

**MERCURY SYSTEMS, INC. FLOWDOWN PROVISIONS FOR COMMERCIAL ITEMS  
(FAR PART 12)**

**INCORPORATION OF FAR AND DFARS CLAUSES**

The FAR AND 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. 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 AND DFARS disputes clause.

**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 MERCURY SYSTEMS and SELLER.

(2) In all clauses listed herein, terms shall be revised to suitably identify the party to establish SELLER's obligations to MERCURY SYSTEMS and to the Government, and to enable MERCURY SYSTEMS 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 MERCURY SYSTEMS, the term "Contracting Officer" shall mean MERCURY SYSTEMS'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 AND DFARS 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 AND DFARS clauses do not apply to this subcontract, such clauses are considered to be self-deleting.

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

The following FAR clauses apply to this Subcontract:

**No minimum dollar value threshold:**

FAR 52.202-1	Definitions
FAR 52.203-3	Gratuities
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 (applies if the Work requires access to classified information)
FAR 52.204-9	Personal Identity Verification of Contractor Personnel (applies if SELLER will have physical access to a federally-controlled facility or access to a Federal 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 52.204-24	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
FAR 52.208-8	Required Sources for Helium and Helium Usage Data (applies if the subcontract involves a major helium requirement)
FAR 52.211-14	Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.
FAR 52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items
FAR 52.215-9	Changes or Additions to Make-or-Buy Program
FAR 52.215-20	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (paragraph (a)(1)(ii) requires submission of previous prices for cost reasonableness evaluation)
FAR 52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (paragraph (a)(1)(ii) requires submission of previous prices for cost reasonableness evaluation)
FAR 52.219-8	Utilization of Small Business Concerns (applies if the subcontract offers further subcontracting opportunities)
FAR 52.222-37	Employment Reports on Veterans
FAR 52.222-41	Service Contract Labor Standards (applies if the subcontract is for services, and subject to the Service Contract Labor Standards statute)
FAR 52.222-50	Combating Trafficking in Persons
FAR 52.222-55	Minimum Wages Under Executive Order 13658
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706
FAR 52.223-3	Hazardous Material Identification and Material Safety Data
FAR 52.223-7	Notice of Radioactive Materials (if the subcontract is for items containing radioactive materials)
FAR 52.223-11	Ozone-Depleting Substances (applies if the Work was manufactured with or contains ozone-depleting substances)
FAR 52.225-1	Buy American Act -- Supplies (applies if the Work contains other than domestic components)
FAR 52.225-5	Trade Agreements (applies if the Work contains other than U.S.-made or designated country end products as specified in the clause)
FAR 52.225-13	Restrictions on Certain Foreign Purchases (prohibits transactions with Burma, Cuba, Iran, North Korea and Sudan, except as authorized by the Office of Foreign Assets Control in the Treasury Department)

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FAR 52.225-26	Contractors Performing Private Security Functions Outside the United States (applies only in that circumstance)
FAR 52.227-19	Commercial Computer Software License
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 MERCURY SYSTEMS does not receive accelerated payments under the prime contract or higher-tier subcontract)
FAR 52.242-17	Government Delay of Work
FAR 52.244-6	Subcontracts for Commercial Items
FAR 52.245-1	Government Property (ALT 1) ("Contracting Officer" means "MERCURY SYSTEMS," except for the definition of Property Administrator, where it is unchanged, and in paragraphs (c) and (h)(4)(iii) where it includes MERCURY SYSTEMS. "Government" is unchanged in the phrases "Government property" and "Government-furnished property," and where elsewhere used, except in paragraph (d)(1), where it means "MERCURY SYSTEMS," and except in paragraphs (d)(2) and (g), where the term includes MERCURY SYSTEMS. The following is added as paragraph "(n)": SELLER shall provide to MERCURY SYSTEMS immediate notice if the Government or other another customer (i) revokes its assumption of loss under any direct contract with SELLER, or (ii) makes a determination that SELLER's property management practices are inadequate, and/or present an undue risk, or that SELLER has failed to take corrective action when required."
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (applies if the subcontract may involve ocean transportation of supplies)
FAR 52.251-1	Government Supply Source (When the contracting officer authorizes use of Government supply sources for contract performance).

**Subcontracts exceeding \$3,500 in value:**

FAR 52.222-54	Employment Eligibility Verification (does not apply to services that are part of the purchase of a COTS item)
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**Subcontracts exceeding \$10,000 in value:**

FAR 52.222-21	Prohibition of Segregated Facilities (to be included in every subcontract subject to FAR 52.222-26)
FAR 52.222-26	Equal Opportunity (applies if the subcontract value exceeds \$10,000, or if the aggregate value of all subcontracts to the subcontractor in a 12-month period exceeds, or can reasonably be expected to exceed, \$10,000)
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act

**Subcontracts exceeding \$15,000 in value:**

FAR 52.222-36	Affirmative Action for Workers with Disabilities
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**Subcontracts of \$30,000 or more in value:**

FAR 52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (applicable to subcontracts when MERCURY SYSTEMS is the prime contractor; the usual substitution of the parties is not applicable to this clause; SELLER shall report to MERCURY SYSTEMS the compensation information required under the clause, if not exempt)
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**Subcontracts exceeding \$35,000 in value:**

FAR 52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (applies if the subcontract exceeds \$35,000 in value and is <i>not</i> for commercial off-the-shelf items (COTS))
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**Subcontracts of \$100,000 or more in value:**

FAR 52.222-35	Equal Opportunity for Veterans
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (>\$150K)

**Subcontracts valued over the Simplified Acquisition Threshold (currently \$250,000 except for supplies or services to be used to support a contingency operation):**

FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (Alternate 1)
FAR 52.222-35	Equal Opportunity for Veterans (unless exempted by rules, regulations, or orders of the Secretary of Labor)
FAR 52.246-2	Inspection of Supplies – Fixed-Price

**Subcontracts exceeding \$5,000,000 in value:**

FAR 52.203-13	Contractor Code of Business Ethics and Conduct (applies if the subcontract exceeds \$5,000,000 in value, <i>and</i> the period of performance is more than 120 days; disclosures made under this clause shall be made directly to the Government entities identified in the clause.)
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**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 252.203-7000	Requirement Relating to Compensation of Former DOD Officials
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 (Seller shall (i) notify Mercury Systems, Inc. when Seller submits a request to vary from a NIST SP 800-171 security requirement to DoD, in accordance with paragraph (b)(2)(ii)(B) of this clause and (ii) provide the incident report number, automatically assigned by DoD, to Mercury Systems, Inc. as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.)
DFARS 252.204-7015	Notice of Authorized Disclosure of Information to Litigation Support Contractors
DFARS 252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services
DFARS 252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements

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DFARS 252.204-7020	NIST SP 800-171 DoD Assessment Requirements		by the Secretary of Defense, contingency operations, humanitarian or peacekeeping operations, or other military operations or exercises designated by the Combatant Commander)
DFARS 252.204-7021	Cybersecurity Maturity Model Certification Requirement		Export-Controlled Items
DFARS 252.211-7003	Item Unique Identification and Valuation (applies if the subcontract requires the Work to contain "unique item identification"; items subject to unique item identification are identified elsewhere in the subcontract; all reports required to be submitted under this clause shall be submitted to MERCURY SYSTEMS)	DFARS 252.225-7048 DFARS 252.225-7993	Dev 2015-O0016 Prohibition on Contracting with the enemy
DFARS 252.223-7001	Hazard Warning Labels (applies if the subcontract requires the delivery of hazardous materials)	DFARS 252.225-7994	Dev 2015-O0016 Additional access to Contractor and Subcontractor In the United States Central Command Theater of Operations
DFARS 252.223-7002	Safety Precautions For Ammunition And Explosives (applies only if the articles furnished under the subcontract contain ammunition or explosives, including liquid and solid propellants) (delete "prime" in paragraph (g)(1)(ii) and add "and MERCURY SYSTEMS Procurement Representative")	DFARS 252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises and Native Hawaiian Small Business Concerns (applies if the subcontract value exceeds \$500,000; in subparagraph (f)(1) "Contractor" shall mean "MERCURY SYSTEMS"; MERCURY SYSTEMS shall have no liability to SELLER for any incentive payment under this clause unless and until the Government provides said incentive payment to MERCURY SYSTEMS)
DFARS 252.223-7003	Change in Place of Performance - Ammunition and Explosives (applies if DFARS 252.223- 7002 applies to the subcontract)	DFARS 252.227-7013	Rights in Technical Data -- Noncommercial Items (applies to the extent specified in DFARS 252.227-7015)
DFARS 252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (applies if the subcontract is for the development, production, manufacture, or purchase of arms, ammunition, or explosives, or when arms, ammunition, or explosives will be provided to SELLER as Government Furnished Property.)	DFARS 252.227-7014	Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation (applies in lieu of FAR 52.227-14)
DFARS 252.223-7008	Prohibition of Hexavalent Chromium	DFARS 252.227-7015	Rights in Technical Data -- Commercial Items
DFARS 252.225-7001	Buy American and Balance of Payments Program (applies if the Work contains other than domestic components; applies in lieu of FAR 52.225-1)	DFARS 252.227-7019	Validation of Asserted Restrictions - Computer Software (applies when the subcontract requires computer software that will be delivered to the Government)
DFARS 252.225-7007	Prohibition on Acquisition of United States Munitions List Items From Communist Chinese Military Companies (applies if SELLER is supplying items on the U.S. Munitions List)	DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data (applies when the subcontract requires the delivery of technical data)
DFARS 252.225-7008	Restriction on Acquisition of Specialty Metals	DFARS 252.234-7004	Cost and Software Data Reporting System (Applies as described in the CSDR contract plan)
DFARS 252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals (applies if the Work to be furnished contains specialty metals; paragraph (d) is deleted)	DFARS 252.237-7010	Prohibition on Interrogation of Detainees by Contractor Personnel
DFARS 252.225-7012	Preference for Certain Domestic Commodities	DFARS 252.239-7017	Notice of Supply Chain Risk (Applies if this Subcontract involves the development or delivery of any information technology, whether acquired as a service or as a supply; insert "or MERCURY SYSTEMS" after "Government" throughout)
DFARS 252.225-7021	Trade Agreements (applies if the Work contains other than U.S.-made, qualifying country, or designated country end products; applies in lieu of FAR 52.225-5)	DFARS 252.239-7018	Supply Chain Risk (Applies if this Subcontract involves the development or delivery of any information technology, whether acquired as a service or as a supply; insert "or MERCURY SYSTEMS" after "Government" throughout)
DFARS 252.225-7036	Buy American Act – Free Trade Agreements		
DFARS 252.225-7039	Defense Contractors Performing Private Security Functions Outside of the United States		
DFARS 252.225-7040	Contractor Personnel Supporting U.S. Armed Forces Deployed Outside The United States (applicable to subcontracts that will be performed outside the United States in areas of combat and other significant military operations designated	DFARS 252.244-7000 DFARS 252.244-7001	Subcontracts for Commercial Items  Contractor Purchasing System Administration

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DFARS 252-246-7000	Material Inspection and Receiving Report
DFARS 252.246-7003	Notification of Potential Safety Issues (applies if the subcontract is for (i) parts identified as critical safety items; (ii) systems and subsystems, assemblies, and subassemblies integral to a system; or (iii) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system; SELLER shall provide notifications to MERCURY SYSTEMS and the contracting officer identified to SELLER)
DFARS 252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System (applicable to solicitations and resulting subcontracts for (i) electronic parts; (ii) end items, component parts, or assemblies containing electronic parts; and (iii) services where the subcontractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service)
DFARS 252.246-7008	Sources of Electronic Devices
DFARS 252.247-7003	Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer
DFARS 252.247-7023	Transportation of Supplies by Sea (applies in lieu of FAR 52.247-64; in the first sentence of paragraph (g), insert a period after "Contractor" and delete the balance of the sentence; paragraphs (f) and (g) shall not apply if the subcontract is valued at or below the simplified acquisition threshold)
DFARS 252.247-7024	Notification of Transportation of Supplies By Sea (applicable if the subcontract meets the criteria set forth in paragraph (b) (2) (ii) of the clause)
DFARS 252.249-7002	Notification of Anticipated Contract Termination or Reduction (applies if the subcontract exceeds \$650,000 in value; delete paragraph (d) (1) and the first five words of paragraph (d) (2))