

RIGHTS IN DATA - SPECIAL WORKS

[CT, FP – NR&D, FP – R&D, CIS, LH/T&M, T&MC, CREI, – 09/04] [FAR 52.227-17 – 06/87]

(a) Definitions.

- (1) "Data," as used in this Article, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to Subcontract administration, such as financial, administrative, cost or pricing or management information.
- (2) "Unlimited rights," as used in this Article, means the right of the Government and, in support and furtherance of its Government contract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) The Government and, in support and furtherance of its Government contract obligations, the Institute, shall have:
 - (A) Unlimited rights in all data delivered under this Subcontract, and in all data first produced in the performance of this Subcontract, except as provided in paragraph (c) of this Article for copyright.
 - (B) The right to limit exercise of claim to copyright in data first produced in the performance of this Subcontract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) of this Article.
 - (C) The right to limit the release and use of certain data in accordance with paragraph (d) of this Article.
- (2) The Subcontractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) of this Article, the right to establish claim to copyright subsisting in data first produced in the performance of this Subcontract.

(c) Copyright.

- (1) Data first produced in the performance of this Subcontract.
 - (A) The Subcontractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this Subcontract without prior written permission of the Contracting Officer through JPL. When claim to copyright is made, the Subcontractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including Subcontract number) to such data when delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Subcontractor grants to the Government, and, in support and furtherance of its Government Contract Manager obligations, the Institute, and others acting on their behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
 - (B) If the Government or the Institute desires to obtain copyright in data first produced in the performance of this Subcontract and permission has not been granted as set forth in subdivision (c)(1)(A) of this Article, JPL may direct the subcontractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignees. Any copyright license required in order to perform work under this Subcontract is freely transferable to any successor-in-interest of JPL, a successor contractor to operate JPL, or the Government.
- (2) Data not first produced in the performance of this Subcontract. The subcontractor shall not, without prior written permission of JPL, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, and, in support and furtherance of its

Government contract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article.

- (d) Release and Use Restrictions. Except as otherwise specifically provided for in this Subcontract, the Subcontractor shall not use for purposes other than the performance of this Subcontract, nor shall the Subcontractor release, reproduce, distribute, or publish any data first produced in the performance of this Subcontract, nor authorize others to do so, without written permission of JPL.
- (e) Indemnity. The subcontractor shall indemnify the Government, the Institute, and their officers, agents, and employees acting for the Government or JPL against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this Subcontract, or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government or the Institute provides notice to the Subcontractor as soon as practicable of any claim or suit, affords the Subcontractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Subcontractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the subcontractor by JPL and incorporated in data to which this Article applies.
- (f) Whenever the words "establish" and "establishment" are used in this clause, with reference to a claim to copyright, they shall be construed to mean "assert" and "assertion," respectively.