

# CHAPTER 5 DEFINITIONS

**1. Associated License Rights (formerly Data Rights).** Government's nonexclusive license **rights** in two categories of valuable intellectual property, "technical **data**" and "computer software" delivered by contractors under civilian agency and DoD contracts.

**2. Covered Government Support .** A contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), which contractor—

a. is not affiliated with the prime or a first-tier subcontractor, program or effort, or with any direct competitor of such prime contractor or any tier subcontractor in furnishing end item or services of the type developed or produced on the program or effort; and

b. executes a contract with the Government agreeing to and acknowledging—

i. that proprietary or nonpublic technical data furnished will be accessed and used only for the purposes stated in that contract;

ii. that the covered Government support will enter into a non-disclosure agreement with the contractor regarding rights to the technical data;

iii. that the covered Government support will take all reasonable steps to protect the proprietary and nonpublic nature of the technical data furnished to the covered Government support contractor program or effort for the period of time in which the Government is restricted from disclosing the technical data outside of the Government;

iv. that a breach of that contract by the covered Government support with regard to a third-party's ownership or rights in such technical data may subject the covered Government support contractor

1. to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

2. to civil actions for damages and other appropriate remedies by the or subcontractor technical data is affected by the breach; and

3. that such technical data provided to the covered Government support under the authority of this section shall not be used by the covered Government support contractor against the third-party for Government or non-Government contracts. (10 U.S. Code § 3775- Definitions, paragraph (a))

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

**4. Computer Software Documentation.** Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software. (DFARS 252.227-7014)

**5. Copyright.** Rights in original works of authorship, fixed in any tangible medium of expression. Works of authorship include: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. Under U.S. law, registration is not necessary for copyright to exist. Computer software can sometimes be protected by copyright, as a literary work. Copyright does not cover names, ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries. (Implementation Guidance for Army Directive 2018-26, Enabling Modernization through Management of Intellectual Property)

**6. Depot-Level Maintenance and Repair.** Material maintenance or repair requiring the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation of equipment as necessary, regardless of the source of funds for the maintenance or repair or the location at which the maintenance or repair is performed.

(a) The term includes: (1) all aspects of software maintenance classified by the Department of Defense as of July 1, 1995, as depot-level maintenance and repair, and (2) interim support or contractor support (or any similar contractor support), intent that such support is for the performance of services described in the preceding sentence.

(b) Exceptions. (1) The term does not include the procurement of major modifications or upgrades of weapon systems that are designed to improve program performance or the nuclear refueling or defueling of an aircraft carrier and any concurrent complex overhaul. A major upgrade program covered by this exception could continue to be performed by private or public sector activities. (2) The term also does not include the procurement of parts for safety modifications. However, the term does include the installation of parts for that purpose. (10 U.S.C. § 2460)

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

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

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

**10. Intellectual Property (IP) Deliverables.** Products or services (including information products and services) that are required to be delivered or provided to the U.S. Government by contract or other legal instrument and that include or embody IP (e.g., technical data and computer software) (DoD Instruction 5010.44, Intellectual Property (IP) Acquisition and Licensing)

**11. Intellectual Property (IP) Rights.** The legal rights governing IP, including ownership as well as license or other authorizations to engage in activities with IP (e.g., make, use, sell, import, reproduce, distribute, modify, prepare derivative works, release, disclose, perform, or display IP). When the IP involves access to classified information, DoD Directive 5535.02, DoD Instruction 2000.03, and Volume 2 of DoD Manual 5220.22 may apply. (DoD Instruction 5010.44, Intellectual Property (IP) Acquisition and Licensing)

## 12. Modular Open Systems Approach (MOSA).

**Modular Open System Approach Requirement.** See 10 USC 4401 for further definitions. The term “modular open system approach” means, with respect to a major defense acquisition program, an integrated business and technical strategy that—

1. employs a modular design that uses modular system interfaces between major systems, major system components and modular systems;
2. is subjected to verification to ensure that relevant modular system interfaces—
  - a. comply with, if available and suitable, widely supported and consensus-based standards; or
  - b. are delivered pursuant to the requirements established in subsection (a)(2)(B) of section 804 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, including the delivery of—
    - i. software-defined interface syntax and properties, specifically governing how values are validly passed and received between major subsystems and components, in machine-readable format;
    - ii. a machine-readable definition of the relationship between the delivered interface and existing common standards or interfaces available in Department interface repositories; and
    - iii. documentation with functional descriptions of software-defined interfaces, conveying semantic meaning of interface elements, such as the function of a given interface field;
3. uses a system architecture that allows severable major system components and modular systems at the appropriate level to be incrementally added, removed, or replaced throughout the life cycle of a major system platform to afford opportunities for enhanced competition and innovation while yielding—
  - a. significant cost savings or avoidance;
  - b. schedule reduction;
  - c. opportunities for technical upgrades;
  - d. increased interoperability, including system of systems interoperability and mission integration; or
  - e. other benefits during the sustainment phase of a major weapon system; and
4. complies with the technical data rights set forth in 10 USC 3771-3775

## 13. Operation Maintenance Installation Training (OMIT). (There is no regulatory or statutory definition.) Recommend adding to PWS.

OMIT is described in 10 USC 3771 as technical data that is necessary for operation, maintenance, installation, and training purposes, other than detailed manufacturing or process data. Data needed for OMIT can include technical data and computer software documentation pertaining to the system and associated equipment. It can be data necessary for providing field and sustainment level operators and maintainers the theory of operation; details on the equipment/software operation (including test and inspection procedures); details sufficient to affect maintenance (including

removal, repair, replacement and the proper lubricants, tools, test equipment, etc. to be used in these operations); installation (for installing items, components, parts, etc. on a platform, assembly, component); and training (including instructors, operators and maintainers (field and sustainment level), packaging/preservation personnel, and logistics assistance representative.

**14. Patent.** In the United States, a patent is the grant of a property right by the United States Patent and Trademark Office (USPTO) to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement of one of those. The right conferred by the patent grant is the right to exclude others from making, using, offering for sale, or selling the invention in the United States or "importing" the invention into the United States. (Implementation Guidance for Army Directive 2018-26, Enabling Modernization through Management of Intellectual Property)

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

- a. Limited rights in such SBIR technical data; and
- b. Restricted rights in such SBIR computer software.
- c. DFARS 252.227-7018 - Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program

**1. Specifically/specially negotiated license rights.** The standard license rights granted to the Government under the appropriate contract clause (for commercial/non- commercial technical data and/or computer software) may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in the appropriate contract clause (for commercial/non-commercial technical data and/or computer software). Any rights so negotiated shall be identified in a license agreement made part of this contract. (Implementation Guidance for Army Directive 2018-26, Enabling Modernization through Management of Intellectual Property)

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

**3. Technical Data Package:** A technical description of an item adequate for supporting an acquisition, production, engineering, and logistics support. The description defines the required design configuration or performance requirements, and procedures required to ensure adequacy of item performance. It consists of applicable technical data such as models, engineering design data, associated lists, specifications, standards, performance requirements, quality assurance provisions, software documentation and packaging details. (MIL-STD-31000B)

**4. Trade Secret:** All forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if - (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily

ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information. (18 U.S.C. § 1839)

**Note:** *This is not a wholly inclusive list of definitions associated with IP, data deliverables, and associated license rights. The full definitions and other associated terms and definitions are located in referenced IP documentation, Federal Acquisition Regulation (FAR), and Department of Defense Federal Acquisition Regulation Supplement (DFARS).*

**Parent topic:** [Appendix E Intellectual Property, Data Deliverables, and Associated License Rights](#)