

AEROVIRONMENT, INC. FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT – FEDERAL ACQUISITION REGULATION (FAR) CLAUSES

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. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract or higher-tier subcontract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. 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. 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 or 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. 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.

C. 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.

D. CLAUSES APPLICABLE TO SUBCONTRACTS WITHOUT REGARD TO DOLLAR VALUE:

- FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (applies if the subcontract is funded under ARRA)
- FAR 52.203-19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Pursuant to paragraph (f), the Contractor must include the substance of this clause, including the flowdown requirement, in subcontracts)
- FAR 52.204-2 Security Requirements (applicable to subcontracts that involve access to classified information)
- FAR 52.204-9 Personal Identity Verification of Contractor Personnel (applicable to subcontracts when 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)
- FAR 52.204.21 Basis Safeguarding of Covered Contractor Information Systems (Pursuant to paragraph (d), the Contractor must include the substance of this clause, including the flowdown provision, in all subcontracts, including subcontracts for the acquisition of commercial items).
- FAR 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Pursuant to paragraph (d), the Contractor must include the substance of this clause, including the flowdown provision, in all subcontracts, including subcontracts for the acquisition of commercial items).
- FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. Pursuant to (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.
- FAR 52.211-5 Material Requirements
- FAR 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use
- FAR 52.211-15 Defense Priority and Allocation Requirements
- FAR 52.215-9 Changes or Additions to Make-or-Buy Program
- FAR 52.215-22 Limitations on Pass-Through Charges – Identification of Subcontract Effort (applicable to solicitations for subcontracts that will incorporate FAR 52.215-23 or 52.215-23 Alt I)
- FAR 52.217-9 Option to Extend Term of the Contract
- FAR 52.219-8 Utilization of Small Business Concerns
- FAR 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (applicable to subcontracts that require or involve the employment of laborers and mechanics at any tier)

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FAR 52.222-41	Service Contract Labor Standards (applicable to subcontracts for services)	FAR 52.242-13	Bankruptcy
FAR 52.222-50 & Alt I	Combating Trafficking in Persons (Alternate I is applicable to subcontracts if it is included in the prime contract)	FAR 52.242-17	Government Delay of Work
FAR 52.222-55	Minimum Wages under Executive Order 13658	FAR 52.243-1	Changes – Fixed Price
FAR 52.222-62	Paid Sick Leave under Executive Order 13706	FAR 52.243-6	Change Order Accounting
FAR 52.223-3	Hazardous Material Identification and Material Safety Data (“Government” means “Government and AV” in this clause.)	FAR 52.244-5	Competition in Subcontracting
FAR 52.223-5	Pollution Prevention and Right-to-Know Information (applicable to subcontracts that provide for performance on a Federal facility)	FAR 52.244-6	Subcontracts for Commercial Items
FAR 52.223-7	Notice of Radioactive Materials	FAR 52.245-1	Government Property (applicable to subcontracts issued under non DoD prime contracts containing FAR 52.245-1 without Alternate I and the subcontract is either a cost-reimbursement, time and materials, or labor-hour type, or is a fixed priced subcontract awarded on the basis of submission of certified cost or pricing data (reference FAR 45.104); under DoD prime contracts containing FAR 52.245-1 without Alternate I, in addition to the subcontract types listed at FAR 45.104, the clause is applicable to negotiated fixed-price subcontracts awarded on a basis other than submission of certified cost or pricing data)
FAR 52.223-11	Ozone-Depleting Substances	FAR 52.245-1 Alt I	Government Property (Alternate I) (applicable to subcontracts issued under prime contracts containing FAR 52.245-1 with Alternate I, and to subcontracts issued under prime contracts containing FAR 52.245-1 without Alternate I when the subcontract awarded is of a type other than those listed in FAR 45.104 or DFARS 245.104)
FAR 52.224-1	Privacy act Notification (applicable to subcontracts when the design, development, or operation of a system of records on individuals is required to accomplish an agency function)	FAR 52.245-1 Alt II	Government Property (Alternate II) (applicable to subcontracts for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research)
FAR 52.224-2	Privacy Act (applicable to subcontracts that require the design, development, or operation of any system of records on individuals that is subject to the Privacy Act)	FAR 52.246-4	Inspection of Services – Fixed-Price
FAR 52.225-1	Buy American Act – Supplies	FAR 52.246-8	Inspection of Research and Development – Cost Reimbursable
FAR 52.225-5	Trade Agreements	FAR 52.246-9	Inspection of Research and Development (Short Form)
FAR 52.225-8	Duty-Free Entry	FAR 52.246-16	Responsibility of Supplies
FAR 52.225-13	Restrictions on Certain Foreign Purchases	FAR 52.247-63	Preference for U.S.-Flag Air Carriers (applicable to subcontracts that involve international air transportation)
FAR 52.227-9	Refund of Royalties (applicable to subcontracts in which the amount of royalties reported during negotiation of the subcontract exceeds \$250)	FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels
FAR 52.227-10	Filing of Patent Applications – Classified Subject Matter (applicable to subcontracts that involve or are likely to involve classified subject matter)	FAR 52.249-2	Termination for Convenience of the Government (Fixed-Price) (in Paragraph (c) “120 days” is changed to “60 days”; in Paragraph (d) “15 days” is changed to “30 days,” and “45 days” is changed to “60 days”; in Paragraph (e) “1 year” is changed to “6 months”; Paragraph (j) is deleted; in Paragraph (l) “90 days” is changed to “45 days”; settlements and payments may be subject to Contracting Officer approval)
FAR 52.227-11	Patent Rights – Ownership by The Contractor (applicable to subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization)	FAR 52.249-5	Termination for Convenience of the Government (Educational and other Nonprofit Institutions)
FAR 52.227-13	Patent Rights – Ownership by the Government (applicable to subcontracts for experimental, developmental or research work, and SELLER is not a U.S. business concern; Paragraph (g) is deleted)	FAR 52.249-8	Default (Fixed-Price Supply and Service) (timely performance is a material element of this subcontract)
FAR 52.227-14	Rights in Data – General	FAR 52.251-1	Government Supply Source (When the contracting officer authorizes use of Government supply sources for contract performance).
FAR 52.227-19	Commercial Computer Software License		
FAR 52.228-3	Workers’ Compensation Insurance (Defense Base Act)		
FAR 52.228-4	Workers’ Compensation Insurance and War Hazard Insurance Overseas		
FAR 52.228-5	Insurance – Work on a Government Installation		
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (applies if SELLER is a small business concern, but does <i>not</i> apply if AV does not receive accelerated payments under the prime contract or higher-tier subcontract)		
FAR 52.233-3	Protest After Award (AV may direct SELLER to stop work if AV is so directed by the government)		
FAR 52.234-1	Industrial Resources Developed Under Defense Production Act Title III		
FAR 52.236-13	Accident Prevention (applicable to fixed-price construction, fixed-price dismantling, demolition, or removal of improvements subcontracts)		
FAR 52.237-2	Protection of Government Buildings, Equipment and Vegetation		
FAR 52.241-15	Stop-Work Order		

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E. CLAUSES APPLICABLE TO SUBCONTRACTS OVER THE MICRO-PURCHASE THRESHOLD (AS DEFINED AT FAR 2.101)

ALSO INCLUDE:

FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving

F. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$10,000

ALSO INCLUDE:

FAR 52.222-21 Prohibition of Segregated Facilities
 FAR 52.222-26 Equal Opportunity
 FAR 52.222-40 Notification of Employee Rights under the National Labor Relations Act

G. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$15,000

ALSO INCLUDE:

FAR 52.222-20 Walsh-Healy Public Contracts Act
 FAR 52.222-36 Affirmative Action for Workers with Disabilities

H. CLAUSES APPLICABLE TO SUBCONTRACTS OF \$30,000 OR MORE ALSO INCLUDE:

FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (applicable to subcontracts when AV is the prime contractor; the usual substitution of the parties is not applicable to this clause; SELLER shall report to AV the compensation information required under the clause, if not exempt)

I. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$35,000

ALSO INCLUDE:

FAR 52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

J. CLAUSES APPLICABLE TO SUBCONTRACTS OF \$100,000 OR MORE ALSO INCLUDE:

FAR 52.222-35 Equal Opportunity for Veterans
 FAR 52.222-37 Employment Reports on Veterans

K. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$150,000

ALSO INCLUDE:

FAR 52.202-1 Definitions
 FAR 52.203-3 Gratuities
 FAR 52.203-7 Anti-Kickback Procedures (except subparagraph (c)(1) of the clause)
 FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions
 FAR 52.203-16 Preventing Personal Conflicts of Interest (applicable to subcontracts that include a requirement for services that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal Government agency or department)
 FAR 52.222-35 Equal Opportunity for Veterans (unless exempted by rules, regulations, or orders of the Secretary of Labor)
 FAR 52.222-54 Employment Eligibility Verification (applicable to subcontracts that (i) are for construction or services; (ii) include work performed in the United States); and (iii) have a performance period of 120 days or more)
 FAR 52.248-1 Value Engineering
 FAR 52.249-9 Default (Fixed-Price Research and Development)

L. CLAUSES APPLICABLE TO SUBCONTRACTS OVER THE SIMPLIFIED ACQUISITION THRESHOLD (AS DEFINED AT FAR 2.101; CURRENTLY \$250,000) ALSO INCLUDE:

FAR 52.203-5 Covenant against Contingent Fees
 FAR 52.203-6 Restrictions on Subcontract Sales to the government
 FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights
 FAR 52.215-2 Audit and Records – Negotiations (applicable to subcontracts: (i) that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type, or any combination of these; (ii) for which certified cost or pricing data are required; or (iii) that require SELLER to furnish reports as discussed in paragraph (e) of the clause)
 FAR 52.215-14 Integrity of Unit Prices (except paragraph (b))
 FAR 52.215-23 & Alt I Limitations on Pass-Through Charges (include Alternate I if it is included in the prime contract) (applicable to cost-reimbursement subcontracts that exceed the simplified acquisition threshold, except if the contract is with the Department of Defense (DoD), then this clause is applicable to all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4)
 FAR 52.227-1 Authorization and Consent (and Alt I) (include Alternate I if it is included in the prime contract)
 FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement

M. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$5,000,000 ALSO INCLUDE:

FAR 52.203-13 Contractor Code of Business Ethics and Conduct (In paragraph (b)(3)(i), the meaning of “agency office of the Inspector General” and “Contracting Officer” does not change; in paragraph (b)(3)(ii) the meaning of “Government” does not change; and in paragraphs (b)(3)(iii) and (c)(2)(ii)(F), the meanings of “OIG of the ordering agency,” “IG of the agency,” “agency OIG” and “Contracting Officer” do not change; clause only applies if subcontract performance period is 120 days or longer)
 FAR 52.203-14 Display of Hotline Poster(s)

N. CLAUSES APPLICABLE TO SUBCONTRACTS OVER \$700,000 ALSO INCLUDE:

FAR 52.219-9 Small Business Subcontracting Plan

O. UNLESS OTHERWISE EXEMPT (SEE FAR 15.408), SUBCONTRACTS MUST ALSO INCLUDE:

FAR 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data (Rights and obligations under this clause shall survive completion of the Work and final payment under this Subcontract)
 FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Rights and obligations under this clause shall survive completion of the Work and final payment under this Subcontract)
 FAR 52.215-12 Subcontractor Certified Cost or Pricing Data

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FAR 52.215-13	Subcontractor Certified Cost or Pricing Data – Modifications	FAR 52.246-6	Inspection – Time-And-Materials And Labor-Hour (“Contracting Officer” means AV’s purchasing representative and “Government” means AV and the Government, provided that an inspection system accepted by the Government will be deemed accepted by AV, and where “Government” first appears in paragraph (k) it means Government and/or AV; the provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to AV and the Government)
FAR 52.215-15	Pension Adjustments and Asset Reversions		
FAR 52.215-18	Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions		
FAR 52.215-19	Notifications of Ownership Changes		
FAR 52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data		
FAR 52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications	FAR 52.247-67	Submission of Transportation Documents for Audit (provided transportation will be reimbursed as a direct charge to the contract)

P. COST REIMBURSEMENT, TIME & MATERIAL OR LABOR HOUR SUBCONTRACTS MUST ALSO INCLUDE:

FAR 52.215-16	Facilities Capital Cost Of Money
FAR 52.215-17	Waiver of Facilities Capital Cost of Money
FAR 52.216-7	Allowable Cost and Payment (SELLER agrees to execute assignment documents in order to comply with subsection (h); this clause is not applicable to labor-hour subcontracts)
FAR 52.216-8	Fixed Fee (applicable if this is a cost-plus-fixed-fee subcontract)
FAR 52.216-10	Incentive Fee (applicable if this is a cost-plus-incentive-fee subcontract)
FAR 52.216-11	Cost Contract – No Fee (applicable if this is a cost-no-fee subcontract)
FAR 52.216-12	Cost-Sharing Contract – No Fee (applicable if this is a cost-sharing, no fee subcontract)
FAR 52.222-2	Payment for Overtime Premiums (insert “0%” in paragraph (a) unless indicated otherwise in the subcontract)
FAR 52.232-7	Payments under Time-And-Materials and Labor-Hour Contracts (“schedule” means this subcontract, “voucher(s)” means invoice(s))
FAR 52.232-20	Limitation of Cost (applicable to fully-funded subcontracts)
FAR 52.232-22	Limitation of Funds (applicable to incrementally-funded subcontracts)
FAR 52.243-2	Changes – Cost-Reimbursement (applicable to cost-reimbursement subcontracts)
FAR 52.243-3	Changes – Time-And-Materials or Labor-Hour Contracts (applicable to time-and-materials or labor-hour subcontracts)
FAR 52.244-2	Subcontracts (paragraphs (g) and (h) only apply)
FAR 52.246-2	Inspection of Supplies – Fixed-Price
FAR 52.246-3	Inspection Of Supplies – Cost-Reimbursement (“Contracting Officer” means AV’s purchasing representative, and “Government” means AV and the Government, provided that an inspection system accepted by the Government will be deemed accepted by AV, and where “Government” first appears in paragraph (k) it means “Government and/or Buyer”; the provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to AV and the Government)
FAR 52.246-5	Inspection Of Services – Cost-Reimbursement (“Contracting Officer” means AV’s purchasing representative, and “Government” means AV and the Government, provided that an inspection system accepted by the Government will be deemed accepted by AV, and the provisions in this clause for access, right to inspect, safety protection, and relief from liability apply equally to AV and the Government)

FAR 52.249-6	Termination (Cost-Reimbursement) (“Government” means AV and “Contracting Officer” means AV’s purchasing representative; in paragraph (e) change “15 days” and “45 days” to “30 days” and “90 days”, respectively; inn paragraph (f) change “1 year” to “six months”; Alternate IV is applicable to time-and-materials or labor-hour subcontracts only)
FAR 52.249-14	Excusable Delays

Q. 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

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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 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 Debarment, Suspension, Proposed Debarment, and Other 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 managerial 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.

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.
- (b) Paragraph (a) applies only to the extent (1) SELLER performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

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), or (2) that in the event such a program does not presently exist, SELLER will develop and place in operation such a written Affirmative Action Compliance Program within one- hundred twenty (120) days from the award of this Contract.
- (b) Paragraph (a) applies only to the extent (1) SELLER performs work in the United States, or (2) recruits employees in the United States to Work on this Contract.

R. ADDITIONAL CLAUSES:

1. COST ACCOUNTING STANDARDS (applicable when stated in the subcontract)

FAR 52.230-2	Cost Accounting Standards
FAR 52.230-3	Disclosure and Consistency of Cost Accounting Practices
FAR 52.230-4	Disclosure and Consistency of Cost Accounting Practices – Foreign Concerns
FAR 52.230-5	Cost Accounting Standards – Educational Institution
FAR 52.230-6	Administration of Cost Accounting Standards

SELLER shall communicate and otherwise deal directly with the Contracting Officer to the extent practicable and permissible as to all matters relating to Cost Accounting Standards. SELLER shall provide AV with copies of all communications between SELLER and the Contracting Officer respecting the applicable Cost Accounting Standards clause, and the Administration of Cost Accounting Standards clause, provided that SELLER shall not be required to disclose to AV such communications containing information confidential to the SELLER. In addition to any other remedies provided

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AEROVIRONMENT, INC. FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT – FEDERAL ACQUISITION REGULATION (FAR) CLAUSES

by law or under this subcontract, SELLER agrees to indemnify and hold AV harmless to the full extent of any loss, damage, or expense if AV is subjected to any liability as the result of a failure of the SELLER or its lower-tier subcontractors to comply with the requirements of FAR 52.230-2, 52.230-3, 52.230-4, 52.230-5 or 52.230-6. Paragraph (b) is deleted in each of the foregoing clauses, except in FAR 52.230-6.

2. TRUTH IN NEGOTIATIONS (cost and pricing data)

Unless exempt, SELLER shall submit a FAR Part 15 compliant cost proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, SELLE- must certify as to the accuracy, currency and completeness of its information in accordance with the FAR required Certificate of Current Cost or Pricing Data.

a. Indemnification

If any price (including profit or fee) negotiated in connection with the prime contract between the Government and AV or any cost that is reimbursable under said contract is reduced because cost or pricing data furnished by the SELLER in connection with any proposal submitted by AV relating to said contract or in connection with this subcontract was not accurate, complete, or current, the SELLER shall indemnify AV in the amount of said reduction.

The phrase "cost or pricing data" as used herein shall be deemed to include any such data which related to a lower-tier prospective or actual subcontract, at any level, which was submitted by the SELLER or the submission of which SELLER procured, in connection with the aforesaid proposal or this subcontract in support of its cost estimate.

If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the SELLER shall be liable and shall pay to AV at the time such overpayment is repaid:

- i. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the SELLER to the date AV is repaid by SELLER at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- ii. For Department of Defense contracts only, a penalty equal to the amount of the overpayment, if the SELLER knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

b. Cost or Pricing Data for Changes

Prior to the pricing of any change or other modification to this subcontract which involves increases and/or decreases in costs plus applicable profit expected to exceed the threshold for submission of cost or pricing data, SELLER shall submit cost or pricing data and shall certify that the data, as defined in Federal Acquisition Regulation 15.406-2, submitted either actually or by specific identification in writing are accurate, complete, and current as of the date of completion of negotiations.

When required to obtain cost or pricing data from its subcontractors, pursuant to the provisions of this subcontract, SELLER shall obtain such data.

S. DISPUTES – GOVERNMENT CONTRACTS:

Any reference to "Disputes" in any applicable FAR clause contained herein shall mean this paragraph, Disputes – Government Contracts.

1. Any dispute arising under this Subcontract relating to any decision of the Contracting Officer under the prime contract shall be resolved in accordance with paragraph 2 below. All other disputes will be resolved by the Disputes and the Applicable Laws provisions of the "Aerovironment, Inc. Terms and Conditions for Subcontracts/Purchase Orders under a U.S. Government Prime Contract (All Agencies)."

2. Notwithstanding any other provisions in this Subcontract, any

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decision of the Contracting Officer under the prime contract that binds AV shall bind both AV and SELLER to the extent that it relates to this SUBCONTRACT, provided that:

(a) AV notifies SELLER with reasonable promptness of such decision; and

(b) AV, at its sole discretion, authorizes SELLER in writing to appeal in the name of AV such decision at its own expense, or

if AV should appeal such decision, AV at its sole discretion offers to SELLER the opportunity at SELLER's own expense to join AV in such appeal.

3. Any decision upon such appeal, when final, shall be binding upon SELLER, and SELLER shall have no recourse against AV for any damages to SELLER that allegedly resulted from the decision of the Contracting Officer.

a. SELLER shall keep AV informed of any appeal it makes by providing copies of all pertinent documents to AV.

b. SELLER shall indemnify and save harmless AV from any and all liability of any kind incurred by or imputed to AV under Section 5, "Fraudulent Claims," of the Contract Disputes Act of 1978, as amended, (41 U.S.C. 7103(c) (2)) if SELLER is unable to support any part of its claim and it is determined that such inability is attributable to fraud or misrepresentation of fact on the part of SELLER.

4. Pending any prosecution, appeal, or final decision or settlement of any dispute arising under this subcontract, the SELLER shall proceed diligently, as directed by AV, with the performance of this subcontract.

5. Nothing in this Paragraph "S" nor any authorization or offer that may be made shall be deemed to constitute acceptance or acknowledgment by AV of the validity of SELLER's claim or any part thereof, nor be deemed to limit or in any way restrict AV from taking any actions, including available remedies, it deems appropriate to protect its own interests.

6. As used in this Paragraph S, the word "appeal" means an appeal taken under the Contract Disputes Act of 1978, as amended.

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.
- 1852.223-74 Drug- and Alcohol-Free Workforce Nov-15.
- 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 NASA Expendable Launch Vehicle Launches Oct-12.
- 1852.244-70 Geographic Participation in the Aerospace Program Apr-85.

The above FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT – FEDERAL ACQUISITION REGULATION (FAR) CLAUSES are hereby accepted.



**AEROVIRONMENT, INC. FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS
FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT – FEDERAL
ACQUISITION REGULATION (FAR) CLAUSES**

Signature

Print Name

Title

Company Name

Date