



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

A. GENERAL

1. Goods and services procured under this order are for use by the United States Government (“Government”). SELLER shall comply with all applicable Government provisions and clauses, including the Federal Acquisition Regulation (“FAR”), Defense Federal Acquisition Regulation Supplement (“DFARS”), and any other Government agency provisions and clauses (collectively, “USG Clauses”).

2. The USG 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 Contract. The full text of these clauses is accessible online at the following website: <https://www.acquisition.gov/content/regulations>. The effective version of each USG Clause shall be the version in effect as of the date the Contract is entered into, unless a different version of that USG 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 Contract, and the SELLER shall have no right of direct action against the Government. SELLER shall include in each lower-tier subcontract the appropriate USG Clauses as required by the FAR and FAR Supplement clauses included in this Contract.

B. GOVERNMENT CONTRACT

1.“Contract” means any contract between AV and SELLER. “Subcontract” means any contract placed by SELLER or lower-tier subcontractors under this Contract. “Prime Contract” means the contract between AV and the Government or between AV and its higher-tier contractor who has a contract with the Government. “Commercial Item” means a commercial item as defined in FAR 2.101. “COTS item” means commercially available off-the-shelf item as defined in FAR 2.101.

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 Contract 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. **If any of the following USG Clauses do not apply to this Contract, 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 USG Clauses and is, therefore, eligible for award. With respect to any applicable USG Clauses incorporated into this Contract 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 Contract to the extent necessary, and for such period as is required, for AV to complete its performance under AV’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 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 Government prime contracts.

D. FAR CLAUSES AND PROVISIONS

FAR CLAUSES APPLICABLE TO CONTRACTS WITHOUT REGARD TO DOLLAR VALUE:

- FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009
- FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights
- 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 Personnel
- FAR 52.204-21 Basis Safeguarding of Covered Contractor Information Systems
- FAR 52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities
- FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
- 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
- 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
- FAR 52.222-41 Service Contract Labor Standards
- FAR 52.222-50 Combating Trafficking in Persons (Alternate I applies if it is included in the Prime Contract)
- FAR 52.222-55 Minimum Wages Under Executive Order 14026
- FAR 52.222-62 Paid Sick Leave Under Executive Order 13706
- FAR 52.223-3 Hazardous Material Identification and Material Safety Data
- FAR 52.223-5 Pollution Prevention and Right-to-Know Information
- FAR 52.223-7 Notice of Radioactive Materials
- FAR 52.223-11 Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons
- FAR 52.224-1 Privacy Act Notification



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Table with 3 columns: FAR/DFARS clause number, description of the clause, and the corresponding FAR/DFARS clause number. The table lists various provisions such as Privacy Act, Buy American, Trade Agreements, etc.

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

Table with 2 columns: FAR/DFARS clause number and description of the clause. This section lists clauses applicable to contracts above a certain dollar value threshold.



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FAR 52.249-9 Default (Fixed-Price Research and Development)
 FAR 52.249-14 Excusable Delays

E. DFARS CLAUSES AND PROVISIONS

DFARS CLAUSES APPLICABLE TO ALL CONTRACTS WITHOUT REGARD TO DOLLAR VALUE:

DFARS 252.203-7002 Requirement to Inform Employees of Whistleblower Rights
 DFARS 252.203-7003 Agency Office of the Inspector General
 DFARS 252.204-7000 Disclosure of Information
 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 252.208-7000 Intent To Furnish Precious Metals As Government-Furnished Material
 DFARS 252.211-7003 Item Identification and Valuation
 DFARS 252.216-7009 Allowability of Legal Costs Incurred in Connection with a Whistleblower Proceeding
 DFARS 252.223-7001 Hazard Warning Labels (Applies to Contracts for goods that require submission of hazardous material data sheets
 DFARS 252.223-7002 Safety Precautions for Ammunition and Explosives
 DFARS 252.223-7003 Change In Place Of Performance – Ammunition and Explosives
 DFARS 252.223-7006 Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials
 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 252.225-7002 Qualifying Country Sources as Subcontractors
 DFARS 252.225-7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies
 DFARS 252.225-7008 Restriction On Acquisition Of Specialty Metals
 DFARS 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals
 DFARS 252.225-7010 Commercial Derivative Military Article – Specialty Metals Compliance Certificate
 DFARS 252.225-7012 Preference for Certain Domestic

DFARS 252.225-7013
 DFARS 252.225-7015
 DFARS 252.225-7016
 DFARS 252.225-7021
 DFARS 252.225-7025
 DFARS 252.225-7027
 DFARS 252.225-7028
 DFARS 252.225-7030
 DFARS 252.225-7031
 DFARS 252.225-7039
 DFARS 252.225-7040
 DFARS 252.225-7043
 DFARS 252.225-7048
 DFARS 252.225-7052
 DFARS 252.225-7972
 DFARS 252.227-7013
 DFARS 252.227-7014
 DFARS 252.227-7015
 DFARS 252.227-7016
 DFARS 252.227-7017
 DFARS 252.227-7018
 DFARS 252.227-7019
 DFARS 252.227-7025
 DFARS 252.227-7026
 DFARS 252.227-7027
 DFARS 252.227-7028
 DFARS 252.227-7030
 DFARS 252.227-7037
 DFARS 252.227-7038
 DFARS 252.227-7039

Commodities
 Duty-Free Entry
 Restriction on Acquisition of Hand or Measuring Tools
 Restriction on Acquisition of Ball and Roller Bearings
 Trade Agreements
 Restriction on Acquisition of Forgings
 Restriction on Contingent Fees For Foreign Military Sales
 Exclusionary Policies and Practices of Foreign Governments
 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate
 Secondary Arab Boycott of Israel
 Defense Contractors Performing Private Security Functions Outside of the United States
 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside The United States
 Anti-Terrorism/Force Protections Policies for Defense Contractors outside the United States
 Export-Controlled Items
 Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten
 Prohibition on Procurement of Foreign-Made Unmanned Aircraft Systems (Deviation 2020-00015)
 Rights in Technical Data—Other Than Commercial Products and Commercial Services
 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation
 Technical Data - Commercial Products and Commercial Services
 Rights in Bid or Proposal Information Identification and Assertion of Use, Release, Or Disclosure Restrictions
 Rights in Noncommercial Technical Data and Computer Software – Small Business Innovation Research (SBIR) Program
 Validation of Asserted Restrictions – Computer Software
 Limitation on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends
 Deferred Delivery of Technical Data or Computer Software
 Deferred Ordering Of Technical Data or Computer Software
 Technical Data or Computer Software Previously Delivered to the Government
 Technical Data – Withholding of Payment
 Validation of Restrictive Markings on Technical Data
 Patent Rights – Ownership by the Contractor (Large Business)
 Patents – Reporting of Subject



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DFARS 252.228-7001	Inventions
DFARS 252.228-7005	Ground And Flight Risk Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles
DFARS 252.231-7000	Supplemental Cost Principles
DFARS 252.234-7004	Cost and Software Data Reporting System
DFARS 252.235-7003	Frequency Authorization
DFARS 252.239-7016	Telecommunications Security Equipment, Devices, Techniques, And Services
DFARS 252.239-7017	Notice of Supply Chain Risk
DFARS 252.239-7018	Supply Chain Risk
DFARS 252.243-7001	Pricing of Contract Modifications
DFARS 252.244-7000	Subcontracts for Commercial Products or Commercial Services
DFARS 252.244-7001	Contractor Purchasing System Administration
DFARS 252.246-7001	Warranty of Data
DFARS 252.246-7003	Notification Of Potential Safety Issues
DFARS 252.246-7007	Contractor Counterfeit Electronic Part Detection And Avoidance System

Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns

DFARS 252.249-7002 Notification of Anticipated Contract Terminations or Reductions

CERTIFICATION Regarding Compliance

If this clause is included in AV's Prime Contract, this certification applies to Contracts over \$1,000,000 issued under DoD contracts, except for Contracts for the acquisition of Commercial Items or COTS items.

By SELLER's acceptance of this Contract:

(i) SELLER certifies that it shall not enter into, and shall not take any action to enforce any provision of, any agreement with any of its employees or independent contractors performing work related to this Contract or purchase order that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of a sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; and

(ii) SELLER certifies that it requires each of its lower-tier subcontractors that performs work under this Contract and that is a "covered subcontractor" as defined in DFARS 252.222-7006, to agree not to enter into, and not to take any action to enforce any provision of, any agreement with any of its employees or independent contractors performing work related to this Contract that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under Title VII of the Civil Rights Act of 1964, or any tort related to or arising out of a sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

DFARS CLAUSES APPLICABLE TO CONTRACTS OVER THE SIMPLIFIED ACQUISITION THRESHOLD (AS DEFINED AT FAR 2.101) ALSO INCLUDE:

DFARS 252.203-7001	Prohibition on Persons Convicted Of Fraud or Other Defense-Contract-Related Felonies
DFARS 252.247-7023	Transportation of Supplies by Sea
DFARS 252.223-7999	Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O0009)

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

DFARS 252.203-7003	Agency Office of the Inspector General
DFARS 252.203-7004	Display Of Fraud Hotline Poster(s)
DFARS 252.209-7004	Subcontracting With Firms That Are Owned or Controlled By the Government of a Terrorist Country that is a State Sponsor of Terrorism (as prescribed by FAR 209.409)
DFARS 252.215-7009	Proposal Adequacy Checklist
DFARS 252.219-7003	Small Business Subcontracting Plan
DFARS 252.219-7004	Small Business Subcontracting Plan (Test Program)
DFARS 252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements
DFARS 252.225-7004	Quarterly Reporting of Actual Contract Performance outside the United States
DFARS 252.225-7033	Waiver of United Kingdom Levies
DFARS 252.226-7001	Utilization of Indian Organizations,

F. NASA FEDERAL ACQUISITION REGULATION SUPPLEMENT ("NFS")

For Contracts/Purchase Orders issued under a NASA Prime Contract, the following NFS Provisions and Clauses shall apply:

NFS 1852.208-81	Restrictions on Printing and Duplicating
NFS 1852.223-74	Drug- and Alcohol-Free Workforce
NFS 1852.225-70	Export Licenses
NFS 1852.228-76	Cross-Waiver of Liability for Space Station Activities
NFS 1852.228-78	Cross-Waiver of Liability for NASA Expendable Launch Vehicle Launches
NFS 1852.244-70	Geographic Participation in the Aerospace Program

G. SELLER 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 Contract to SELLER. By entering into such Contract, SELLER republishes the certifications and representations submitted with its written offer, including company profile information,

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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 (Applies 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 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

Applicability Regarding Debarment, Suspension, Proposed Debarment, and Ineligibility.

(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.

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.

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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.

H. ADDITIONAL CLAUSES:

1. COST ACCOUNTING STANDARDS (Applies to modified and full CAS-covered contracts)

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 by law or under this Contract, 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. DEFECTIVE COST OR PRICING DATA

Unless otherwise exempt, SELLER shall submit a FAR Part 15 compliant proposal inclusive of appropriate updates throughout the negotiation process. At the conclusion of negotiations, and regardless of any prior certification, SELLER 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 Contract 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 Contract 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 Contract 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 Contract, SELLER shall obtain such data.

3. BUSINESS SYSTEMS RULE

SELLER shall communicate and otherwise deal directly with the United States Government Contracting Officer to the extent practicable and permissible as to all matters relating to any of SELLER's business systems under any of the following applicable Business Systems clauses: DFARS 252.215-7002 “Cost Estimating System Requirements,” DFARS 252.234-7002 “Earned Value Management System,” DFARS 252.242-7004 “Material Management and Accounting System,” DFARS 252.242-7006 “Accounting System Administration,” DFARS 252.244-7001 “Contractor Purchasing System Administration,” and DFARS 252.245-7003 “Contractor Property Management System Administration” (hereinafter referred to collectively as “Business Systems clauses”). SELLER shall promptly provide AV with copies of communications with the United States Government related to significant deficiencies in any of SELLER's business systems under the applicable Business Systems clauses, provided that SELLER shall not be required to disclose to AV information confidential to SELLER contained in any such communications. In addition to any other remedies provided by law or under this Contract, SELLER hereby indemnifies and holds AV harmless to the full extent of any loss, damage, or expense, including without limitation any withholds under DFARS 252.242-7005, “Contractor Business Systems,” to AV that result from any government action, claim, withhold or similar action against AV that results in a loss or expense to AV of any type, including, but not limited to, lost profit or fee, legal costs, interest, and indirect cost markups, because of a failure of SELLER or its lower-tier subcontractors to comply with any of the Business Systems clauses.

I. DISPUTES – GOVERNMENT CONTRACTS:

Any reference to “Disputes” in any applicable USG Clause contained herein shall mean this paragraph, Disputes – Government Contracts.

1. Any dispute arising under this Contract 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



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

Contract (All Agencies).”

2. Notwithstanding any other provisions in this Contract, any 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 CONTRACT, 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 Contract, the SELLER shall proceed diligently, as directed by AV, with the performance of this Contract.

5. Nothing in this Paragraph I 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 I, the word “appeal” means an appeal taken under the Contract Disputes Act of 1978, as amended.