

**AEROVIRONMENT, INC. FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT - FEDERAL ACQUISITION REGULATION (FAR) CLAUSES FOR ALL SUBCONTRACTS, AND DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES FOR SUBCONTRACTS UNDER U.S. DEPARTMENT OF DEFENSE (DOD) CONTRACTS**

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**A. INCORPORATION OF FAR CLAUSES**

The FAR clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Subcontract. The full text of these clauses is accessible online at the following website: <https://www.acquisition.gov/content/regulations>. The effective version of each clause shall be the version in effect as of the date the Subcontract is entered into, unless a different version of that clause appears in the Prime Contract or higher-tier subcontract, in which case the version in the Prime Contract or higher-tier subcontract controls and applies.

The Contracts Disputes Act shall have no application to this Subcontract, and the SELLER shall have no right of direct action against the U.S. Government. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Subcontract, and not any FAR disputes clause.

**B. INCORPORATION OF DFARS CLAUSES**

If this Subcontract is under a DOD Prime Contract, the DFARS clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Subcontract. The full text of these clauses is accessible online at the following website: <https://www.acquisition.gov/content/regulations>. The effective version of each clause shall be the version in effect as of the date the Subcontract is entered into, unless a different version of that clause appears in the Prime Contract or higher-tier subcontract, in which case the version in the Prime Contract or higher-tier subcontract controls and applies.

The Contracts Disputes Act shall have no application to this Subcontract, and the SELLER shall have no right of direct action against the U.S. Government. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Subcontract, and not any FAR disputes clause.

**C. GOVERNMENT SUBCONTRACT**

(1) This Subcontract is entered into by the parties in support of a U.S. Government prime contract. The term "Subcontract" as used in the text of this document (including parenthetical instructions), *but not in the clauses listed herein*, includes subcontracts and purchase orders between AV and SELLER. (2) In all clauses listed herein, terms shall be revised to suitably identify the party to establish SELLER's obligations to AV and to the Government, and to enable AV to meet its obligations under the prime contract. *In the clauses listed herein*, and without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean AV, the term "Contracting Officer" shall mean AV's subcontracting or purchasing representative, the term "Contractor" or "Offeror" shall mean SELLER, "Subcontractor" shall mean SELLER'S subcontractor or supplier, and the term "Contract" shall mean this subcontract or purchase order. For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change (a) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract

Contracting Officer or duly authorized representative, or (b) when title to property is to be transferred directly to the Government. The listed FAR clauses are incorporated herein as if set forth in full text unless made inapplicable by their corresponding notes, if any. **If any of the following FAR clauses do not apply to this Subcontract, such clauses are considered to be self-deleting and are of no force or effect.** The SELLER, by signing its offer, hereby certifies compliance with the following clauses and is, therefore, eligible for award. With respect to any applicable FAR clauses incorporated into this subcontract relating to rights in noncommercial technical data and noncommercial computer software and noncommercial computer software documentation, the SELLER grants to AV the right to use, disclose, modify, combine, integrate or make derivative works of any noncommercial technical data, noncommercial computer software and/or noncommercial computer software documentation delivered under this subcontract to the extent necessary, and for such period as is required, for AV to complete its performance under AV's U.S. Government programs.

**D. PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If AV furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that AV, acting on its own behalf, may modify or limit any rights the Government may have to authorize SELLER's use of such Furnished Items in support of other U. S. Government prime contracts.

**E. PROVISIONS OF THE FEDERAL ACQUISITION REGULATION INCORPORATED BY REFERENCE**

The following FAR clauses apply to this Subcontract:

**No minimum dollar value threshold:**

FAR 52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
FAR 52.204 - 2	Security Requirements
FAR 52.204 - 9	Personal Identity Verification of Contractor
FAR 52.204-21	Personnel Basic Safeguarding of Covered Contractor Information Systems
FAR 52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
FAR 52.211-14	Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.
FAR 52.215-9	Changes or Additions to Make-or-Buy Program.

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FAR 52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data	FAR 52.203 - 6	Restrictions on Subcontractor Sales to the Government (Alternate 1)
FAR 52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data-Modifications	FAR 52.203 - 12	Limitation on Payments to Influence Certain Federal Transactions
FAR 52.219-8	Utilization of Small Business Concerns (applies if the subcontract offers further subcontracting opportunities)	FAR 52.222 - 35	Equal Opportunity for Veterans (unless exempted by rules, regulations, or orders of the Secretary of Labor)
FAR 52.222-41	Service Contract Labor Standards	FAR 52.246-2	Inspection of Supplies – Fixed-Price

FAR 52.222 - 50	Combating Trafficking in Persons
FAR 52.222-55	Minimum Wages Under Executive Order 14026
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706
FAR 52.223-7	Notice of Radioactive Materials (if the subcontract is for items containing radioactive materials)
FAR 52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons
FAR 52.225-1	Buy American-Supplies
FAR 52.225-5	Trade Agreements
FAR 52.225-13	Restrictions on Certain Foreign Purchases
FAR 52.225-26	Contractors Performing Private Security Functions Outside the United States
FAR 52.227-19	Commercial Computer Software License
FAR 52.232 - 40	Providing Accelerated Payments to Small Business Subcontractors
FAR 52.242-17	Government Delay of Work
FAR 52.244-6	Subcontracts for Commercial Products and Commercial Services
FAR 52.245-1	Government Property (ALT 1)
FAR 52.247 - 64	Preference for Privately Owned U.S.-Flag Commercial Vessels
FAR 52.251-1	Government Supply Source

**F. PROVISIONS OF THE U.S. DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) INCORPORATED BY REFERENCE**

The following DFARS clauses apply to this Subcontract if it is under a DOD prime contract or a higher-tier subcontract under such a prime contract:

DFARS 252.203 - 7002	Requirement to Inform Employees of Whistleblower Rights
DFARS 252.203 - 7003	Agency Office of the Inspector General
DFARS 252.204 - 7008	Compliance with Safeguarding Covered Defense Information Controls
DFARS 252.204 - 7009	Limitations on the Use or Disclosure of Third Party Contractor Reported Cyber Incident Information
DFARS 252.204 - 7012	Safeguarding Covered Defense Information and Cyber Incident Reporting
DFARS 252.204 - 7015	Notice of Authorized Disclosure of Information for Litigation Support
DFARS 252.204 - 7018	Prohibition On The Acquisition Of Covered Defense Telecommunications Equipment Or Services
DFARS 252.204 - 7020	NIST SP 800-171 DOD Assessment Requirements
DFARS 252.204 - 7021	Cybersecurity Maturity Model Certification Requirements
DFARS 252.211 - 7003	Item Unique Identification and Valuation
DFARS 252.223 - 7001	Hazard Warning Labels
DFARS 252.223 - 7002	Safety Precautions For Ammunition And Explosives
DFARS 252.223 - 7003	Change in Place of Performance - Ammunition and Explosives
DFARS 252.223 - 7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives
DFARS 252.223 - 7008	Prohibition of Hexavalent Chromium
DFARS 252.225 - 7001	Buy American and Balance of Payments Program
DFARS 252.225-7007	Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies
DFARS 252.225 - 7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals
DFARS 252.225 - 7012	Preference for Certain Domestic Commodities

**FAR CLAUSES APPLICABLE TO CONTRACTS AT OR ABOVE A CERTAIN DOLLAR VALUE THRESHOLD**

FAR 52.203 - 13	Contractor Code of Business Ethics and Conduct
FAR 52.204 - 10	Reporting Executive Compensation and First-Tier Subcontract Awards
FAR 52.209 - 6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
FAR 52.222 - 21	Prohibition of Segregated Facilities
FAR 52.222 - 26	Equal Opportunity
FAR 52.222 - 35	Equal Opportunity for Veterans
FAR 52.222 - 36	Equal Opportunity for Workers with Disabilities
FAR 52.222 - 40	Notification of Employee Rights Under the National Labor Relations Act
FAR 52.222 - 54	Employment Eligibility Verification

**Subcontracts valued over the Simplified Acquisition Threshold:**

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DFARS 252.225 - 7021	Trade Agreements	DFARS 252.246 - 7007	Contractor Counterfeit Electronic Part Detection and Avoidance System
DFARS 252.225-7039	Defense Contractors Performing Private Security Functions Outside of the United States	DFARS 252.247 - 7023	Transportation of Supplies by Sea
DFARS 252.225-7040	Contractor Personnel Supporting U.S. Armed Forces Deployed Outside The United States	DFARS 252.247 - 7023	Notification of Transportation of Supplies by Sea
DFARS 252.225 - 7048	Export - Controlled Items	DFARS 252.249-7002	Notification of Anticipated Contract Termination or Reduction
DFARS 252.225 - 7052	Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten		
DFARS 252.225 - 7972	Prohibition on Procurement of Foreign-Made Unmanned Aircraft Systems (Deviation 2020-O0015)		
DFARS 252.225 - 7993	Dev 2015-O0016 Prohibition on Providing Funds to the Enemy (SEP 2015)		
DFARS 252.225 - 7994	Dev 2015-O0016 Additional Access to Contractor and Subcontractor Records In the United States Central Command Theater of Operations (DEVIATION 2015-O0013)(MAR 2015)		
DFARS 252.226 - 7001	Utilization of Indian Organizations, Indian - Owned Economic Enterprises and Native Hawaiian Small Business Concerns		
DFARS 252.227 - 7013	Rights in Technical Data - Other Than Commercial Products and Commercial Services		
DFARS 252.227 - 7014	Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation		
DFARS 252.227 - 7015	Technical Data - Commercial Products and Commercial Services		
DFARS 252.227 - 7019	Validation of Asserted Restrictions - Computer Software		
DFARS 252.227 - 7037	Validation of Restrictive Markings on Technical Data		
DFARS 252.234 - 7004	Cost and Software Data Reporting System		
DFARS 252.237 - 7010	Prohibition on Interrogation of Detainees by Contractor Personnel		
DFARS 252.239 - 7017	Notice of Supply Chain Risk		
DFARS 252.239 - 7018	Supply Chain Risk		
DFARS 252.244 - 7000	Subcontracts for Commercial Products or Commercial Services		
DFARS 252.244 - 7001	Contractor Purchasing System Administration		
DFARS 252-246 - 7000	Material Inspection and Receiving Report		
DFARS 252.246 - 7003	Notification of Potential Safety Issues		

**G. CERTIFICATIONS AND REPRESENTATIONS**

SELLER acknowledges that AV will rely upon SELLER's certifications and representations, including representations as to business size and socio-economic status as applicable, contained herein and in any written offer, proposal or quote, or company profile submission, which results in award of a subcontract to SELLER. By entering into such Subcontract, SELLER republishes the certifications and representations submitted with its written offer, including company profile information, and oral offers/quotations made at the request of AV, and SELLER makes those certifications and representations set forth below. SELLER shall immediately notify AV of any change of status regarding any certification or representation.

**1. FAR 52.203 - 11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions**

(Applicable to solicitations and contracts exceeding \$150,000)  
 (a) Definitions. As used in this provision -  
 "Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203 - 12).  
 (b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203 - 12) are hereby incorporated by reference in this provision.  
 (c) Certification. SELLER hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.  
 (d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, SELLER shall complete and submit, with its offer, to AV OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. SELLER need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.  
 (e) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall

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be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

### **2. FAR 52.209-5 Certification Regarding Responsibility Matters**

(a)(1) SELLER certifies, to the best of its knowledge and belief, that-- (i) SELLER and/or any of its Principals--

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision; and

(ii) SELLER has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(D) Have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(2) Principal, for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division, or business segment; and similar positions).

(b) SELLER shall provide immediate written notice to AV if, at any time prior to contract award, SELLER learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that SELLER knowingly rendered an erroneous certification, in addition to other remedies available, AV may terminate this contract for default.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

### **3. FAR 52.222-22 Previous Contracts and Compliance Reports**

(a) SELLER represents that if SELLER has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26): (1) SELLER has filed all required compliance reports and (2) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

### **4. FAR 52.222-25 Affirmative Action Compliance**

(a) SELLER represents: (1) that SELLER has developed and has on file at each establishment, Affirmative Action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2).

### **NASA Federal Acquisition Regulation Supplement**

For Subcontracts/Purchase Orders issued under a NASA contract, the following NASA Federal Acquisition Regulations (FAR) Provisions and Clauses shall apply:

1852.208-81 Restrictions on Printing and Duplicating Nov 04.

BMSD-664 Rev. J (Legacy ID: SCF-024)

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- 1852.223-74 Drug- and Alcohol-Free Workforce Oct 23..
- 1852.225-70 Export Licenses Feb-00.
- 1852.228-76 Cross-Waiver of Liability for Space Station Activities Oct-12.
- 1852.228-78 Cross-waiver of liability for science or space exploration activities unrelated to the International Space Station. Oct-12.
- 1852.244-70 Geographic Participation in the Aerospace Program Apr-85.

The above AEROVIRONMENT, INC. FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT - FEDERAL ACQUISITION REGULATION (FAR) CLAUSES FOR ALL SUBCONTRACTS, AND DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES FOR SUBCONTRACTS UNDER US