

AEROVIRONMENT, INC. TERMS AND CONDITIONS FOR SUBCONTRACTS/PURCHASE ORDERS UNDER A U.S. GOVERNMENT PRIME CONTRACT (ALL AGENCIES)

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1.**ACCEPTANCE OF CONTRACT/TERMS AND
CONDITIONS**

(a) This Subcontract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

(b) SELLER's acknowledgment, acceptance of payment, or commencement of performance, shall constitute SELLER's unqualified acceptance of this Subcontract.

(c) Unless expressly accepted in writing by AEROVIRONMENT, INC. ("AV"), additional or differing terms or conditions proposed by SELLER or included in SELLER's acknowledgment are objected to by AV and have no effect.

(d) The headings used in this Subcontract are inserted for the convenience of the parties and shall not define, limit, or describe the scope or the intent of the provisions of this Contract.

2. APPLICABLE LAWS

(a) This Subcontract and any matter arising out of or related to this Subcontract shall be governed by the laws of the State of California, without regard to its conflicts of law provisions, except that any provision in this Subcontract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR; or (iii) substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contracts appeals, and quasi-judicial agencies of the federal Government.

(b)(1) SELLER, in the performance of this Contract, shall comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. SELLER shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and

directives of any local, state and/or federal governmental authority.

(2) If: (i) AV's contract price or fee is reduced; (ii) AV's costs are determined to be unallowable; (iii) any fines, penalties, withholdings, or interest are assessed on AV; or (iv) AV incurs any other costs or damages, as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, AV may proceed as provided for in (4) below.

(3) Where submission of cost or pricing data is required or requested at any time prior to or during performance of this Contract, if SELLER or its lower-tier subcontractors: (i) submit and/or certify cost or pricing data that are defective; (ii) with notice of applicable cutoff dates and upon AV's request to provide cost or pricing data, submit cost or pricing data, whether certified or not certified at the time of submission, as a prospective subcontractor, and any such data are defective as of the applicable cutoff date on AV's Certificate of Current Cost or Pricing Data; (iii) claim an exception to a requirement to submit cost or pricing data and such exception is invalid; (iv) furnish data of any description that is inaccurate; or, if (v) the U.S. Government alleges any of the foregoing; and, as a result, (A) AV's contract price or fee is reduced; (B) AV's costs are determined to be unallowable; (C) any fines, penalties, withholdings, or interest are assessed on AV; or (D) AV incurs any other costs or damages; AV may proceed as provided for in (4) below.

(4) Upon the occurrence of any of the circumstances identified in paragraphs (2) and (3) above, AV may make a reduction of corresponding amounts (in whole or in part) in the price of this Subcontract or any other contract with SELLER, and/or may demand payment (in whole or in part) of the corresponding amounts. SELLER shall promptly pay amounts so demanded. In the case of withholding(s), AV may withhold the same amount from SELLER under this contract.

(c) SELLER represents that each chemical substance constituting or contained in Work sold or otherwise transferred to AV hereunder is on the list of chemical substances compiled and published by the Administrator of the

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Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 *et seq.*) as amended.

(d) SELLER shall make available to AV all Safety Data Sheets for any material provided to AV, or brought or delivered to AV or its customer's premises in the performance of this Subcontract as required by applicable law, such as the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder.

(e) SELLER shall be responsible for compliance with all requirements and obligations relating to its employees under all local, state, and federal statutes, ordinances, rules and regulations, including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; social security contribution and withholding; unemployment insurance; employer's liability insurance; worker's compensation; veteran's rights; and all other employment-, labor- or benefits-related laws.

(f) SELLER shall notify AV promptly in writing if a charge of noncompliance with any law addressing occupational health and safety or protection of the environment has been filed against SELLER in connection with the performance of this Contract.

3. ASSIGNMENT

Any assignment of SELLER's Subcontract rights or delegation of SELLER's duties shall be void, unless prior written consent is given by AV. Nevertheless, SELLER may assign rights to be paid amounts due, or to become due, to a financing institution if AV is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of AV against SELLER. AV shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

4. CHANGES

(a) The AV Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Subcontract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, AV shall make an equitable adjustment in the Subcontract price and/or delivery schedule, and modify this Subcontract accordingly. Changes to the delivery schedule will be subject to a price adjustment only.

(c) SELLER must assert its right to an equitable adjustment under this clause within twenty (20) days from the date of receipt of the written change order from AV. If SELLER's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, AV shall have the right to prescribe the manner of disposition of the property.

(d) Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse SELLER from proceeding without delay in the performance of this Subcontract as changed.

5. COMMUNICATION WITH AV CUSTOMER

SELLER shall not communicate with AV's customer or higher-tier customer in connection with this Contract, except as expressly permitted in advance by AV. This clause does not prohibit SELLER from communicating with the U.S. Government with respect to: (1) matters SELLER is required by law to communicate to the U.S. Government; (2) an ethics or anticorruption matter; (3) any matter for which this Contract, including a FAR or FAR Supplement clause included in this Contract, provides for direct communication by SELLER to the U.S. Government; or (4) if SELLER is a small business concern, any material matter pertaining to payment or utilization.

6. CONFLICT MINERALS

All parts and/or material supplied cannot contain conflict minerals originating in the Democratic Republic of the Congo or the adjoining countries of Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia ("Covered Countries"). Accordingly, SELLER shall certify:

- (a) Whether the parts and/or material supplied contain conflict minerals – tantalum, tin, tungsten or gold; and
- (b) If the parts and/or material contain conflict minerals:
 - (i) The relevant identification number(s) of the parts and/or material that contain conflict minerals and which conflict minerals are incorporated in each item;
 - (ii) That the conflict minerals did not originate in a Covered Country;
 - (iii) The supplier from which Seller obtained the conflict minerals; and
 - (iv) The smelter used to produce the conflict minerals.

SELLER shall include this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as WORK to AV.

7. CONTRACT DIRECTION

(a) Only the AV Procurement Representative has authority on behalf of AV to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

(b) AV engineering and technical personnel or other AV personnel may from time to time render assistance or give technical advice or discuss or effect an exchange of information with SELLER's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Subcontract and shall not be the basis for equitable adjustment.

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(c) Except as otherwise provided herein, all notices to be furnished by SELLER shall be in writing and sent to the AV Procurement Representative.

8. COUNTERFEIT WORK

(a) SELLER shall not deliver Counterfeit Work to AV under this Contract.

(b) SELLER shall purchase products to be delivered or incorporated as Work to AV directly from only the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by AV.

(c) SELLER shall immediately notify AV with the pertinent facts if SELLER becomes aware or suspects that it has delivered Counterfeit Work. When requested by AV, SELLER shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

(d) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Subcontract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.

(e) In the event that Work delivered under this Subcontract constitutes or includes Counterfeit Work, SELLER shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, SELLER shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation AV's costs of removing Counterfeit Work, of installing replacement Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies AV may have at law, equity or under other provisions of this Contract.

(f) SELLER shall include paragraphs (a) through (d) and this paragraph (f) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to AV.

9. DEFAULT

(a) AV, by written notice, may terminate this Subcontract for default, in whole or in part, if SELLER: (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. SELLER shall have ten (10) days (or such longer period as AV may authorize in writing) to cure any such failure after receipt of notice from AV. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) Following a termination for default of this Contract, SELLER shall be compensated only for Work actually delivered and accepted. AV may require SELLER to deliver to

AV any supplies and materials, manufacturing materials, and manufacturing drawings that SELLER has specifically produced or acquired for the terminated portion of this Contract. AV and SELLER shall agree on the amount of payment for these other deliverables.

(c) Upon the occurrence and during the continuation of a default, AV may exercise any and all rights and remedies available to it under applicable law and equity, including without limitation, cancellation of this Contract. If after termination for default under this Contract, it is determined that SELLER was not in default, such termination shall be deemed a termination for convenience.

(d) SELLER shall continue all Work not terminated or cancelled.

10. DEFINITIONS

The following terms shall have the meanings set forth below:

(a) "AV" means AEROVIRONMENT, INC., acting through its companies or business units as identified on the face of this Contract. If a subsidiary or affiliate of AEROVIRONMENT, INC. is identified on the face of this Contract, then "AV" means that subsidiary or affiliate.

(b) "AV Procurement Representative" means a person authorized by AV's cognizant procurement organization to administer and/or execute this Contract.

(c) "Subcontract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Subcontract" shall also mean the Release document for the Work to be performed.

(d) "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable. For purposes of "Counterfeit Work," Work consists of those parts delivered under this Subcontract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies).

(e) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.

(f) "Intellectual Property" means intellectual property, including but not limited to, any and all inventions, copyrightable materials, know-how, trade secrets, technology, designs, works of authorship, discoveries, improvements, processes, methods, mask works, data, information, technical data, computer software and/or computer software documentation.

(g) "SELLER" means the party identified on the face of this Subcontract with whom AV is contracting.

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(h) "Separate Intellectual Property" means Intellectual Property that is either conceived, created, developed, obtained, acquired and/or otherwise generated prior to, or separately and independently from performance under, this Contract.

(i) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

(j) "Utilize" includes, but is not limited to, to make, use, sell, import, modify, improve, repair, lend, lease, copy, reproduce, display, perform, distribute, prepare derivative works, disclose, transfer, and have all the same done by any third-party.

11. DISPUTES

(a) Good Faith Negotiations. If any dispute arises under this Contract, the aggrieved party shall give written notice of the dispute to the other party. The parties shall seek to resolve by promptly negotiating with the other in good faith. The negotiation shall be conducted by representatives authorized to bind the respective party by his or her decisions.

(b) Mediation. If the parties do not resolve the dispute within twenty (20) days following the notice of dispute, the parties shall endeavor to resolve the dispute by mediation under the applicable rules of a reputable U.S. based mediation organization (e.g., JAMS, Endispute) located in Los Angeles County, California. Such mediation shall be scheduled to last no more than two (2) days unless the parties otherwise agree in writing.

(c) Binding Arbitration. If the parties do not resolve the dispute by mediation, the dispute shall be settled by binding arbitration before a single arbitrator conducted on a confidential basis and pursuant to the rules of the American Arbitration Association. Such arbitration will be conducted in Los Angeles, California.

(d) Legal Fees. In any dispute arising out of this Contract, each party will be responsible for its costs and expenses incurred, except that the costs and fees imposed by an arbitrator for the arbitrator's expenses shall be borne equally by the parties.

(e) Equitable Relief. Neither party shall be precluded hereby from securing equitable remedies in courts of jurisdiction, including, but not limited to, temporary restraining orders and preliminary injunctions to protect its rights and interests, but such remedies shall not be sought as a means to avoid or stay mediation or arbitration.

(f) Until final resolution of any dispute hereunder, SELLER shall diligently proceed with the performance of this Subcontract as directed by AV.

12. ELECTRONIC CONTRACTING

The parties agree that if this Subcontract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Subcontract or acknowledgement contains an electronic signature.

13. EXCUSABLE DELAY

Neither party shall be responsible to the other party for any delay in performing its obligations under this Subcontract due to any events of *force majeure*, except as otherwise provided for within this clause. *Force majeure* means any act of God, war, terrorism, actions or failure to act of any government in its sovereign capacity, fire, flood, earthquake, strike, epidemic, quarantine, embargo, nuclear incident, or any other act beyond reasonable control and without the fault of either party or its agents. The party whose performance of obligations hereunder has been affected by any events of force majeure shall notify the other party within five calendar days thereafter by sending a detailed statement and sufficient evidence with respect thereto, and shall likewise notify promptly of any subsequent change in the circumstances. The affected party shall exercise its best efforts under the circumstances to remove or remedy the events of force majeure and the effects thereof and resume full performance hereof as soon as possible.

14. EXPORT CONTROL

(a) SELLER shall comply with all applicable U.S. export control laws and economic sanctions laws and regulations, specifically including but not limited to the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. 120 *et seq.*; the Export Administration Regulations, 15 C.F.R. 730-774; and the Foreign Assets Control Regulations, 31 C.F.R. 500-598 (collectively, "Trade Control Laws"). Without limiting the foregoing, SELLER shall not transfer any export controlled item, technical data, technology, or service, including transfers to foreign persons employed by or associated with, or under contract to SELLER or SELLER's lower tier suppliers, unless authorized in advance by an export license (such as Technical Assistance Agreement (TAA) or Manufacturing License Agreement (MLA), license exception or license exemption, collectively, "Export Authorization"), as required.

(b) SELLER shall notify AV if any deliverable under this Subcontract is restricted by applicable Trade Control Laws. Before providing AV any item or data controlled under any of the Trade Control Laws, SELLER shall provide in writing to the AV Procurement Representative the export classification of any such item or controlled data (*i.e.*, the export classification under the EAR, ITAR, EU List of Dual Use Items and Technology, Wassenaar Agreement's List of Dual-Use Goods and Technologies or other applicable export control list) and shall notify the AV Procurement Representative in writing of any changes to the export classification information of the item or controlled data. SELLER represents that an official authorized to bind the SELLER has determined that the SELLER or the designer, manufacturer, supplier or other source of the Work has properly determined their export classification.

(c) SELLER hereby represents that neither SELLER nor any parent, subsidiary or affiliate of SELLER is included on any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), Denied Parties List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security

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("BIS"), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, or the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "Restricted Party Lists"). SELLER shall immediately notify the AV Procurement Representative if SELLER, or any parent, subsidiary or affiliate of SELLER becomes listed on any Restricted Party List or if SELLER's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

(d) If SELLER is engaged in the business of exporting, manufacturing (whether exporting or not) or brokering defense articles or furnishing defense services, SELLER represents that it is and will continue to be registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

(e) Where SELLER is a party to or signatory under an AV Export Authorization, SELLER shall provide prompt notification to the AV Procurement Representative in the event of: (1) changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR or other applicable governmental restrictions, and the initiation or existence of a U.S. Government investigation, that could affect SELLER's performance under this Contract; or (2) any change by SELLER that might require AV to submit an amendment to an existing Export Authorization or request a new or replacement Export Authorization. SELLER shall provide to AV all information and documentation as may reasonably be required for AV to prepare and submit any required export license applications. Delays on SELLER's part to submit the relevant information for export licenses shall not constitute an excusable delay under this Contract.

(f) SELLER shall include paragraphs (a) through (d) and this paragraph (f) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or delivered as Work to AV. SELLER shall immediately notify AV upon learning that any lower tier subcontractor with which it engages has become listed on the Restricted Parties List.

(g) SELLER shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause. SELLER shall indemnify and hold harmless AV from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

15. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. SELLER shall be liable for handling charges and return shipment costs for any excess quantities.

16. FURNISHED PROPERTY

(a) AV may, by written authorization, provide to SELLER property owned by either AV or its customer ("Furnished Property"). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in AV or its customer. SELLER shall clearly mark (if not already so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, SELLER shall be responsible for, and shall promptly notify AV of, any loss or damage to Furnished Property. Without additional charge, SELLER shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Subcontract and good commercial practice.

(d) At AV's request, and/or upon completion of this Contract, SELLER shall submit, in an acceptable form, inventory lists of Furnished Property, and shall deliver such property or make such other disposal thereof as may be directed by AV.

(e) The Government Property Clause contained in this Subcontract shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or property to which the Government may take title under this Contract.

17. GRATUITIES/KICKBACKS

(a) SELLER shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as an AV supplier.

(b) By accepting this Contract, SELLER certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

18. INDEPENDENT CONTRACTOR RELATIONSHIP

(a) SELLER's relationship to AV shall be that of an independent contractor and this Subcontract does not create an agency, partnership, or joint venture relationship between AV and SELLER or AV and SELLER personnel. Personnel supplied by SELLER hereunder shall be deemed employees of SELLER and shall not for any purposes be considered employees or agents of AV. SELLER assumes full responsibility for the actions and supervision of such personnel while performing services under this Contract. AV assumes no liability for SELLER personnel.

(b) Nothing contained in this Subcontract shall be construed as granting to SELLER or any personnel of SELLER rights under any AV benefit plan.

(c) SELLER shall advise the AV Procurement Representative of any unauthorized direction or course of conduct.

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(d) SELLER shall indemnify and hold harmless AV and its customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of SELLER, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

(e) SELLER shall indemnify and hold harmless AV from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which AV may sustain or incur in consequence of (i) SELLER's failure to pay any employee for the Work rendered under this Contract, or (ii) any claims made by SELLER's personnel against AV.

19. INFORMATION OF AV

(a) SELLER shall not reproduce or disclose, or direct or facilitate a third party to reproduce or disclose, any information, knowledge, or data that SELLER may receive from, be provided access to by AV or a third party acting on behalf of or at the direction of AV, including proprietary, confidential or non-public information of AV or of others ("AV INFORMATION"), without the prior express written consent of AV. AV INFORMATION includes, but is not limited to, business plans, marketing information, cost estimates, forecasts, bid and proposal data, financial data, formulae, compositions, products, processes, procedures, inventions, systems, or designs. AV INFORMATION shall not include information that: (i) is known to the SELLER prior to the first disclosure by AV; (ii) is or becomes publicly known through no wrongful act of the SELLER; (iii) is rightfully received by SELLER without restriction on disclosure from a third party, where such third-party is not acting on behalf of or at the direction of AV; (iv) is independently and separately developed by the SELLER; (v) is furnished to any third party by AV without restriction on its disclosure; (vi) is approved for release upon a prior express written consent of AV; or (vii) is required to be disclosed pursuant to judicial order or by operation of law, provided that SELLER gives AV immediate notice of such required disclosure, such that AV may seek to prevent such disclosure and SELLER cooperates with AV to prevent such disclosure. SELLER agrees not to use any AV INFORMATION for any purpose except to perform under this Contract. SELLER shall maintain data protection processes and systems sufficient to adequately protect AV INFORMATION and comply with any law or regulation applicable to such information.

(b) Prior to commencement of Work, SELLER shall have a written agreement with each of its employees, or third parties engaged by SELLER and authorized in advance in writing by AV, who will perform services hereunder that is sufficient to enable SELLER to comply with the confidentiality terms of this Contract.

(c) AV INFORMATION provided to SELLER remains the property of AV. Within thirty (30) days of the expiration or termination of this Subcontract or upon the request of AV, SELLER shall return or certify the destruction of all AV INFORMATION and any reproductions, and SELLER shall

promptly surrender any and all information or proprietary data developed by SELLER in performance of this Contract, unless its retention is authorized in writing by AV.

(d) If SELLER becomes aware of any unauthorized compromise, use, copying or disclosure of any AV INFORMATION, whether by SELLER, its officers, employees, agents, suppliers, or subcontractors or any entity under SELLER's direction or control (an "Incident"), SELLER shall take appropriate immediate actions to investigate and contain the Incident and any associated risks, including prompt notification to AV after learning of the Incident. As used in this Section, "compromise" means that any information provided by AV has been exposed to unauthorized access, inadvertent disclosure, known misuse, loss, destruction, or alteration other than as required to perform the Work. SELLER shall provide reasonable cooperation to AV in conducting any investigation regarding the nature and scope of any Incident. Any costs incurred in investigating or remedying Incidents shall be borne by SELLER.

(e) Any information provided by AV and identified as proprietary or subject to restrictions on public disclosure by law or regulation shall be encrypted (i) when transmitted via the Internet or any other publicly accessible means, or (ii) during electronic storage if potentially accessible by the Internet, the public, or otherwise by non-authorized users.

(f) SELLER shall comply with the terms of any proprietary information agreement executed by SELLER with AV and with all proprietary information markings and restrictive legends applied by AV to anything provided hereunder to SELLER. The provisions set forth above are in addition to and do not alter, change or supersede any obligations contained in a proprietary information agreement between the parties.

(g) Unclassified controlled U.S. Department of Defense information shall be governed by DFARS 252.204-7012 if this Subcontract contains said clause.

(h) SELLER shall not provide any of the SELLER's or a third-party's proprietary information to AV without the prior execution of a non-disclosure or proprietary information agreement between AV and the owner of the proprietary information, where such agreement provides for the disclosure of the subject proprietary information between the parties.

(i) Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Subcontract or the subject matter hereof, will be made by SELLER or its subcontractors without the prior express written approval of AV.

(j) SELLER shall not use "AV," "AeroVironment," "AeroVironment, Inc.," or any other trademark, service mark, trade name, product name, logo, and/or any portion or component thereof, owned by AV, in whatever shape or form, without the prior expressed written consent of AV.

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20. INSPECTION AND ACCEPTANCE

(a) AV and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. SELLER shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve SELLER of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. AV's final inspection and acceptance shall be at destination.

(c) If SELLER delivers non-conforming Work, AV may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require SELLER, at SELLER's cost, to make all repairs, modifications, or replacements at the direction of AV necessary to enable such Work to comply in all respects with Subcontract requirements.

(d) SELLER shall not re-tender rejected Work without disclosing the corrective action taken.

21. INSURANCE/ENTRY ON AV FACILITIES

(a) In the event that SELLER, its employees, agents, or subcontractors perform work at the site(s) of AV or its customers for any reason in connection with this Subcontract (unless only a small amount of work is required on the AV or customer sites, e.g., a few brief visits per month) then SELLER and its subcontractors shall maintain for the performance of this Subcontract workers compensation, commercial general liability (CGL) and automobile liability (AL) (third party bodily injury and property damage liability) insurance with a minimum of \$1,000,000 per occurrence limit and such other insurance as AV may require. SELLER shall provide AV thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of SELLER's required insurance, provided however such notice shall not relieve SELLER of its obligations to maintain the required insurance. SELLER shall name AV as an additional insured to the CGL and AL policies for the duration of this Contract. If requested, SELLER shall provide AV with a "Certificate of Insurance" evidencing SELLER's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of AV and is not contributory with any insurance that AV may carry. "Subcontractor" as used in this clause shall include SELLER's subcontractors at any tier. SELLER's obligations for maintaining insurance coverages herein are freestanding and are not affected by any other language in this Contract.

(b) SELLER's personnel, including SELLER's subcontractors, shall comply with all AV security, safety, rules of conduct, badging and personal identity, and related requirements while on AV premises, including but not limited to providing proof of citizenship or lawful permanent resident status, and authorization to work. In addition, prior to entry on AV premises, SELLER shall coordinate with AV to gain access to facilities. AV may, at its sole discretion, have SELLER remove any specified employee of SELLER from AV's premises and request that such employee not be reassigned to any AV premises under this Contract.

(c) SELLER shall ensure that SELLER personnel assigned to work on AV's or customer's premises comply with any on-premises guidelines and: (i) do not bring weapons of any kind onto AV's or customer's premises; (ii) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on AV's or customer's premises; (iii) do not possess hazardous materials of any kind on AV's or customer's premises without AV's authorization; (iv) remain in authorized areas only; (v) do not conduct any non- AV related business activities (such as interviews, hirings, dismissals or personal solicitations) on AV's or customer's premises; (vi) do not send or receive non-AV related mail through AV's or customer's mail systems; (vii) do not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on AV's or customer's premises without AV's prior written permission or as permitted by law; and (viii) follow instruction from AV in the event of an actual or imminent safety or environmental hazard.

(d) All persons, property, and vehicles entering or leaving AV's or customer's premises are subject to search.

(e) SELLER shall promptly notify AV and provide a report of any accidents or security incidents involving loss of or misuse or damage to AV's or its customer's intellectual or physical assets, and all physical altercations, assaults, or harassment.

(f) SELLER shall ensure that SELLER personnel: (i) do not remove AV or customer assets from AV's or customer's premises without AV authorization; (ii) use AV or customer assets only for purposes of this Contract; (iii) only connect with, interact with or use computer resources, networks, programs, tools or routines that AV agrees are needed to provide services; and (iv) do not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers. AV may periodically audit SELLER's data residing on AV's or customer's information assets.

(g) SELLER shall immediately report to AV all emergencies (e.g., medical, fire, spills or release of any hazardous material) and non-emergency incidents (e.g., job-related injuries or illnesses) occurring on AV's or a customer's site. SELLER shall provide AV with a copy of any reports of such incidents SELLER makes to governmental authorities.

(h) SELLER shall defend, indemnify and hold harmless AV, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, by reason of property damage or loss or personal injury to any person caused in whole or in part by the actions or omissions of SELLER, its officers, employees, agents, suppliers, or subcontractors under this clause.

22. INTELLECTUAL PROPERTY

(a) SELLER shall retain all ownership in, and to, any and all of SELLER's Separate Intellectual Property. Nothing in this Subcontract shall transfer ownership of SELLER's the Separate Intellectual Property from SELLER to AV, or in any way restrict SELLER use of its Separate Intellectual Property.

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(b) SELLER warrants that the Work performed or delivered under this Subcontract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country.

(c) SELLER shall defend, indemnify, and hold harmless AV and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Subcontract infringes or otherwise violates the intellectual property rights of any person or entity.

(d) SELLER's obligation to defend, indemnify, and hold harmless AV and its customers under Paragraph (c) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to AV's Prime Contract for infringement of a U.S. patent and AV and its customers are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorneys' fees by a third party.

(e) Except as otherwise provided herein or as determined by the applicable Government procurement regulations regarding rights to technical data, SELLER agrees to grant, hereby grants to or will otherwise obtain for AV a nonexclusive, worldwide, perpetual, royalty-free, paid-up and irrevocable license to use and sell the Work and as otherwise necessary to perform AV's prime contract. SELLER further agrees to grant, and hereby grants to AV a license to repair, rebuild, or relocate the Work and to have the Work repaired, rebuilt, or relocated.

(f) To the extent that any Separate Intellectual Property is embedded or incorporated into, used in connection with, or otherwise necessary for the use, sale or operation of the Work, SELLER agrees to grant, hereby grants to, or will otherwise obtain for AV a nonexclusive, worldwide, perpetual, royalty-free, paid-up, and irrevocable license to the Separate Intellectual Property to use and sell the Work and as otherwise necessary to perform AV's prime contract.

(g) Any tangible media storing reports, memoranda, operation and maintenance manuals, or other written materials prepared by SELLER and furnished to AV pursuant to this Contract, whether such materials are in human- or machine-readable form, shall become AV's sole property. SELLER agrees to grant, and hereby grants to AV the right to copy, display, perform, distribute, prepare derivative works of, such written materials in performance of AV's prime contract and otherwise for AV's internal use, and in so doing to copy, disclose, and transfer and deliver such materials, and derivatives thereof, to its customer(s).

(h) For any Work manufactured by SELLER to AV design or specification, or for any Work developed partially or entirely at AV's expense, SELLER agrees to assign, convey and transfer to AV, without any further consideration, all right, title and interest to any and all Intellectual Property, conceived, created, developed, obtained, acquired, received and/or otherwise generated in performance of this Subcontract (collectively the "Developed IP"). Upon request SELLER shall execute any required papers and furnish all reasonable assistance to AV for AV to vest all right, title and interest, and ownership in and to, and to protect and perfect its rights in,

the Developed IP. To the extent that any Separate Intellectual Property is embedded or incorporated into, used in connection with, or otherwise necessary to Utilize the Developed IP, SELLER agrees to grant, hereby grants to; or will otherwise obtain for AV a nonexclusive, worldwide, perpetual, royalty-free, paid-up, and irrevocable license to the Separate Intellectual Property to Utilize the Developed IP, and as otherwise necessary to perform AV's prime contract.

23. LIMITATION OF LIABILITY

In no event shall Buyer be liable for anticipated profits or for special, incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or connected with or resulting from this purchase order or from the performance or breach thereof shall, in no case, exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

24. NEW MATERIALS

The Work to be delivered hereunder shall consist of new materials, as defined in FAR 52.211-5, not used, or reconditioned, remanufactured, or of such age as to impair its usefulness or safety.

25. OFFSET CREDIT/COOPERATION

This Subcontract has been entered into in direct support of AV's international offset programs. All offset benefit credits resulting from this Subcontract are the sole property of AV to be applied to the offset program of its choice. SELLER shall assist AV in securing appropriate offset credits from the respective country government authorities.

26. PACKING AND SHIPMENT

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. SELLER shall mark containers or packages with necessary lifting, loading, and shipping information, including the AV Subcontract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Subcontract number.

(c) Unless otherwise specified, delivery shall be FCA Destination, Incoterms 2010.

27. PARTS OBSOLESCENCE

AV may desire to place additional orders for Work purchased hereunder. SELLER shall provide AV with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Work purchased under this Contract.

28. PAYMENTS, TAXES, AND DUTIES

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (1) AV's receipt of SELLER's proper invoice; (2) scheduled delivery date of the Work; or (3) actual delivery of the Work.

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(b) Each payment made shall be subject to reduction to the extent of amounts which are found by AV or SELLER not to have been properly payable, and shall also be subject to reduction for overpayments. SELLER shall promptly notify AV of any such overpayments found by SELLER.

(c) AV shall have a right to recoup or setoff, as the case may be, against payments due or at issue under this Subcontract or any other contract between the parties.

(d) Payment shall be deemed to have been made as of the date of mailing of AV's payment or the date of transmittal of AV's electronic funds transfer.

(e) Unless otherwise specified, prices include all applicable federal, state and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.

(f) SELLER shall submit upon the request of AV's Procurement Representative a release of claims upon final payment under this Contract.

29. PRECEDENCE

Any inconsistencies in this Subcontract shall be resolved in accordance with the following descending order of precedence: (1) Face of the Purchase Order and/or Task Order, release document, or schedule, (including any continuation sheets), as applicable, including any special terms and conditions; (2) this AEROVIRONMENT, INC. TERMS AND CONDITIONS FOR SUBCONTRACTS/PURCHASE ORDERS UNDER A U.S. GOVERNMENT PRIME CONTRACT (ALL AGENCIES); and (3) the Statement of Work.

30. PRIORITY RATING

If so identified, this Subcontract is a "rated order" certified for national defense, emergency preparedness, and energy program use, and SELLER shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

31. QUALITY CONTROL SYSTEM

(a) SELLER shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by SELLER shall be kept complete and available to AV and its customers.

32. RETENTION OF RECORDS

Unless a longer period is specified in this Subcontract or by law or regulation, SELLER shall retain all records related to this Subcontract for five (5) years from the date of final payment received by SELLER. Records related to this Subcontract include, but are not limited to, financial, proposal, procurement, specifications, production, inspection, test, quality, shipping and export, and certification records. At no additional cost, SELLER shall timely provide access to such records to the U.S. Government and/or AV upon request.

33. SELLER BUSINESS SYSTEMS

"SELLER Business Systems" as used in this clause means SELLER's material management and accounting system, cost estimating system, accounting system, earned value management system, property management system, and purchasing system. If SELLER's Business Systems are reviewed and approved by a Government agency, SELLER shall provide prompt notice to AV whenever there is a material change in the status of the Government's approval or determination of adequacy of any of SELLER's Business Systems.

34. SEVERABILITY

Each clause, paragraph and subparagraph of this Subcontract is severable, and if one or more of them are declared invalid, the remaining provisions of this Subcontract will remain in full force and effect.

35. STOP WORK

(a) SELLER shall stop Work for up to ninety (90) days in accordance with any written notice received from AV, or for such longer period of time as the parties may agree, and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, AV shall either terminate this Subcontract in accordance with its provisions, or continue the Work by written notice to SELLER. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

36. SURVIVABILITY

If this Subcontract expires, is completed, or is terminated, SELLER shall not be relieved of those obligations in the following clauses:

- Applicable Laws
- Counterfeit Work
- Disputes
- Electronic Contracting
- Export Control
- Independent Contractor Relationship
- Information of AV
- Insurance/Entry on AV Facilities
- Intellectual Property
- Release of Information
- Retention of Records
- Use of Free, Libre and Open Source Software (FLOSS)
- U.S. Government flowdown clauses and provisions that by their nature should survive warranties

37. TERMINATION FOR CONVENIENCE

(a) AV reserves the right to terminate this Contract, or any part hereof, for its convenience. AV shall terminate by delivering to SELLER a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, SELLER shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, SELLER shall be paid a percentage of the Subcontract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable

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charges SELLER can demonstrate to the satisfaction of AV, using SELLER's standard record keeping system, as have resulted from the termination. SELLER shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

(b) In no event shall AV be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Subcontract price. SELLER's termination claim shall be submitted within ninety (90) days from the effective date of the termination.

(c) SELLER shall continue all Work not terminated.

38. TIMELY PERFORMANCE

(a) SELLER's timely performance is a critical element of this Contract.

(b) Unless advance shipment has been authorized in writing by AV, AV may store at SELLER's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If SELLER becomes aware of an impending labor dispute involving SELLER or any lower tier subcontractor, or any other difficulty in performing the Work, SELLER shall timely notify AV, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(d) In the event of a termination for convenience or change, no claim will be allowed for any manufacture or procurement in advance of SELLER's normal flow time unless there has been prior written consent by AV.

39. TOOLING

If Buyer agrees to pay SELLER for all tooling and all other articles required for the performance of the Work, either separately or as a stated part of the unit price of goods purchased herein, title to same shall pass to Buyer upon (i) commencement of processing for use in performance of this Contract, or (ii) Buyer payment therefore, whichever occurs first.

Any such tooling and other articles that are Buyer's property shall be used only in the performance of this Subcontract unless otherwise provided in writing by Buyer. SELLER agrees to follow normal industrial practice in the preparation and maintenance of pertinent property control records, and shall make such records available for inspection by Buyer at all reasonable times. After completion or termination of this Subcontract and upon the request of Buyer, SELLER shall furnish a list of such Buyer's property in the form requested by Buyer and shall make such available for disposition by Buyer. Buyer may, at its sole discretion and by written notice, divest itself of title in favor of SELLER.

40. TRAVEL COSTS

(a) All travel incurred by SELLER in the performance of this Subcontract is included within the Subcontract price and shall not be separately reimbursed by AV unless such travel is expressly authorized in writing in advance by AV's Procurement Representative.

(b) When travel is authorized under this Contract, SELLER shall be reimbursed only for necessary, reasonable, and

actual travel expenses for transportation, lodging, meals and incidental expenses, and only to the extent that they do not exceed the maximum per diem rate in effect at the time of travel, as set forth in the United States Federal Travel Regulations for the area of travel authorized under this Contract. Air travel shall be reimbursed for coach class only. Lodging expenses are reimbursable only where incurred from establishments serving the general public.

(c) SELLER shall provide a detailed summary of all such costs by category of expense with each invoice. SELLER shall provide a legible receipt for each claimed individual expense exceeding \$25.00.

41. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)

(a) This clause only applies to Work that includes the delivery of software (including software residing on hardware).

(b) SELLER shall disclose to AV in writing any FLOSS that will be used or delivered in connection with this Subcontract and shall obtain AV's prior written consent before using or delivering such FLOSS in connection with this Contract. AV may withhold such consent in its sole discretion.

(c) As used herein, "FLOSS License" means the General Public License ("GPL"), Lesser/Library GPL, ("LGPL"), the Affero GPL ("APL"), the Apache license, the Berkeley Software Distribution ("BSD") license, the MIT license, the Artistic License (e.g., PERL), the Mozilla Public License("MPL"), or variations thereof, including without limitation licenses referred to as "Free Software License", "Open Source License", "Public License", or "GPL Compatible License."

(d) As used herein, "FLOSS" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates AV to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(e) SELLER shall defend, indemnify, and hold harmless AV, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, relating to use of software in connection with this Subcontract or the delivery of FLOSS.

42. USE OF DELIVERABLE TECHNICAL DATA AND COMPUTER SOFTWARE

(a) This clause applies only to technical data or computer software delivered by SELLER to AV under this Contract.

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(b) As used in this clause "Nonconforming Marking" means any confidential, proprietary, or other restrictive-use markings that are not expressly permitted by applicable FAR, DFARS, NASA FAR Supplement or other U.S. Government agency acquisition clauses incorporated into this Contract. SELLER shall not deliver technical data or computer software that contains Nonconforming Markings. On behalf of the Government, AV may notify SELLER of such a Nonconforming Marking. If SELLER fails to remove or correct such marking within sixty (60) days after such notification, AV may, notwithstanding any other provision of this Contract, ignore or, at SELLER's expense, remove or obliterate any such Nonconforming Marking as may be on technical data or computer software delivered by SELLER.

43. WAIVERS, APPROVALS, AND REMEDIES

(a) Failure by either party to enforce any of the provisions of this Subcontract or applicable law shall not constitute a waiver of the requirements of such provisions or law, or as a waiver of the right of a party thereafter to enforce such provision or law.

(b) AV's approval of documents shall not relieve SELLER of its obligation to comply with the requirements of this Contract.

(c) The rights and remedies of either party in this Subcontract are cumulative and in addition to any other rights and remedies provided by law or in equity.

44. WARRANTIES

(a) For goods and services provided by SELLER under this Contract, all warranties shall run to AV and its customers. Further, SELLER warrants that all Work furnished pursuant to this Subcontract shall strictly conform to applicable specifications, drawings, samples, descriptions, and other requirements of this Subcontract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of one (1) year. If any nonconforming Work is identified within the warranty period, SELLER, at AV's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of nonconforming Work, and re-performance of Work shall be at SELLER's expense. If repair, or replacement, or re-performance of Work is not timely, AV may elect to return, re-perform, repair, replace, or re-procure the non-conforming Work at SELLER's expense. All warranties shall run to AV and its customers.

(b) With regard to goods, SELLER warrants that the price(s) for the goods sold to Buyer under this Subcontract are not less favorable than those currently extended to any other customer for the same or like goods or services in equal or smaller quantities.

(c) With regard to services, SELLER warrants that
(1) SELLER is and shall remain free of any obligation or restriction that would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by SELLER under this Contract; and that
(2) SELLER will perform the services under this Subcontract with the degree of high professional skill and sound practices and judgment that is normally exercised by recognized professional firms with respect to services of a similar nature.