FACT SHEET:
Overview of Law, Regulations, and Policy for Licensing Technical Data (TD) and Computer Software (CS) to DoD

• The Data Deliverables. For DoD, development and delivery of technical data (TD) & computer software (CS) is governed by the Defense Federal Acquisition Regulation Supplement (DFARS).

• The Data Rights Scheme. DoD generally takes only a license in the intellectual property (IP) embodied in TD or CS (even for portions funded entirely by DoD). The DFARS “standard” license rights are based primarily on the source of funding to “develop” the IP, with specialized policies and protections for commercial technologies—as outlined below and summarized in Figure 1.

• “Developed Exclusively at Private Expense.” This includes reimbursed development costs that are appropriately charged to the Government via indirect cost pools (e.g., independent R&D, bid & proposal); as well as development not otherwise charged or allocated to a Government contract.

• Protection for Privately-Funded Technology. For technology developed exclusively at private expense, DoD’s standard license is limited primarily to internal use of that IP, being authorized to release the proprietary IP to third parties outside of the government only—
  – For certain limited, critical activities directly supporting DoD activities (e.g., emergency repairs, support contractors supporting DoD program management);
  – When the IP owner is notified of the intended release to the IP owner; and
  – When the third party recipient is legally bound to appropriate use and nondisclosure restrictions.

• Mixed Funding. The standard license for IP developed with a mix of DoD & private funds allows use only by or on behalf of the Gov’t; the developer retains exclusive rights for commercial uses.

• Commercial Technologies. There are special protections for commercial technologies:
  – Funding Presumption: Commercial items or processes are presumed to have been developed exclusively at private expense (with special exceptions for major systems).
  – Deliverables: DoD receives the same deliverables customarily provided to the public, except for certain special needs (i.e., data needed for DoD-unique maintenance, data for DoD-funded modifications, or Form, Fit, and Function (FFF) data).
  – Commercial Computer Software: DoD receives only the same license rights customarily provided to the public (subject to federal law, and the license meeting the agency’s needs).
  – DoD-funded Modifications: minor modifications or modifications customarily offered in the commercial marketplace do not alter the commercial status of the technology; only modifications that rise to the level of “development” can affect the DoD license rights.

• Modular Licensing & the Modular Open Systems Approach (MOSA). For technology developed with a mix of DoD and private funds, the privately-funded work can be segregated from the DoD-funded work, at the “lowest practicable segregable level,” allowing separate licenses to govern each portion (a.k.a. the “Doctrine of Segregability”). MOSA is primarily a technical approach for system design, which naturally facilitates a more effective approach to TD and CS deliverables, as well as modular licensing. MOSA helps preserve competition throughout the system life cycle by enabling a “plug-and-play” approach for “black box” commercial or proprietary system components, leveraging open, standard, interfaces between those components.
**Figure 1. DFARS License Rights for Technical Data (TD) & Computer Software (CS)**

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<th>Rights Category</th>
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<td>Unlimited Rights (UR)</td>
<td>Noncommercial TD and CS</td>
<td>Developed exclusively at Gov’t expense, and certain data types (FFF, OMIT, CSD)³</td>
<td>All uses; no restrictions</td>
<td></td>
</tr>
<tr>
<td>Government Purpose Rights (GPR)</td>
<td>Noncommercial TD and CS</td>
<td>Developed with mixed (Gov’t &amp; private) funding</td>
<td>All uses; no restrictions</td>
<td>For “Government Purposes” only; no commercial use²</td>
</tr>
<tr>
<td>Limited Rights (LR)</td>
<td>Noncommercial TD only</td>
<td>Developed exclusively at private expense</td>
<td>Unlimited; except cannot be used for manufacture</td>
<td>Emergency repair or overhaul, certain support contractors²,⁴</td>
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<tr>
<td>Restricted Rights (RR)</td>
<td>Noncommercial CS only</td>
<td>Developed exclusively at private expense</td>
<td>One computer at a time; minimum backup copies; modification⁵</td>
<td>Emergency repair &amp; overhaul; certain service/maintenance contracts²,⁴,⁵</td>
</tr>
<tr>
<td>Specifically Negotiated License Rights</td>
<td>All TD &amp; CS (including commercial TD &amp; CS)</td>
<td>Mutual agreement of the parties; use whenever the standard categories do not meet both parties’ needs</td>
<td>As negotiated by the parties; however, must not be less than LR in any type of TD, and must not be less that RR in noncommercial CS</td>
<td></td>
</tr>
<tr>
<td>Small Business Innovation Research Data Rights</td>
<td>Noncommercial TD and CS</td>
<td>All TD or CS generated under an SBIR contract</td>
<td>The equivalent of UR in OMIT &amp; FFF data; the equivalent of LR in all other delivered TD; the equivalent of RR in CS</td>
<td></td>
</tr>
<tr>
<td>Commercial TD License Rights</td>
<td>Commercial TD only</td>
<td>TD related to commercial items (developed exclusively at private expense)⁶</td>
<td>The equivalent of UR in OMIT &amp; FFF data; the equivalent of LR in all other delivered TD</td>
<td></td>
</tr>
<tr>
<td>Commercial CS Licenses</td>
<td>Commercial CS &amp; CSD</td>
<td>Any commercial CS or CS Documentation</td>
<td>As specified in the commercial license customarily offered to the public⁷</td>
<td></td>
</tr>
</tbody>
</table>

**Figure 1 Notes:**

1. DoD cannot require more than the minimum standard rights (for the rights criteria) as a condition of contract award (10 U.S.C. 2320(a)(2)(F)). However, DoD can evaluate the license restrictions as part of source selection & negotiations.
2. For rights categories other than UR, all third parties’ use is controlled by a Non-Disclosure Agreement (NDA) that creates third party beneficiary rights, including a direct cause of action for any unauthorized uses (see DFARS 227.7103-7, 252.227-7025). A notice requirement also applies to releases of LR data and RR software.
3. “FFF” = form, fit, and function data; “OMIT” = data necessary for operation, maintenance, installation, training (OMIT); “CSD” = computer software documentation (e.g., user manuals).
4. In addition to the Note 2 safeguards, all authorized “Covered Government Support Contractors” with access to LR data or RR software must agree to sign an NDA directly with the owner of the data/software.
5. See DFARS 252.227-7014(a) for more information on the details of RR.
6. If the Gov’t funds any portion of development, the noncommercial TD clause (252.227-7013) is used for the Gov’t-funded portions, and the commercial TD clause (-7015) is used for the privately-funded portions (227.7103-6(a)).
7. Such licenses must be consistent with Federal procurement law and satisfy user needs.