



**APPENDIX FOA-1
GOVERNMENT CLAUSES INCORPORATED BY
REFERENCE**

Beyond New Horizons, LLC
Arnold Engineering Development Complex Test Operations & Sustainment

- A. The Federal Acquisition Regulation (FAR) and the U. S. Department of the Air Force, Headquarters Defense Federal Acquisition Regulation (DFAR), and the Air Force Federal Acquisition Regulation (AFFAR) clauses, which are incorporated by reference herein shall have the same force and effect as if printed in full text. Full text of the reference clauses may be accessed online at website address: <http://www.acquisition.gov/dfars>

- B. Wherever necessary to make the context of the unmodified FAR, DFAR and AFFAR clauses applicable to this subcontract:
 - (1) The term "Contractor" shall mean "SELLER/SUBCONTRACTOR;"
 - (2) The term "Contract" shall mean this subcontract; and
 - (3) The term "Government," "Contracting Officer" and equivalent phrases shall mean CONTRACTOR and/or CONTRACTOR'S representative, except the terms "Government" and "Contracting Officer" do not change:
 - (i) In the phrases "Government Property," "Government-Furnished Property," and "Government-Owned Property;"
 - (ii) In any patent, data rights or other intellectual property clauses incorporated herein, except that the term "Government" shall mean both "Government" and "CONTRACTOR" with respect to any Patent Indemnity clause;
 - (iii) When a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or his duly authorized representative;
 - (iv) When title to property is to be transferred directly to the Government;
 - (v) When access to proprietary financial information or other proprietary data is required except for authorized audit rights; and
 - (vi) Where specifically modified herein.
 - (4) For authorized audit rights, the term "Contracting Officer, or an authorized representative of the Contracting Officer" shall also include "CONTRACTOR, or an authorized representative of CONTRACTOR."

- C. The following clauses are incorporated by reference into this subcontract: The CONTRACTOR is responsible for flowing down the requirements of all applicable FAR and DFAR clauses to its sub tier suppliers at any tier to the extent required.

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS		
Clause Number	Title and Date	Instructions
252.203-7000	Requirements Relating to Compensation of Former DoD Officials (Sep 2011)	None
252.203-7002	Requirement to Inform Employees of Whistleblower Rights (Dec 2022)	None

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS		
Clause Number	Title and Date	Instructions
252.203-7999 <i>DEVIATION</i>	Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements (DEVIATION 2015-00010) (Feb 2015)	None
252.204-7000	Disclosure of Information (Oct 2016)	None
252.204-7012	Safeguarding of Unclassified Controlled Technical Information (Jan 2023)	None
252.211-7007	Reporting of Government-Furnished Property (Mar 2022)	This clause applies if Government Furnished Property is provided to Subcontractor / SELLER under this agreement.
252.215-7000	Pricing Adjustments (Dec 2012)	None
252.223-7001	Hazard Warning Labels (Dec 1991)	None
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Sep 2016)	This clause applies when on-site services will be performed, and the nature of the services may involve the temporary storage of toxic or hazardous material.
252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Sep 1999)	This clause applies to all subcontracts and POs at every tier: (1) for the development, production, manufacture, or purchase of arms, ammunition and explosives (AA&E); or (2) when AA&E will be provided to the subcontractor/SELLER as Government-furnished property.
252.225-7001	Buy American and Balance of Payments Program (Jan 2023)	None
252.225-7002	Qualifying Country Sources as Subcontractors (Mar 2022)	None
252.225-7007	Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies (Dec 2018)	None
252.225-7008	Restriction on Acquisition of Specialty Metals (Mar 2013)	This clause applies to all subcontracts and purchase orders for the supply of Specialty Metals.
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (Jan 2023)	This clause applies to all subcontracts and purchase orders for the supply of certain articles containing Specialty Metals, except that: <ul style="list-style-type: none"> 1. Paragraph (c) (6) is modified as follows: [PN: Modify paragraph (c)(6) of this clause as necessary to facilitate management of the minimal content exception] 2. Paragraph (d) shall not apply.
252.225-7012	Preference for Certain Domestic Commodities (Apr 2022)	This clause applies if any of the commodities identified in the

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS		
Clause Number	Title and Date	Instructions
		clause will be provided under this [subcontract/PO].
252.225-7013	Duty-Free Entry (Dec 2022)	None
252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (Jun 2005)	None
252.225-7017	Photovoltaic Devices (Jan 2014)	None
252.225-7025	Restriction on Acquisition of Forgings (Dec 2009)	This clause applies to all subcontracts or purchases orders for forging items or for other items that contain forging items
252.225-7047	Exports by Approved Community Members in Performance of the Contract (Jun 2013)	This clause applies to all subcontracts or purchase orders that may require exports or transfers of qualifying defense articles in connection with deliveries under the subcontract or purchase order.
252.225-7048	Export-Controlled Items (Jun 2013)	None
252.225-7988 <i>DEVIATION</i>	Acquisition of the American Flag (DEVIATION) (Feb 2014)	This clause applies to all PO's or Subcontract for the supply of US Flags
252.227-7016	Rights in Bid or Proposal Information (Jan 2023)	None
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (Jan 2023)	None
252.227-7027	Deferred Ordering of Technical Data or Computer Software (Apr 1988)	None
252.227-7037	Validation of Restrictive Markings on Technical Data (Jan 2023)	None
252.239-7000	Protection Against Compromising Emanations (Oct 2019)	This clause applies to any Information Technology developed or provided under the [Subcontract/Purchase Order]
252.239-7018	Supply Chain Risk (Dec 2022)	This clause applies to any Information Technology developed or provided under the [Subcontract/Purchase Order]
252.244-7000	Subcontracts for Commercial Items (Jan 2023)	None
252.245-7001	Tagging, Labeling, and Marking of Government-Furnished Property (Apr 2012)	This clause applies if Subcontractor/Seller is provided with any Government-Furnished Property
252.246-7003	Notification of Potential Safety Issues (Jan 2023)	. Whenever the clause is included, insert the following in the Instruction column: "Subcontractor shall provide <u>any notification required by paragraph (c) of this clause to both Contractor and the ACO and the PCO.</u> " [PN – Project needs to identify the ACO and PCO]

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS		
Clause Number	Title and Date	Instructions
252.247-7023	Transportation of Supplies by Sea (Jan 2023)	None
252.247-7024	Notification of Transportation of Supplies by Sea (Mar 2000)	None
52.202-01	Definitions (Jun 2020)	None
52.203-03	Gratuities (Apr 1984)	None
52.203-05	Covenant Against Contingent Fees (May 2014)	None
52.203-06	Restrictions on Subcontractor Sales to the Government (Jun 2020)	None
52.203-07	Anti-Kickback Procedures (Jun 2020)	None
52.203-08	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014)	None
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (May 2014)	None
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Jun 2020)	None
52.204-4	Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011)	None
52.204-9	Personal Identity Verification of Contractor Personnel (Jan 2011)	This clause shall apply when the Subcontractor/Seller's employees are required to have routine physical access to a Federally controlled facility and/or routine access to a Federally controlled information system.
52.204-12	Data Universal Numbering System Number Maintenance (Oct 2016)	None
52.204-13	System for Award Management Maintenance (Oct 2018)	None
52.204-24	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.	None
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021)	None
52.204-26	Covered Telecommunications Equipment or Services-Representation.	None
52.204-27	Prohibition on a Byte Dance Covered Application (Jun 2023)	None
52.208-08	Required Sources for Helium and Helium Usage Data (Aug 2018)	[PN: PR/Buyer shall include this clause in any subcontract or purchase order that involves a major helium requirement.]
52.209-6	Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Nov 2011)	None
52.211-15	Defense Priority and Allocation Requirements (Apr 2008)	The rating is DO-C9.
52.215-2	Audit and Records – Negotiation (Jun 2020)	[PN: When certified cost or pricing data is required with the Initial Award, include with no Instructions other than "None." If neither cost or pricing data is required with the initial award, include this clause with the following instruction: "This clause will become operative in the event that any modification to the subcontract [or Purchase Order] requires the submission of cost or pricing data."

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS		
Clause Number	Title and Date	Instructions
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data – Modifications DEVIATION 2022-O0001 (Oct 2021)	None
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications (Nov 2021)	None
52.219-04	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011)	[PN: this clause should be included in any subcontract or PO when it has been determined that the particular procurement will give a price evaluation preference to HUBZone small business concerns. This clause cannot be used with FAR clause 52.219-3 because 52.219-3 is specifically reserved for HUBZone set aside procurements where all bidders are HUBZone small business concerns.]
52.219-08	Utilization of Small Business Concerns DEVIATION 2023-O0002 (Dec 2022)	None
52.219-09 <i>ALTERNATE II</i>	Small Business Subcontracting Plan	[PN1: This clause applies to large businesses only, excluding subcontracts and POs for commercial items, when there are subcontracting opportunities. It is preferable to include it in all applicable proforma with the instruction so that it will be self-deleting when the subcontractor or vendor is a small business.]
52.222-19	Child Labor—Cooperation with Authorities and Remedies (Dec 2022)	None
52.222-21	Prohibition of Segregated Facilities (Apr 2015)	Paragraphs (b)(1) through (b)(11) only apply to this subcontract/purchase order.
52.222-26	Equal Opportunity (Sep 2016)	None
52.222-35	Equal Opportunity for Veterans (Jun 2020)	None
52.222-36	Affirmative Action for Workers with Disabilities (Jun 2020)	None
52.222-50	Combating Trafficking in Persons (Nov 2021)	None
52.222-54	Employment Eligibility Verification (May 2022)	Use the following as the Instruction: “This clause applies when work will be performed in whole or in part in the United States. This clause does not apply to: 1) Subcontracts with self-employed individuals, 2) Subcontracts with a value less than \$3,000, or 3) Purchases of COTS Items. Notwithstanding any other audit provisions contained within this subcontract, Contractor

APPLICABLE TO ALL SUBCONTRACTS/PURCHASE ORDERS		
Clause Number	Title and Date	Instructions
		reserves the right, from time to time as Contractor deems appropriate, to request satisfactory proof of compliance from Subcontractor and all lower tier Subcontracts. Therefore, upon request, Subcontractor must be able to provide, at every tier, satisfactory proof of compliance with this clause for its lower tier Subcontractors."
52.222-99	Establishing a Minimum Wage for Contractors. (DEVIATION) (Jun 2014)	None
52.223-3	Hazardous Material Identification and Material Safety Data (Jan 1997)	None
52.223-7	Notice of Radioactive Materials (Jan 1997)	[PN: Buyer/PR shall include this clause in all subcontracts/purchase orders for radioactive materials meeting the criteria in paragraph (a) of the clause.]
52.223-11	Ozone-Depleting Substances (May 2001)	None
52.223-12	Refrigeration Equipment and Air Conditioners (Jun 2016)	None
52.224-2	Privacy Act (Apr 1984)	This clause applies when the design, development or operation of a system of records on individuals is required
52.225-13	Restrictions on Certain Foreign Purchases (Feb 2021)	None
52.227-1	Authorization and Consent (Jun 2020)	None
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Jun 2020)	None
52.227-4	Patent Indemnity -- Construction Contracts (Dec 2007)	None
52.232-8	Discounts for Prompt Payment (Feb 2002)	None
52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Mar 2023)	This applies if Subcontractor/Supplier is a Small Business.
52.237-11	Accepting and Dispensing of \$1 Coin (Sep 2008)	[PN: Include this in any purchase order for vending machines]
52.242-13	Bankruptcy (Jul 1995)	None
52.244-6	Subcontracts for Commercial Items (Dec 2022)	Subcontractor/SELLER is not relieved of risk of loss for Government Property in its possession and control
52.245-01	Government Property (Sept 2021)	SUBCONTRACTOR is NOT relieved of risk of loss for damage to Government Property.
5352.242-9000	Contractor Access to Air Force Installations (Oct 2019)	None

APPLICABLE TO ALL SUBCONTRACTS EXCEEDING \$3,500

Clause Number	Title and Date	Instructions
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020)	None

APPLICABLE TO ALL SUBCONTRACTS EXCEEDING \$10,000

Clause Number	Title and Date	Instructions
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)	None
52.222-41	Service Contract Labor Standards (Aug 2018)	None

APPLICABLE TO ALL SUBCONTRACTS EXCEEDING \$150,000

Clause Number	Title and Date	Instructions
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies (Jan 2023)	None
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Jun 2020)	None
52.222-17	Nondisplacement of Qualified Workers (May 2014)	

APPLICABLE TO ALL SUBCONTRACTS EXCEEDING \$500,000

Clause Number	Title and Date	Instructions
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Jan 2023)	None

APPLICABLE TO ALL SUBCONTRACTS AND CHANGES EXCEEDING \$650,000

Clause Number	Title and Date	Instructions

APPLICABLE TO ALL SUBCONTRACTS EXCEEDING \$2,000,000

Clause Number	Title and Date	Instructions
52.215-13	Subcontractor Certified Cost or Pricing Data – Modifications DEVIATION 2022-O0001 (Oct 2021)	None

APPLICABLE TO ALL SUBCONTRACTS EXCEEDING \$5,000,000

Clause Number	Title and Date	Instructions
52.203-13	Contractor Code of Business Ethics and Conduct (Nov 2021)	None

APPLICABLE TO ALL SUBCONTRACTS EXCEEDING \$5,000,000		
Clause Number	Title and Date	Instructions

FEDERAL ACQUISITION REGULATION PRIME CONTRACT CLAUSES IN FULL TEXT

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008)

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700). This Subcontract is rated DO-C9.

52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states, the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION
Employee Class Monetary Wage - Fringe Benefits - This is not a wage determination. See Exhibit B - Special Conditions, Service Contract Labor Standards Determinations for classes of employees and approximate wage rates.

52.222-99 - Establishing a Minimum Wage for Contractors. (DEVIATION)

(Class Deviation [2014-O0017](#), Establishing a Minimum Wage for Contractors. This clause is effective on 26 Jun 2014, and remains effective until incorporated into the FAR or DFARS or is otherwise rescinded)

The contracting officer shall insert the following clause in solicitations and resultant contracts that include the FAR clause 52.222-6 and/or 52.222-41, and work is to be performed in whole or in part in the United States (the 50 States and the District of Columbia).

ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS (DEVIATION 2014-O0017) (JUNE 2014)

This clause implements Executive Order 13658, Establishing a Minimum Wage for Contractors, dated February 12, 2014, and OMB Policy Memorandum M-14-09, dated June 12, 2014.

(a) Each service employee, laborer, or mechanic employed in the United States (the 50 States and the District of Columbia) in the performance of this contract by the prime Contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the Contractor and service employee, laborer, or mechanic, shall be paid not less than the applicable minimum wage under Executive Order 13658. The minimum wage required to be paid to each service employee, laborer, or mechanic performing work on this contract between January 1, 2015, and December 31, 2015, shall be \$10.10 per hour.

(b) The Contractor shall adjust the minimum wage paid under this contract each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all service employees, laborers, or mechanics subject to the Executive Order beginning January 1 of the following year. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(c) The Contracting Officer will adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Contracting Officer shall consider documentation as to the specific costs and workers impacted in determining the amount of the adjustment.

(d) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (c) of this clause, and will not provide price adjustments under this clause that result in duplicate price adjustments with the respective clause of this contract implementing the Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act).

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in all subcontracts.

(End of clause)

252.203-7999 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements. (DEVIATION 2015-O0010) (FEB 2015)

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a federal department or agency governing the nondisclosure of classified information.

(d) (1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (DEVIATION) (AUG 2013)

Basic. As prescribed in [219.708](#) (b)(1)(A) and (b)(1)(A)(1), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)—BASIC (DEC 2019)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions.* As used in this clause—

“Summary Subcontract Report (SSR) Coordinator” means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b) Subcontracts awarded to qualified nonprofit agencies designated by the Committee for Purchase From

People Who Are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor's small business subcontracting goal (section 8025 of Pub. L. 108-87).

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity for the Contractor.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) Submit the consolidated SSR for an individual subcontracting plan to the "Department of Defense."

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) The authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan resides with the SSR Coordinator.

(g) Include the clause at Defense Federal Acquisition Regulation Supplement (DFARS) [252.219-7004](#), Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS [219.702-70](#), if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.702(a), and to have further subcontracting opportunities.

(End of clause)

252.225-7988 ACQUISITION OF THE AMERICAN FLAG (DEVIATION) (FEB 2014)

(a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) If the Contractor is required to deliver under this contract one or more American flags (Federal Supply Class 8345), such flag(s), including the materials and components thereof, shall be manufactured in the United States, consistent with the requirements at 10 U.S.C. 2533a (commonly known as the "Berry Amendment"):

(c) This clause does not apply to the acquisition of any end items or components related to flying or displaying the flag (e.g., flagpoles and accessories).

ADDITIONAL FULL TEXT PRIME CONTRACT CLAUSES

H115 ORGANIZATIONAL CONFLICTS OF INTEREST (APR 2023)

(a) The purpose of this clause is to ensure that:

(1) In providing services to the Government and its customers under this contract, the Contractor's objectivity and judgment are not biased because of its present, or future, financial, contractual, organizational, or other interests;

(2) The Contractor does not obtain an unfair competitive advantage by virtue of its access to non-public Government information regarding the Government's program plans and resources;

(3) The Contractor does not obtain any unfair competitive advantage by virtue of its access to proprietary or competition sensitive information belonging to others;

(4) The Contractor ensures no bias or unfair competitive advantage exists while aggressively addressing any perception issue that may arise; and

(5) The contract complies with Section 207 of the Weapon Systems Acquisition Reform Act of 2009, Pub. L. No. 111-23 (May 22, 2009).

(b) Definitions for purposes of this clause:

(1) "Contractor" means the business entity receiving the award of this contract, as well as its parents, affiliates, divisions, subsidiaries, and successor entities. The term "affiliates" is defined in FAR 2.101 and 9.403. The term "Contractor" includes the firm, or firms, who were required to sign the contract document (see FAR 4.102). The term Contractor also includes participants in any formal contractor team arrangement as defined in FAR 9.601. Examples of formal Contractor team arrangements include, but are not limited to, partnerships, joint ventures, and alliances. Finally, the term "Contractor" includes the Contractor's subcontractors who:

(i) Operate Arnold Engineering and Development Complex (AEDC) test and evaluation facilities, or

(ii) Handle, receive, reduce, interpret, or transmit data obtained, utilized, or produced in conjunction with testing and evaluation or analysis.

(2) "Development" means all efforts taken toward the solution of broadly defined problems. Development may encompass research, evaluating technical feasibility, proof of design and test, or engineering of programs not yet approved for acquisition or operation.

(3) "Organizational conflict of interest," or "OCI," means that a relationship or situation exists where an offeror or Contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that may directly or indirectly relate to the work to be performed under a Department of Defense (DoD) or other Federal agency contract which

(i) May diminish its capacity to give impartial, technically sound, and objective assistance and advice, or

(ii) May result in it having an unfair competitive advantage. OCI does not include the normal flow of benefits from the performance of the contract.

(4) "OCI mitigation plan" means a plan, submitted in accordance with FAR 9.505, identifying and listing all DoD contracts held by the Contractor, along with all other Federal agency contracts involving aerospace systems, major subsystems, or components thereof. The plan shall contain either an explanation for why the cited work does not create an OCI, or a formal written description of the actions the Contractor has agreed to take to mitigate any actual, potential, or perceived OCIs arising from such contracts. The plan shall also contain a discussion of any Contractor involvement, as either a prime or subcontractor, in competitions for any DoD contract and for contracts with other Federal agencies that involve aerospace systems, major subsystems or components thereof, regardless of the stage of the acquisition. The OCI mitigation plan submitted with the Contractor's proposal will be maintained throughout contract performance and shall be regularly updated by the Contractor to reflect involvement in existing, potential, and new contracts and programs to ensure all actual or perceived OCIs arising during performance of this Test Operations and Sustainment (TOS) II contract are identified and subsequently avoided, neutralized, or mitigated. The Government is responsible for approval and enforcement of the Contractor's plan. While implementation of the mitigation plan rests largely with the Contractor, the Government bears responsibility for ensuring the plan is properly implemented.

(5) "Proprietary information" means all information designated as proprietary in accordance with law and regulation and held in confidence or disclosed under restriction to prevent uncontrolled distribution and unauthorized use. Examples include, but are not limited to, marked information, information submitted in confidence to the Government, limited or restricted data, trade secrets, sensitive financial information, and computer software. Proprietary information may also appear in cost and pricing data or involve classified information. Refer to FAR 3.104-1 for the definition of contractor bid and proposal information requiring protection. Refer to FAR 3.104-4 for disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(i) Proprietary information shall not include information which

(A) Was known to the Contractor prior to its receipt from a company or the Government,

(B) Was independently developed by the Contractor without access to a company's proprietary data,

(C) Is or becomes public knowledge without the fault of the Contractor,

(D) Has been lawfully obtained by the Contractor without restrictions on disclosure from a source other than a company or the Government, or

(E) Is or becomes available to a third party from a company on an unrestricted basis.

(ii) Other limitations set forth in this contract may apply to the use of information and data. The burden of proof as to the applicability of any of the exceptions described in paragraph (b)(5)(i) shall rest on the Contractor.

(6) "System" means a combination of two or more interrelated pieces of equipment (or sets) arranged in a functional package to perform an operational function or to satisfy a requirement. A system can include a grouping of hardware, software, and materials to perform a designated function with specified results. A "major subsystem" means a functional grouping of components that combine to perform a key function within an element such as electrical power, attitude control, sensor imaging, and propulsion. "Component" means any sub-part of a system or major subsystem that performs a specific function but is not capable of executing the primary function of the system or major subsystem independent of other components. Systems and major subsystems include, but are not limited to, aircraft, missiles, bombs or other weapons, air-breathing engines, liquid and solid propellant rockets, rocket motors, spacecraft, reentry vehicles, satellite mission payloads, solar arrays, and power generating systems. Components include, but are not limited to, electrical harnesses, star trackers, gyroscopes, line replaceable units,

linkages, integrated circuits, and bolts.

(7) "Facilities similar to AEDC facilities" includes facilities, commercial or otherwise, that could perform the same or similar testing to that conducted in AEDC facilities. This term cannot be defined with any further specificity given the diversity of testing performed at AEDC and without an understanding of the systems or major subsystems to be tested. Facilities similar to AEDC facilities can be more specifically defined as part of any OCI mitigation plan.

(c) The Government will approve the Contractor's OCI mitigation plan once any actual, potential, or perceived OCIs are adequately mitigated as determined by the Contracting Officer.

(d) Except to the extent required in the performance of this contract according to its terms, the Contractor shall not, during the performance of the contract and for a period of three (3) years following completion of performance thereof, engage as an Original Equipment Manufacturer or as a prime contractor (or subcontractor without an approved OCI mitigation plan) in any design, development, or production of aerospace systems or major subsystems of a type normally developed, tested, or evaluated in AEDC facilities, or facilities similar to AEDC facilities. The Contractor also shall not engage in studies or act as a consultant in those regards during the foregoing timeframe without an approved OCI mitigation plan. These restrictions do not apply to prime contracts or subcontracts for components.

(e) The Contractor may gain access to proprietary information of other companies during contract performance. When the Contractor has access to the proprietary information of other companies, the Contractor must enter into a company-to-company agreement to:

(1) Protect another company's information from unauthorized use or disclosure; and

(2) To refrain from using the information for any purpose other than that for which it was furnished. The Contractor shall furnish these agreements to the Contracting Officer for review and approval. The Contractor is not permitted to use the proprietary information obtained in performing this contract for any other purpose without the prior approval of the Contracting Officer.

(f) The Contractor shall comply with all restrictions described in FAR 9.505. The Contractor must also thoroughly inculcate in its employees, through formal training in company policies and procedures, an awareness of the philosophy of both this clause and FAR Subpart 9.5. All Contractor employees shall be educated in and formally acknowledge the absolute necessity of refraining from divulging proprietary information from other companies received in connection with work under this contract to any unauthorized person.

(g) The Contractor shall require its employees to sign written agreements prohibiting proprietary information disclosure except in accordance with a Government-approved OCI mitigation plan. This written agreement shall be between the Contractor and its employees and shall in substance provide that such employee will not, during their employment by the Contractor or thereafter, disclose to others or use for their own behalf, proprietary information from other companies received in connection with the work under this contract. The agreement shall acknowledge the employee is trained regarding handling proprietary information and discuss penalties for violations.

(h) If the Contractor discovers an actual, potential, or perceived OCI not previously considered and adequately mitigated under this clause and a Government-approved OCI mitigation plan, the Contractor shall make a prompt and full disclosure in writing to the Contracting Officer. This disclosure shall include a description of the action the Contractor has taken or proposes to take, or actions recommended to be taken by the Government, in order to avoid, neutralize, or mitigate the conflict.

(i) The Contractor shall report any violation (i) or suspected violation of this clause or a

Government-approved OCI mitigation plan, whether by its own personnel or those of its subcontractors, to the Contracting Officer. This report shall include a description of the violation and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the violation. The Contractor shall routinely monitor its proposed business development and shall discuss any real or perceived OCI issues with the Contracting Officer and affected AEDC customers to proactively resolve and/or mitigate potential OCI issues. After conducting any necessary discussions, the Contracting Officer and the Contractor shall agree on appropriate corrective action, if any, or the Contracting Officer shall direct such action, subject to the terms of this contract.

(j) OCI violations are a significant contract performance issue. Violations of an OCI mitigation plan or this clause may have consequences such as Award Fee decrements, contract termination, suspension or debarment, or other appropriate remedies or administrative actions.

(k) The Contractor may propose changes to an approved OCI mitigation plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon incorporation by contract modification or written approval of the revised plan by the Contracting Officer.

(l) The Government shall require proper checks and balances in contract performance and minimization of the potential conflicts of interest between this TOS II and Test Services advisory and assistance services (A&AS) efforts. Therefore, a company cannot be a Contractor on the TOS II contract and perform work at AEDC under the Technical and Management Advisory Services (TMAS) or other Test Services A&AS contract(s).

(m) For all other AEDC support contracts, the Government realizes the potential exists for actual or perceived OCIs to develop if the same Contractor performs work on both this TOS II contract and another AEDC contract. To alleviate these concerns, a Contractor performing work in any role on this TOS II contract must have a government approved OCI mitigation plan prior to performing any work on any other AEDC contract.

(n) The Contractor shall include paragraphs (a) through (m) of this clause in every subcontract, purchase order, or other agreement. Exceptions must be approved in writing by the Contracting Officer.

(H050) RIGHTS IN INFORMATION AND DATA (APR 2023)

(a) The Contractor shall transfer ownership to the Government of all technical data, computer software, and computer software documentation as defined in DFARS 252.227-7013 and 252.227-7014, and any and all other data of any description or form, including, but not limited to, all sketches, notebooks, designs, drawings, specifications, blueprints, models, negatives, photographs, findings, memoranda, reports, recommendations, automated data processing equipment (ADPE) programs, as well as all copies of the foregoing, created, produced, developed, delivered, furnished, or provided under this contract, unless otherwise identified by the Contractor pursuant to DF ARS 252.227-7017 as being furnished with Government purpose rights, limited rights, or restricted rights under either DF ARS 252.227-7013 or DF ARS 252.227-7014. Except for technical data, computer software, or computer software documentation identified by the Contractor under DF ARS 252.227-7017 as being furnished with Government purpose rights, limited rights, or restricted rights, the Contractor retains no right, title, or interest in and to such data, computer software, and computer software documentation which becomes the property of the Government. This property shall be delivered by the contractor to the Government in accordance with the terms of this contract, upon completion or termination of this contract or when otherwise directed by the Contracting Officer. The Government reserves its right to take delivery of this data, computer software, and computer software documentation via Contract Data Requirements Lists (CDRLs) or as deferred delivery at the point the Government chooses. As owner, the Government may use, reproduce, or disclose the data, computer software, and computer software documentation covered by this clause in any way and for any purpose it may desire with the exception that competition sensitive data, marked as such by the

Contractor and so agreed to by the Government, such as personal data on individuals, payroll records, management methodology, and organizational approaches, or data, computer software or computer software documentation identified pursuant to DFARS 252.227-7017, shall not be disclosed outside the Government unless disclosed consistent with the rights identified by the Contractor. The Contractor shall mark the number of this contract on all data, computer software, and computer software documentation delivered hereunder. Any data, computer software, or computer software documentation belonging to third parties and furnished to the Contractor by the Government in performance of this contract shall be treated as property of the Government.

(b) Except as specifically authorized by this contract, or as otherwise approved in writing by the Contracting Officer, all information and data furnished by the Government to the Contractor in the performance of this contract

shall be used only in connection with the work under this contract and shall be protected by the Contractor from unauthorized use, release, duplication, or disclosure.

(c) The Contractor shall take appropriate measures to ensure that its personnel, who have or might reasonably have access to such information and data referred to in paragraph (b) above, agree to honor the Contractor's commitment and safeguard such information and data (See Section H Clause HI 15, Organizational Conflict of Interest (APR 2023)).

(d) If the Contractor acquires technical or other data, computer software, or computer software documentation necessary for the performance of this contract from any third party through license or otherwise, in addition to providing the Government with rights or title to such data, computer software, or computer software documentation in accordance with subparagraph (a) of this clause, the Contractor shall also obtain all rights necessary to allow such rights in data, computer software, and computer software documentation to be assigned to any successor contractor to this contract.