



DEPARTMENT OF THE NAVY  
NAVAL SEA SYSTEMS COMMAND  
WASHINGTON, D.C. 20362-5101

NAVSEAINST 9085.4<sup>IN REPLY REFER TO</sup>  
OPR CEL-TD  
20 May 1988

**NAVSEA INSTRUCTION 9085.4**

From: Commander, Naval Sea Systems Command

Subj: ENGINEERING DRAWING TECHNICAL DATA PACKAGE (EDTDP)  
ACQUISITION REQUIREMENTS

Ref: (a) DOD-D-1000B Drawings  
(b) NAVSEAINST 5000.39  
(c) NAVSEAINST 4000.6

Encl: (1) Definitions  
(2) Technical Data Acquisition Plan (TDAP) Preparation  
Guide  
(3) DOD Supplement to the Federal Acquisition Regulations  
(DFAR) Technical Data and Computer Software Contract  
Clauses

1. **Purpose.** To issue Naval Sea Systems Command (NAVSEA) policy for obtaining adequate technical data to support reprocurment and maintenance.

2. **Scope**

a. This instruction applies to the acquisition of all EDTDPs under the cognizance of NAVSEA.

b. This instruction does not apply to EDTDPs under the technical cognizance of the Deputy Commander for Nuclear Propulsion (SEA 08).

3. **Definitions.** Terms used in this instruction are defined in enclosure (1).

4. **Background.** Engineering drawings are frequently inadequate for competitive reprocurment and for logistics support due in part to the following:

a. Drawings delivered by contractors have omitted information containing restrictive legends.

b. Drawings delivered by contractors have contained invalid restrictive legends, and/or legends that improperly restrict their use.

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c. Drawings are identified with valid restrictive legends such that the Government cannot use them for reprourement.

d. Engineering drawings are procured at levels that are not consistent with logistic program requirements. This can impair:

(1) Competitive reprourement of systems, equipment, and spare parts.

(2) Fabrication of parts, and repair and maintenance of equipment.

## 5. Policy

a. Rights-in-Technical Data. Acquire only the EDTDP rights that are essential to meet the needs of the Government.

(1) EDTDP rights shall be acquired to support competitive reprourement.

(2) Prenotification of rights in data clause of reference (b) shall be used in all NAVSEA solicitations.

b. Drawing Levels. For production contracts, drawings shall be obtained at a level to support competitive reprourement and the maintenance philosophy. In special circumstances where usable engineering drawings exist which do not meet the requirements of reference (a) or the predicted end-use of the engineering drawings does not include the need for reprourement, tailoring of the acquisition by cost saving alternatives from the drawing level requirements is encouraged.

(1) EDTDPs shall reflect the end item and include all design, construction details, and processes generated during the design, evaluation, first article manufacture and test of the equipment sufficient to support, as applicable, equipment maintenance, overhaul, reprourement, and the acquisition of spare parts.

(2) Existing Government technical data and commercial standards which meet the EDTDP policy requirements and conform to reference (a) shall be screened for use prior to the preparation of new drawings.

## c. Acquisition Planning Documents

(1) The requirements for the acquisition of EDTDPs shall be included in a Technical Data Acquisition Plan (TDAP). The TDAP will be part of the Integrated Logistic Support Plan (ILSP). Reference (b) pertains.

(2) Funding to accomplish the requirements of the plan shall be budgeted in the early stages of the acquisition cycle.

6. Action

a. Ships, Systems and Equipment Acquisition Managers

(1) Prepare the TDAP pursuant to enclosure (2) and the following:

(a) Objectives that cover development, preparation, quality assurance, delivery, distribution, and drawing level.

(b) Alternative methods that will be used to ensure the availability of sufficient data for competitive reprocurement, if unlimited data rights are not acquired.

(c) An approved deviation statement when competitive reprocurement is not used.

(2) Document the periodic review of the TDAP as part of the ILSP review cycle; reference (b) pertains.

(3) Submit requests for deviations to the Deputy Chief Engineer for Logistics (CHENG-L) prior to the issuance of a hardware solicitation or contract when the TDAP indicates that the available technical data or the data to be developed for hardware items will not support competitive reprocurement. Deviation from the policy of this instruction shall typically be based on one or more of the following:

(a) Maintenance concepts

(b) Logistic support analysis

(c) Spare parts breakout program analysis

(d) Life-cycle cost analysis

(4) Develop price estimates that will reflect the cost of drawings to be procured that will support competitive reprocurement with needed logistics information and the appropriate data rights.

(5) Include the following clauses from the DOD Supplement to the Federal Acquisition Regulations (DFAR), provided in enclosure (3), in solicitations and contracts when an EDTDP is required:

(a) Rights in Technical Data and Computer Software  
(252.227-7013)

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(b) Restrictive Markings on Technical Data  
(252.227-7018)

(c) Deferred Ordering of Technical Data or Computer  
Software (252.227-7027)

(d) Requirement for Technical Data Certification  
(252.227-7028)

(e) Identification of Technical Data (252.227-7029)

(f) Technical Data, Withholding of Payment  
(252.227-7030)

(g) Data Requirements (252.227-7031)

(h) Prenotification of Rights in Technical Data  
(252.227-7035) - solicitations only

(i) Certification of Technical Data Conformity  
(252.227-7036) - contracts only

(j) Validation of Restrictive Markings on Technical  
Data (252.227-7037)

(k) Warranty of Data (252.246-7001)

(6) Perform a detailed evaluation to determine the validity of the classification of the engineering drawings identified by a prime or subordinate contractor as having limited data rights.

(a) Consider the following government options when a limited data rights legend is evaluated as correct:

1. Procure unlimited rights to the drawings
2. Do not procure unlimited rights to the drawings
3. Develop alternatives to preclude data with limited rights.

(b) Request, when the validity of the legend is considered incorrect, that the contractor voluntarily remove the legend. If the legend is not removed further negotiation or litigation may be required.

(c) Prepare a documented record evaluating the validity of limited data rights when procuring less than unlimited rights to data, such as in para. 6.(a), 2 or 3 above. This

deviation shall be submitted to CHENG-L in sufficient time for review prior to contract award or contract modifications.

(7) Specify in all contracts that the requirements for rights-in-data and drawing levels apply to subcontractors and their vendors who provide material and/or components necessary for completion of the item being procured.


b. Deputy Chief Engineering for Logistics (CHENG-L)

(1) Review and approve or disapprove deviations from the policy of this instruction.

(2) Review TDAPs on a random basis to monitor compliance with this instruction.

c. Data Managers (DM) and Data Requirements Review Board (DRRB). Ensure that a TDAP has been developed and that all deviations from the policy of this instruction have been approved prior to signing the approval block on DD Form 1423 of all NAVSEA hardware solicitations and contracts in accordance with the appropriate contract values cited in reference (c).

d. Deputy Commander for Contracts (SEA 02). Ensure that the clauses cited in paragraph 6.a.(5) are included in all hardware solicitations and contracts when an EDTDP is required.

  
H. E. YOUNG  
Vice Commander

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DEFINITIONS

1. Acquisition Manager. Project Directors, Project and Program Managers, Ship Acquisition Project Managers, Ship Logistics Managers (SLMs), Life Cycle Managers and designated shore activities having overall responsibility for ship/system/equipment acquisitions.

2. Engineering Drawing (ED). A document that discloses (directly or by reference) by means of pictorial or textual presentations, or combinations of both, a physical item, either as an individual part or assembly, in its final or completed state. The use of the term engineering drawing in this instruction includes associated lists.

3. Prenotification of Rights in Technical Data.

a. This procedure is incorporated into a solicitation, when offerors shall be required to identify, to the maximum extent practicable, in their response to the solicitation, such privately developed items, components, processes, or computer software and the associated technical data which they:

(1) Intend to deliver with limited or restricted rights;

(2) Intend to deliver with unlimited rights; or

(3) Have not yet determined will be delivered with limited or restricted rights or unlimited rights.

b. This procedure will give the Government the earliest possible identification of potential, or anticipated delivery of limited rights and will enable the Data Manager and Contracting Officer to make a determination if such rights are appropriate or to take other actions. Such actions may include requiring the contractor to utilize items, components, or processes developed at government expense or to negotiate the specific acquisition of unlimited rights to the data.

4. Rights-in-Data

a. Unlimited rights. The rights to use, duplicate, or disclose technical data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit other to do so.

b. Limited rights. The rights to use, duplicate, or disclose technical data in whole or in part, by or for the Government, with the express limitation that such technical data shall not be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for

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manufacture, or (3) used by a party other than the Government.  
[Some exceptions apply, see reference (b)].

5. Engineering Drawing Technical Data Package (EDTDP). A technical description of an item adequate for reprourement and engineering support. The description defines the required design configuration and assures adequacy of item performance. It consists of applicable technical data such as plans, engineering drawings and associated lists, specifications, standards, performance requirements, quality assurance provisions, and packaging data.





**TECHNICAL DATA ACQUISITION PLAN (TDAP)  
PREPARATION GUIDE**

**1. Technical Acquisition Data Plan (TDAP) - General Guidance.**

The Acquisition Plan (AP) is the overall, or top level, document that lays out program objectives and a plan of action to acquire engineering data along with any other contract deliverables. However, for most large acquisitions (e.g., major systems), the AP would become too long a document if engineering data considerations were included in full detail. Therefore, it is necessary to capture essential planning information in a Technical Data Acquisition Plan (TDAP). The TDAP will be part of the Integrated Logistics Support Plan (ILSP). Appendix A provides a sample TDAP.

a. **EDMO.** The Engineering Data Management Officer (EDMO) assigned to the acquisition activity is the person responsible for collecting and organizing engineering data details for the TDAP. EDMOs should recognize that the value of the TDAP lies not so much in the completed plan but, rather, in going through the planning process to arrive at the point of having a complete TDAP to publish. As with any planning process, the mere requirement to sit down and force oneself to think through all of the engineering data details focuses attention on the issues, choices to be made, identification of things to do, etc. The planning process is analogous to taking a final exam for a course. The final exam is a communicative tool to verify that the course has been taken-it is not the final objective itself. Satisfactorily completing the course is the real objective and the final exam is the objective measure. So too, completion of planning for engineering data acquisition is the objective for the EDMO; the TDAP documents the results and serves as a medium for communicating the results to others.

b. **Other TDAP Support.** Of course, the EDMO is not the only person involved in the planning that goes into the TDAP. This is done with help from others, especially those who will assume responsibility for the item or the data after delivery. The TDAP must be a team effort with appropriate inputs from business and technical specialists (e.g., functional inputs from those in contracting, financial, engineering, logistics, and legal offices).

c. **TDAP Support of the End-Item.** The TDAP should be primarily based on meeting downstream production and logistics support needs. The Government needs to get contractual commitment to furnish the engineering data while it has competition between alternate developers. Thereafter, the developing contractors may be reluctant to furnish data that will prevent them from being sole source for future production and maintenance contracts.

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Unfortunately, while competition exists, the actual components have often not been picked or developed, and the ultimate logistics support and production plans have not been made. The organizations that will be responsible for using and supporting the system typically have few people available to assign to determining future support and data needs. This requires that procuring activities make particular efforts to get inputs from such organizations and anticipate their needs. Additionally, the advice of legal counsel, especially lawyers with experience in intellectual property rights (technical data and patents), may be helpful in drafting a TDAP. In this way the Government should be able to obtain needed data when downstream data needs are fully determined.

2. The Technical Data Acquisition Plan (TDAP)

a. Nature of the TDAP. The TDAP is an essential element of a successful program in that it brings all the players together and starts a dialogue that keeps all organizations informed and aware of engineering data acquisition strategies. The purpose of such a plan is twofold:

(1) to set forth in general terms the program objectives for the acquisition of technical data, and

(2) to identify a plan of action for accomplishing these objectives.

Stated another way, the TDAP should identify where the overall program or project is headed and how engineering data fits into the picture. The plan must identify the EDMO, other participants and their organizations, their office codes and telephone numbers. Thus, when questions or concerns arise from any command, there is a responsible person to contact for resolution of the problems. While no universal pattern of distribution exists, the TDAP would normally be distributed to all activities participating in the program and made available to others on request.

b. TDAP Schedule Requirement. Another key to an effective engineering data acquisition program is the preparation of a milestone schedule chart, which identifies pertinent engineering data events and allows enough time to plan for manpower and travel funding resources. The schedule must show both precontract events [e.g., completion of contract requirements packages, Request For Proposals (RFP) issuance, source selection activity, planned contract award date, etc.] for acquisitions not yet on contract and postaward events [e.g., the engineering data guidance conferences, In-Process Reviews (IPRs), inspections, final acceptance, delivery of engineering data, etc.] for all acquisitions.

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c. Basic Strategies. Since the EDMO must ensure that engineering data to be delivered with limited rights are identified by the contractor and, if questionable, challenged by the Procuring Contracting Officer (PCO), one of the plan's major topics should be the data rights strategies. The plan should indicate whether unlimited rights in the data need to be acquired. Whether license rights will be acquired or whether an alternate technique (for example, form, fit and function data; reverse engineering; etc.) will be used to make sure that competition in the future is feasible. Alternate techniques to unlimited rights also include specially drafted contract terms that allow the Government the right to use limited rights data for Government purposes, such as competition, and options giving the Government the right to order data and rights in the future. How contractor proposals will be evaluated needs to be considered early and should also be covered in the TDAP.

d. Criteria for Change. The TDAP should include criteria to determine when Class 1 and Class 2 engineering changes (reference DOD-STD-480) are to be incorporated into the engineering data. These criteria should specify a time period and/or the number of changes allowed to accumulate before incorporation. It is not enough to list the criteria for incorporation of changes in the TDAP; the criteria must also be stated in the contract to ensure contractor awareness and compliance.

e. Evolution of the Plan. At the outset, the TDAP should identify engineering data by DID numbers [including CDRL (Contract Data Requirements List) sequence number when known] and proposed sections of the Statement Of Work (SOW) which cause engineering data to be generated, collected, delivered, and maintained. Once the contract is awarded, the engineering data requirements may be maintained by using a Management Information System (MIS), since contract changes should also be distributed to other program participants. This contract requirements list in the TDAP should be accompanied by the identification of proposed clauses and provisions that are not standard for all acquisitions. The EDMO should also identify what level of engineering drawings (pursuant to DOD-D-1000) are being (or will be) acquired in each program phase. Approved or planned deviations from NAVSEA engineering data acquisition procedures and any other information required by regulations must be identified in the TDAP. Since all of this information will not be available at the time the TDAP is initially prepared, the plan is a dynamic document that is updated and revised as additional information becomes available or as acquisition strategies change. Updates should be furnished to those on the distribution list.

f. Sample Technical Data Acquisition Plan. Appendix A is a sample TDAP. It is structured to illustrate a typical NAVSEA program. Paragraph content and headings are for illustration

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only; actual content and headings will differ for each program. The existence of such samples should not, however, result in stereotyped plans. The following guidance is offered to the EDMO for use in preparing the TDAP. The EDMO shall analyze:

(1) The program in terms of technical data requirements. Is this a newly developed weapons systems where the Government is funding the design and development where it can legitimately expect to receive all technical data with unlimited rights? Is this a modification of an existing weapons system or commercial system where the Government would expect to receive a few documents applicable to the modification of the contract end item, but not previously procured (existing) data? Are the multiple contractors doing work or developing data? How do they interrelate? Is the prime contractor responsible for all the data maintenance for the life of the system? Are commercial systems or subsystems to be used? Will the contractor support these commercial system acquisition with restrictive legends on the drawings?

(2) What the contract requirements will mean. The EDMO should do more than list CDRL and SOW references. The EDMO should analyze the impact these documents have on the government and the life cycle cost they impact. Does the contract specify we will receive complete data on the weapons system, the support equipment, the engines, or other subsystems? Does the requirement flow down to the subcontractors and vendors, and do they understand the requirement? Are the requirements appropriate to the current acquisition phase of the program?

(3) What management actions need to be taken and indicate the plan of action to be sure they are carried out. Do the contract requirements need to be corrected or expanded? Do actions need to be taken to update the CDRL requirements and SOW as the program moves into new phases? Do the In-Process Reviews (IPRs) need to concentrate on certain areas such as vendor data, associate contractor data, commercial item data, limited rights data? What actions need to be taken to obtain visibility of the contractor's drawing release systems, data management systems, quality control systems? How will IPRs be structured in terms of sampling, and how will they be structured to review drawings practices, completeness, reproducibility, data rights, and control drawings? These questions, at least, should be identified and addressed in the contractor guidance conference.

3. **Contract Administration Office (CAO) Participation.** In addition to the normal contract Administration services, which are listed in FAR Subpart 42.3, the CAO may be able to provide other assistance by virtue of its knowledge of specific contractor operations and frequently in-plant location. The EDMO should be aware of this potential capability and coordinate with the PCO

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to negotiate with the CAO the additional services that may be needed. When appropriate, the agreements should be documented in a Memorandum Of Agreement (MOA) or Letter Of Instruction (LOI) to the CAO. A copy of any such MOA or LOI should be attached to the TDAP. Limitations on any particular CAO's capabilities would also be identified. Overall, the following are tasks that the CAO should perform:

- a. Evaluating the contractor's drawings system for conformance to contract standards.
- b. Monitoring contractor's systems to review subcontractor data management.
- c. Participating in engineering data reviews.
- d. Following up on deficiency correction and detecting deficiencies trends.
- e. Selecting, or recommending to the EDMO, drawing packages for review.
- f. Providing to the contractor the technical approval letters for drawing updates.
- g. Ensuring that technical approval letters accompany shipments to engineering drawing repositories.
- h. Helping resolve rights in technical data problems by examining substantiating evidence in-plant and providing findings to the PCO.
- i. Monitoring engineering data delivery schedules.

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APPENDIX A

SAMPLE TECHNICAL DATA ACQUISITION PLAN (TDAP) -  
FOR THE (PROGRAM NAME)

(DATE)

(Signature)  
PROGRAM OR PROJECT EDMO

(Signature)  
PROGRAM OR PROJECT MANAGER

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#### DISTRIBUTION LIST

(Distribution of the TDAP will vary from program to program. However copies should be given to program participants, including the ultimate recipient(s) of the engineering data.)

#### REVISION PAGE

(Each time the TDAP is revised, the date of the revision will be listed on a revision page identifying, whenever possible, the nature of the change, revision number, etc.)

#### PURPOSE

This Technical Data Acquisition Plan (TDAP) describes the management strategy of the (name of program) office for acquiring complete, accurate, and adequate engineering data and supporting documentation to support the (name of system). The TDAP is designed to provide all participating agencies with necessary direction to ensure that engineering data requirements and schedules are understood and preparatory actions are taken in phase with other program events.

#### AUTHORITY

This TDAP is published by the (name of program) Program/Project Office as part of the program documentation for (name of program). (If appropriate, cite any Navy directives or publications as well.)

#### RESPONSIBILITY

The TDAP is the responsibility of the (name of program) Program Manager and will become the responsibility of the [cognizant Ship Logistic (SLM) or Life-Cycle Manager (LCM)] upon transfer of program management responsibility from the acquisition phase to the life-cycle support phase.

(Identify specific EDMO responsibilities and engineering data responsibilities of other participating organizations.)

#### PART I - GENERAL

1.1 System Description. (Briefly describe the system being acquired)

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1.2 Program Management. (name of code or activity) has been designated the implementing code/activity for the (name of program) Program/Project by COMNAVSEA and (name of NAVSEA directorate/division, etc.) has been designated lead by (name of code/activity). Within (name of NAVSEA directorate/division, etc.), program management responsibility has been assigned to the (name of program office and office code) Program/Project/Office and (name of system) Program Manager is responsible for the management and direction of all implementing and participating command efforts in the (name of system) acquisition. In accordance with NAVSEAINSTs 9085.2 and 9085.4, an EDMO has been identified to manage the various efforts needed to acquire engineering data (see Attachment 1). The EDMO reports to (identify EDMO's place in the program office chain of command).

1.3 Applicable Documents. [Identify the governing documents for the program or project. Cite the Program Charter, Program Objective Memorandum (POM), SEATASK, or other authority for the program by number and date, including revision. Also identify other applicable documents; for example, (program name) system specification (name and date) contract (number and date).]

## PART II - CONCEPTS AND STRATEGY

2.1 Acquisition Strategy. (Briefly describe acquisition strategy for the system pertinent to engineering data; for example, program phase, contracting technique, competition, tailoring.)

2.2 Maintenance Concept. [Briefly describe maintenance concept for the system pertinent to engineering data. For example, Levels used, Interim Contractor Support (ICS), Contractor Logistics Support (CLS), etc.]. Refer to the Integrated Logistics Support Plan (ILSP) and the system specification.

### 2.3 Contractual Requirements for Engineering Data:

2.3.1 Levels of Engineering Drawings. (Level 1, 2, or 3) engineering drawings are required to be prepared by the contractor during the (program phase) of the contract. [Level 3 engineering drawing data will be required if and when the contract proceeds to production. When program direction or planning documents specify that the production contract for a single design is to be competed, Level 3 engineering data must be contractually required and delivered during the Full Scale Development (FSD) phase. Justification should be provided and appropriate approval obtained if less than a full Level 3 engineering drawing package is to be acquired.]

2.3.2 Delivery of Preliminary and Final Engineering Data.  
[Describe the method, media, and timing for each delivery of

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engineering data to the US Navy. For example, deferred delivery, 60 days before Initial Operational Capability (IOC), increment shipments, etc. If deferred ordering, or deferred delivery are used, specify how the engineering data are to be ordered. State the media of engineering data (Microfilm, aperture cards, blue-line, CAD/CAM, etc.) delivery.]

2.3.3 Engineering Data Contract Provisions. (Identify by name and number clauses other than those in the DOD FAR SUPPLEMENT.)

2.3.4 Other Contractual Requirements. The Statement Of Work (SOW) task(s) which direct(s) the contractor as to engineering data (is,are) (provide contract SOW references). The Data Item Description(s) (DIDs) requiring delivery of engineering data (is,are), on contract under Contract Data Requirements List (CDRL) sequence number(s) (cite all CDRL items and associated DID numbers involving format and delivery of engineering data).

2.4 Engineering Data Guidance Conference. An Engineering Data Guidance Conference (will be,was) held (number of) days after (program phase) contract award.

2.5 In-Process Reviews. In-Process Review(s) (IPR) (will be, have been) performed to make sure the contractor's engineering data (will meet, have met) contractual requirements. These reviews (will be, have been) conducted (state when and where the extent not shown in the milestone schedule charts).

2.5.1 Acquisition Program EDMO. The acquiring program office EDMO (will, has) schedule(d) each IPR with the (name of program) Program Manager and (will, has) inform(ed) the contractor and review team members of the actual dates. The contract administration office (CAO) (will, have) assist(ed) in each review. Additional team members (will be, have been) chosen from (for example engineering, manufacturing, acquisition, logistic, etc.). The names, office code, and telephone numbers of these team members are included in Attachment 1, Identification of Participants. The EDMO (will, has) review(ed) the engineering data for discrepancies and ensure(d) these discrepancies (are, have been) noted. The contractor (will be, has been) tasked through the procurement contracting officer (PCO) to correct the engineering data, and a copy of the write-up (will be, has been) provided to the CAO.

2.5.2 CAO. The CAO (will, has) provide(d) a team member for each review. The contractor (will be, has been) officially tasked to make the required changes to the engineering data, and the CAO (will, has) inform(ed) the PCO of the contractor's changes. (Reference MOA in Attachment 2)

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2.6 Acceptance of Engineering Data. Ensure that the contract contains procedures so that after the last IPR, the (name of program) Program Manager or his designated representative(s) (will, have) sign(ed) a joint letter to the PCO for transmittal to the CAO for delivery to the contractor, indicating technical approval of the engineering data. Formal acceptance of the engineering data (will not be, was not) made until such approval (has, had) been given. The CAO (will, has) require(d) the contractor to attach a copy of this letter to the DD Form 250 for engineering data delivery. For revisions of delivered engineering data, the CAO will be responsible for furnishing the approval letters. The cognizant NEDSA will, upon receipt of the engineering data, inspect it for format, density and legibility. If necessary, they will obtain necessary corrections (format, density, and legibility only) from contractors, and when acceptable, will provide final acceptance signature on the DD Form 250.

### PART III - PERTINENT MILESTONE SCHEDULE CHART(S)

(Milestone chart(s) will be different for each program, but in every case, they need to depict two types of information:

1. Major program events; for example, contract award dates, Preliminary Design Review (PDR), Critical Design Review (CDR), Physical Configuration Audit (PCA), Initial Operational Capability (IOC), Program Management Responsibilities Transfer (PMRT), etc.

2. Major engineering data management events; for example, guidance conferences, IPRs, engineering data ordering dates, engineering data delivery dates, etc.).

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### ATTACHMENT 1 TO THE TDAP, IDENTIFICATION OF PARTICIPANTS

(This list may vary in format and level of detail but should include the name, office code, and telephone number of the implementing and supporting commands EDMOs and any other pertinent participants.)

### ATTACHMENT 2, MEMORANDUM OF AGREEMENT (MOA) AND LETTERS OF INSTRUCTIONS (LOI)

(If any MOAs, LOIs, or similar documents exist for engineering data acquisition, these should be provided as Attachment 2 to the TDAP).

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19/20B Enclosure (2)

**DOD FAR SUPPLEMENT  
Selected Technical Data and Computer  
Software Related Contracted Clauses**

52.227-7013 Rights in Technical Data and Computer Software. As prescribed at 27.482(a)(1), insert the following clause:

**RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (MAY 1987)**

(a) Definitions.

The terms used in this clause are defined in 27.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) Rights in Technical Data.

(1) Limited Rights. The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights in accordance with 27.473-1(a) and 27.473-1(b)(2); and

(ii) unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(3)(i), (ii), (iii), or (iv), below.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the Contractor and/or any subcontractor asserting limited rights.

**LIMITED RIGHTS LEGEND**

Contract No. \_\_\_\_\_.

Contractor: \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS 27.471. This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of

the portions subject to such limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(2) Government Purpose License Rights. The Government shall have Government purpose license rights in:

(i) unpublished technical data pertaining to items, components, or processes for which the Government has funded, or will fund, a part of the development cost, unless the Contracting Officer has determined that the Government requires unlimited rights, and:

(A) the Contractor has contributed or will contribute more than fifty percent (50%) of the development cost of the item, component, or process; or

(B) the Contractor is a small business firm or nonprofit organization that agrees to commercialize the technology; and

(ii) unpublished technical data listed or described in an agreement incorporated into the Schedule of the contract, which the parties have agreed will be furnished with Government purpose license rights in accordance with DFARS 27.472-6, 27.472-7, 27.473-1(a) and 27.473-1(b)(2).

Government purpose license rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the Contractor and/or any subcontractor asserting Government purpose license rights.

**GOVERNMENT PURPOSE LICENSE RIGHTS LEGEND**

Contract No. \_\_\_\_\_.

Contractor: \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in DFARS 27.471. This legend, together with the indications of the portions of

this data which are subject to such limitations, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations and shall be honored only as long as the data continues to meet the definition of Government purpose license rights.

(3) Unlimited Rights. Unless other rights have been agreed to in writing in accordance with DFARS 27.472-7, the Government shall have unlimited rights in:

(i) technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(ii) form, fit, or function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iii) manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes;

(iv) technical data, which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(v) technical data pertaining to an item, component, or process for which the Government has funded or will fund the entire development cost;

(vi) technical data pertaining to an item, component, or process, for which the Government has funded or will fund a part of the development cost, and the Contractor has not contributed or will not contribute more than fifty percent (50%) of the development cost;

(vii) technical data pertaining to an item, component, or process for which the Government has funded, or will fund, a part of the development cost, and the Contractor is a small business firm or nonprofit organization that does not agree to commercialize the technology;

(viii) technical data pertaining to an item, component, or process, for which the Government has funded, or will fund, a part of the development cost and, notwithstanding (b)(3)(vi) and (vii) above, the Contracting Officer has determined, in accordance with DFARS 27.472-5(b), that the Government requires unlimited rights; and

(ix) technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this or any other Government contract or subcontract.

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(c) Rights in Computer Software.

(1) Restricted Rights.

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, Provided, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

**RESTRICTED RIGHTS LEGEND**

Use, duplication or disclosure is subject to  
restrictions stated in Contract No. \_\_\_\_\_  
with \_\_\_\_\_ (Name of Contractor) \_\_\_\_\_.

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

**RESTRICTED RIGHTS LEGEND**

Use, duplication, or disclosure by the  
Government is subject to restrictions  
as set forth in subparagraph (c)(1)(ii) of  
the Rights in Technical Data and Computer  
Software clause at 52.227-7013.

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(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, Provided, that the unmodified portions shall remain subject to these restrictions.

(2) Unlimited Rights. The Government shall have unlimited rights in:

(i) computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(d) Technical Data and Computer Software Previously Provided Without Restriction. Contractor shall assert no restrictions on the

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Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) Copyright.

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in DFARS 27.471. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for  
the U.S. Government pursuant to the copyright  
license under the clause at 52.227-7013 (date).

(f) Removal of Unjustified and Nonconforming Markings.

(1) Unjustified Technical Data Markings. Notwithstanding any provision of this contract concerning inspection and acceptance, the

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Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 52.227-7037.

(2) Nonconforming Technical Data Markings. Correction of nonconforming markings is not subject to such clause. The Government may, at the Contractor's expense, correct any nonconforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the nonconforming markings within sixty (60) days.

(3) Unjustified and Nonconforming Computer Software Markings. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(1) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) Relation to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) Limitation on Charges for Data and Computer Software. The Contractor recognizes that it is the policy of the Government not to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This policy applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. However, it does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) Acquisition of Technical Data and Computer Software from Subcontractors.

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor.

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However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) Notice of Limitations on Government Rights.

(1) Unless the Schedule provides otherwise, and subject to (j)(2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component, or process for which technical data would contain any restrictions on the Government's right to use, disclose, or have others use such data.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components, or processes for which such notice was given pursuant to prenotification of rights in technical data in connection with this contract.

(3) Unless the schedule provides otherwise, Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component, or process in the performance of the contract.

(End of clause)

ALTERNATE I (MAY 1987)

As prescribed at 27.482(a)(2), add the following paragraph to the basic clause:

( ) (i) Notwithstanding any other provision of this contract, the Government shall have (specify additional Government rights here, i.e., reprourement) rights in restrictive rights technical data furnished under this contract, effective on the day immediately following the date specified in the contract for the expiration of the restrictive rights legends. Such expiration date shall be marked on each piece of data subject to expiring restrictions furnished under the contract.

(ii) Technical data subject to the expiration of restrictive rights shall be marked with the limited rights legend set forth in paragraph (b)(2)(i) above with the title of the legend modified to read:

RESTRICTIVE RIGHTS LEGEND (SUBJECT TO EXPIRATION)

Contract No. \_\_\_\_\_  
Contractor: \_\_\_\_\_

The following statement shall also be added to the legend:

**Restrictive rights shall become (specify additional Government rights here, i.e., reprourement) rights on (insert expiration date).**

The modified legend shall be included on any reproduction of the restrictive rights data, in whole or in part.

**ALTERNATE II (MAY 1987)**

As prescribed at 27.482(a)(3), add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

**52.227-7018 Restrictive Markings on Technical Data.** As prescribed at 27.482(d), insert the following clause:

**RESTRICTIVE MARKINGS ON TECHNICAL DATA (MAY 1987)**

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized, as well as (2) such records as are sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name

or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer should give written notification of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, the corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

**52.227-7027 Deferred Ordering of Technical Data or Computer Software.** As prescribed at 27.482(m), insert the following clause:

**DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (NOV 1974)**

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

**52.227-7028 Requirement for Technical Data Certification.** As prescribed at 27.482(n), insert the following provision:

**REQUIREMENT FOR TECHNICAL DATA CERTIFICATION (APR 1974)**

The Offeror shall submit with its offer a certification as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

52.227-7029 Identification of Technical Data. As prescribed at 27.482(o)), insert the following clause:

**IDENTIFICATION OF TECHNICAL DATA (MAR 1975)**

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

52.227-7030 Technical Data--Withholding of Payment. As prescribed at 27.482(p), insert the following clause:

**TECHNICAL DATA--WITHHOLDING OF PAYMENT (JUL 1976)**

(a) If "Technical Data" (as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may withhold from further payment such sum as the Contracting Officer considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

**52.227-7031 Data Requirements.** As prescribed at 27.482(q), insert the following clause:

**DATA REQUIREMENTS (APR 1972)**

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 52.2 made a part of the contract.

(End of clause)

**52.227-7035 Prenotification of Rights in Technical Data.** As prescribed at 27.482(t), insert the following provision:

**PRENOTIFICATION OF RIGHTS IN TECHNICAL DATA (MAY 1987)**

(a) Prenotification of Limitations on Government Rights.

In order for the Government to make informed judgments concerning the competitive procurement potential of items, components, processes, or computer software developed at private expense that an Offeror intends to deliver under a resultant contract, Offerors shall identify to the maximum practicable extent in their responses to this solicitation such privately developed items, components, processes, or computer software and the technical data which they:

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- (1) intend to deliver with limited rights;
- (2) intend to deliver with Government Purpose License Rights; or
- (3) have not yet determined if such rights should apply.

This requirement does not apply to standard commercial items which are manufactured by more than one source of supply. If an Offeror asserts other than unlimited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the Contracting Officer, evidence to support any such assertion.

(End of provision)

52.227-7036 Certification of Technical Data Conformity. As prescribed at 27.482(u), insert the following clause:

**CERTIFICATION OF TECHNICAL DATA CONFORMITY (MAY 1987)**

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, \_\_\_\_\_, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. \_\_\_\_\_ is complete, accurate, and complies with all requirements of the contract.

Date \_\_\_\_\_  
Name and Title of  
Certifying Official \_\_\_\_\_

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.



(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

52.227-7037 Validation of Restrictive Markings on Technical Data. As prescribed in 27.482(v), insert the following clause:

**VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (MAY 1987)**

(a) Definition. The terms used in this clause are defined in 27.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) Justification. The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) Prechallenge Request for Information.

(1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking

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would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates.

(Note: The Contracting Officer may also challenge the validity of the restricted markings if such technical data is publicly available, has been furnished to the Government without restriction, or has been otherwise made available without restriction.) When challenging the validity of restrictive markings, the Contracting Officer will follow the procedures described in paragraph (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may formally challenge the validity of the marking as described in paragraph (d) below.

(d) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) state the specific grounds for challenging the asserted restriction;

(ii) require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) state that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

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(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties (all appropriate Contracting Officers and Contractors and subcontractors). The schedule shall afford the Contractor or subcontractor an equitable opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) Final Decision When Contractor or Subcontractor Fails to Respond. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2)(ii) through (iv) below.

(f) Final Decision When Contractor or Subcontractor Responds.

(1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233-1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final

decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or

disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) Final Disposition of Appeal or Suit.

(1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained--

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained--

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) Duration of Right to Challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) Privity of Contract. The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) Flowdown. The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

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52.246-7001 Warranty of Data. As prescribed at 46.770-10, insert the following clause:

**WARRANTY OF DATA (NOV 1974)**

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design typed documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty Provided, that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, the Contracting Officer may:

(i) by written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) if the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1)(i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(3) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of Clause)

Alternate I (NOV 1974). As prescribed at 46.770, insert the following paragraph:

(3) In addition to the remedies specified under (d)(1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

Alternate II (NOV 1974). As prescribed at 46.770, insert the following paragraph:

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:



(i) with respect to the requirement under Category E or I of MIL-D-1000, provided that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

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