparagraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: "Unpublished-rights reserved under the copyright laws of the United States."

(End of clause)

PRESCRIPTION

Should be used in RFI/RFPs and contracts for the acquisition of existing computer software or documentation, other than from GSA's Multiple Award Schedule contracts.