



Flowdown Provisions
NASA Launch Services (NLSII) Contract NNK10LB00B

PRIME CONTRACT REQUIREMENTS

- A. The following clauses of the Federal Acquisition Regulation (FAR) and National Aeronautics and Space Administration Federal Acquisition Regulation Supplement (NFS) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable during the performance of this Contract. The full text of a clause may be accessed electronically at the following address: <http://www.acquisition.gov/far> . With regard to any clauses contained in this document which are incorporated by reference into any other exhibit to this Contract, the version of the clause contained in this document, inclusive of any notes attached thereto, shall take precedence.

1. FAR FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010) (Applies in lieu of any other version of 52.203-13 incorporated in other exhibits of this Contract.) (Applies in lieu of any other version of 52.203-13 incorporated in other exhibits of this Contract.) (Applicable if the Contract equals or exceeds \$5 Million and the period of performance is 120 days or over. Paragraph (c) does not apply to small businesses. Disclosures made under this clause shall be made directly to the Government entities identified in the clause, with a copy to ULA.)
52.219-08	UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) (Applies in lieu of any other version of 52.219-08 incorporated in other exhibits of this Contract.)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) (Applies in lieu of any other version of 52.222-21 incorporated in other exhibits of this Contract.) (Applies only to Contracts subject to the Equal Opportunity clause.)
52.222-26	EQUAL OPPORTUNITY (MAR 2007) (Applies in lieu of any other version of 52.222-26 incorporated in other exhibits of this Contract.)
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006) (Applies in lieu of any other version of 52.222-35 incorporated in other exhibits of this Contract.) (Applies if the Contract equals or exceeds \$100,000.)
52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 1998) (Applies in lieu of any other version of 52.222-36 incorporated in other exhibits of this Contract.) (Applies if the Contract exceeds \$10,000.)
52.222-37	EMPLOYMENT REPORTS ON VETERANS (SEP 2006) (Applies in lieu of any other version of 52.222-37 incorporated in other exhibits of this Contract.) (Applies if the Contract equals or exceeds \$100,000.)
52.222-50	COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Applies in lieu of any other version of 52.222-50 incorporated in other exhibits of this Contract.)
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009) (Applies in lieu of any other version of 52.222-54 incorporated in other exhibits of this Contract.) (Applies if this Contract exceeds \$3,000 and includes Work performed in the United States.)
52.227-14	RIGHTS IN DATA-GENERAL (DEC 2007) ALT II (DEC 2007) ALT III (DEC 2007) (Applies in lieu of any other version of 52.227-14 incorporated in other exhibits of this Contract.) (If delivery of limited rights data is required, ULA will affix the following "Limited Rights Notice" to the data:

Limited Rights Notice (Dec 2007)

(a) These data are submitted with limited rights under Government Contract No. NNK10LB00B. These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(i) Use (except for manufacture) by support service contractors in support of the contract.

(ii) Evaluation by nongovernment evaluators in participation in evaluation of proposals submitted under the contract.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

2. NFS FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
1852.219-75	SMALL BUSINESS SUBCONTRACTING REPORTING (May 1999) (Applicable if FAR 52.219-9 applies to this Contract.)
1852.223-70	SAFETY AND HEALTH (APR 2002) (Applies if (i) the work will be conducted completely or partly on premises owned or controlled by the Government; (ii) the work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold; (iii) the work, regardless of place of performances, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable); and (iv) when the Contractor (or subcontractor or supplier) determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.)

1852.225-70 EXPORT LICENSES (FEB 2000)

1852.228-75 MINIMUM INSURANCE COVERAGE (OCT 1988)(For any work on a Government Installation, CONTRACTOR should have, at a minimum, the insurance required by this clause. To the extent that the ULA terms attached to this Contract require greater levels of insurance, CONTRACTOR shall obtain the insurance required by ULA.)

NOTES

1. Substitute "ULA" for "Government" throughout this clause.
2. Substitute "Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and ULA" after "Government" throughout this clause.
4. Insert "or ULA" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through ULA.

B. The following additional provisions apply to this Contract:

1) 1852.228-78 CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (DEVIATION) (OCT 2009) (Applies when hardware or services procured under this Contract are used to provide launch services to NASA)

(a) The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities, unrelated to the International Space Station (ISS), but which involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

(1) "Agreement" refers to any NASA agreement that contains the cross-waiver of liability provision authorized in 14 CFR 1266.104.

(2) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential Damage;

(3) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(4) "Party" means a party to a NASA agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. For purposes of this cross-waiver of liability, "Party" also means a contractor or subcontractor of a party to such a NASA agreement.

(5) "Payload" means all property to be flown or used on or in a Launch Vehicle.

(6) "Protected Space Operations" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. Protected Space Operations begins at the signature of the Agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. Protected Space Operations excludes activities on Earth which are conducted on return from space to develop further a Payload's product or process other than for the activities within the scope of an Agreement for launch services.

(7) "Related entity" means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. The terms "contractors" and "subcontractors" include suppliers of any kind.

(c) Cross-waiver of liability:

(1) ULA and CONTRACTOR each agree to a waiver of liability pursuant to which each waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A Party;

(ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;

(iii) A Related Entity of any of the entities identified in (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in (c)(1)(i) through (c)(1)(iii) of this clause.

(2) The contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraph (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this crosswaiver of liability shall not be applicable to:

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damages resulting from failure of a Party to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or

(vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

2) GOVERNMENT INSIGHT AND ACCESS

(a) CONTRACTOR acknowledges that the Government has reserved certain insight rights into CONTRACTOR's performance under this Contract. This Government insight will include, but is not limited to, access to facilities used in the performance of this Contract, access to data directly related to the performance of this Contract (other than financial data) through electronic or other means, attendance and participation at meetings and participation in scheduled program events. **The Government's insight does not include approval/disapproval rights, nor the right to require new data or documents to be created.**

(b) Government insight is defined as gaining an understanding necessary to knowledgeably concur/non-concur with the CONTRACTOR's actions through watchful observation, documentation, meeting attendance, reviews, tests and compliance evaluations. Where Government insight is required, the CONTRACTOR shall notify the ULA Procurement Representative of meetings, reviews, or tests in sufficient time to permit meaningful Government participation.

(c) Should insight identify non-compliance with the terms and conditions of the contract, a difference in interpretation of test results, or disagreement with the CONTRACTOR technical directions, the Government, through ULA, will take appropriate action within the terms of the contract to ensure compliance via written direction to the CONTRACTOR.

(d) In accordance with paragraph (a), CONTRACTOR's documents, reports, records, software and data provided to ULA be made available to the Government in compliance with the Prime Contracts. CONTRACTOR will label all information provided to ULA under this Contract as either "ULA Proprietary Information" or "[CONTRACTOR] Proprietary Information" as appropriate in accordance with the data rights provisions of this Contract. Except as noted in paragraph (c), the Government's access to such CONTRACTOR data shall not constitute delivery of data, software or information to the Government and the Government shall only have the right to review and evaluate, and print out and incorporate the data into other documents for Governmental purposes.

(e) ULA's rights in data shall be determined under the "Intellectual Property" provision of the Docs.

(f) If this Contract is for production work, the Government's rights in data shall be determined under FAR 52.227-14 with ALTs II and III, and 1852.227-14.

3) INSPECTION SYSTEM RECORDS

Pursuant to the "Quality Control System" provision of the General Provisions, the CONTRACTOR shall maintain records evidencing inspections until ULA approves destruction of such records, but in no event for less than three (3) years after delivery of all items and/or completion of all services called for by this Contract

4) KENNEDY SPACE CENTER ("KSC") SECURITY CONTROLS (KSC 52.204-96, JAN 2007)

(Applies if this Contract requires the CONTRACTOR's entry onto KSC.)

(a) Identification of Employees

1. The CONTRACTOR shall require each employee engaged on the work site to display NASA-furnished identification badges and special access badges at all times. The CONTRACTOR shall obtain and submit badging request forms for each person employed or to be employed by the CONTRACTOR under this contract. The CONTRACTOR shall designate its own security and badging officials to act as points-of-contact for the KSC Security Office. Prior to proceeding with onsite performance, the CONTRACTOR shall submit the following information to the Protective Services Branch, Code TA-E2, Kennedy Space Center:

- a. Contract number and location of work site(s)
- b. Contract commencement and completion dates
- c. Status as prime or subcontractor
- d. Names of designated security and badging officials

2. Identification and badging of employees shall be accomplished as soon as practicable after award of the contract. During performance of the contract, the contractor shall, upon termination of an employee, immediately deliver badges and/or passes issued to the employee to the NASA Security Office. It is agreed and understood that all NASA identification badges/passes remain the property of NASA, and the Government reserves the right to invalidate such badges/passes at any time.

(b) Access to Controlled Areas within KSC

1. Certain areas within KSC have been designated as Controlled Areas. These are normally surrounded by fencing and have an entrance gate monitored by a guard or monitoring device. Access into such areas is classified into "escorted" or "unescorted" access. For each employee for which the CONTRACTOR desires to have unescorted access, the prescribed forms must be submitted to the NASA Security Office. Due to the time required to process requests for unescorted access, the CONTRACTOR is advised to complete and submit the required forms as soon as practicable after contract award. Within 14 working days after the receipt of the forms, the NASA Security Office will determine whether the person is eligible for unescorted access.

2. The prime CONTRACTOR is responsible for providing escort services for any of his employees and/or any subcontractor employees who are not eligible for unescorted access.

3. All requests for unescorted access by subcontractors will be submitted through the prime contractor for forwarding to the NASA Security Office.

5) LIABILITY FOR THIRD PARTY CLAIMS ARISING FROM NASA LAUNCHES

This clause only applies to missions under a NASA prime contract.

(a) This clause applies to Third Party claims that arise from the conduct of hazardous launch activities when hardware or services procured under this Contract are used to provide launch services to NASA and NASA has agreed to provide liability coverage under the terms of 42 U.S.C. §2473(c)(13). This clause explains the approach of NASA, ULA and CONTRACTOR to address Third Party claims between NASA, ULA and CONTRACTOR for damage to or loss of property or bodily injury or death arising from covered launch activities. This clause applies in lieu of indemnification under Public Law 85-804 and the Commercial Space Launch Act for launch services provided to NASA using hardware or services provided by CONTRACTOR under this Contract.

(b) Definitions:

(1) Covered Launch Activities: Any and all activities involved in the preparation of a launch vehicle and payload for launch, and conduct of the launch, when those activities take place at a launch site in the United States.

(2) Launch: The intentional ignition of the first-stage motor(s) of the launch vehicle that has been integrated with the payload.

(3) Launch Vehicle: The baseline LVS consisting of a common core booster section and any strap on motors attached, one (1) interstage, an orbital adjust module, the payload fairing and the payload adapter.

(4) Party or Parties: The CONTRACTOR, ULA and NASA.

(5) Payload: All NASA or NASA-sponsored equipment that has been or will be integrated with the launch vehicle for transportation into earth orbit or escape trajectories.

(6) Related Party:

(i) Any of the parties' directors, officers, agents, employees or customers

(ii) Any of the parties' contractors, subcontractors, or suppliers at any tier involved directly or indirectly in the performance of this Contract

(iii) Any entity having any right, title or interest, whether through sale, lease or service arrangement or otherwise, directly or indirectly, in the payload, the launch vehicle, or the launch service. Third Party: Any person or entity other than NASA, ULA and the CONTRACTOR and their Related Parties.

(c) Required Insurance for Liability to Third Parties

(1) ULA shall continue in effect or acquire insurance to protect the parties and the Related Parties from liability for claims from Third Parties for damage to or loss of property or personal injury or death arising in connection with the covered launch activities under this Contract. The amount of the required insurance shall be the maximum amount available in the commercial marketplace at reasonable cost, but shall not exceed \$500 million for each launch. The policy or policies shall name CONTRACTOR and its related parties as additional insured parties. Required insurance coverage shall attach no later than the arrival of the launch vehicle at the launch site and shall remain in force for at least thirty (30) days following launch.

(3) The foregoing insurance requirement does not preclude ULA or the CONTRACTOR from acquiring or continuing in effect any additional insurance to protect their interests or the interests of their Related Parties.

(d) Third Party Claims in Excess of Required Insurance

(1) NASA has determined that launches, under this Contract, are conducted by NASA in performance of its functions, as specified in 42 U.S.C. § 2473(a). As a result, once ULA or its insurers have paid out for Third Party claims the amount of required insurance under paragraph 32.3(A), NASA will consider any additional Third Party claims for damage to or loss of property or personal injury or death arising from the launches as claims against the United States under the authority of 42 U.S.C. § 2473(c)(13).

(2) ULA (once it or its insurers have paid to Third Party claimants, from their own funds, an amount equal to the amount of required insurance for a launch) shall adjust, settle and pay meritorious and reasonable additional Third Party claims in excess of the amount of required insurance. To the extent NASA determines that such costs exceed \$25,000, it will forward such claim to the Secretary of Treasury for certification and payment pursuant to 31 U.S.C. § 1304(a). Such costs are subject to the availability of funds and the usual tests for allowability and the total of such costs shall be paid up to a limit of \$1.5 billion above the insurance obtained by ULA for each launch.

(3) In evaluating Third Party claims against the United States paid by ULA, NASA will consider such a claim to be meritorious unless the claim represents:

(i) Liabilities for which ULA or the CONTRACTOR is otherwise responsible under the express terms or conditions of the contract or a task order issued under this Contract

(ii) Liabilities for which ULA has failed to insure or to maintain insurance as required by NASA

(iii) Liabilities for which ULA has not reasonably adjusted, settled, or paid on a meritorious and reasonable basis.

(iv) Liabilities that result from willful misconduct or lack of good faith on the part of any of ULA or the CONTRACTOR's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:

(a) All or substantially all of ULA or the CONTRACTOR's business

(b) All or substantially all of ULA's or the CONTRACTOR's operations at any one plant or separate location in which this Contract is being performed

(c) A separate and complete major industrial operation in connection with the performance of this Contract

(v) Liabilities that arise from the willful misconduct or gross negligence of the Claimant or, in the case of a claim based on death, the claimant's descendant.

(e) Third Party Liability for NASA Secondary Payloads on Non-NASA Primary Missions. The requirements of this clause shall apply to all launch services provided under this Contract except for those services involving NASA secondary payloads which are manifested on a launch service for non-NASA (commercial) primary payloads. In the event that a NASA secondary payload is manifested on a launch services for a non-NASA (commercial) primary payload, ULA shall obtain third party liability insurance and indemnification for third party claims in excess of insurance pursuant to the Commercial Space Launch Act, 49 U.S.C. 70101 et seq.

6) MISSION SUCCESS: Investigation and Corrective Action

(a) In the event of an anomaly or failed mission, a NASA-chaired Failure Review Board ("FRB") will determine the cause of anomaly or failure, if activated. The FRB will evaluate all available data from the launch vehicle, payload, Range, and other sources in order to determine if the mission failure was attributable to the launch vehicle or conditions for which the CONTRACTOR would normally be expected to control or avoid.

(b) The Government and ULA will determine the scope of the investigation and shall conduct and control the investigation. The CONTRACTOR shall, if requested by ULA, assist in the investigation as to the Work performed by CONTRACTOR under this Contract. The Government or ULA may designate representatives to observe and participate in CONTRACTOR's failure investigation. If the CONTRACTOR changes design of any hardware delivered hereunder, the CONTRACTOR shall provide NASA, through ULA, insight into the change. The Government or ULA may establish an independent assessment team to assess the CONTRACTOR's investigative and corrective actions.

(c) The CONTRACTOR shall present to the Government, through ULA, its findings resulting from the investigation and the proposed corrective actions (return to flight activities), if any. The CONTRACTOR shall be responsible for proving the corrective action is sufficient to return to flight. ULA or NASA may either accept or reject any finding or corrective action. If ULA and NASA accept a finding and the related corrective action, the CONTRACTOR shall be responsible for the cost of the corrective action including re-acceptance for NASA missions. In the event ULA or the Government requires additional analyses or tests beyond those planned by the CONTRACTOR, the CONTRACTOR shall implement the ULA Procurement Representative's written direction to perform the additional tests or analyses. The costs of implementing these additional tests or analyses may be the basis for an adjustment to this Contract. ULA or the Government may, at its option and its expense, conduct its own investigation of the anomaly or failure. The CONTRACTOR shall cooperate with and fully support any such ULA or Government investigation.

(d) The CONTRACTOR shall report to NASA, through ULA, any flight anomalies of its supplies or services related to the Work under this Contract, from non-NASA missions.

7) PATENT INDEMNITY

The CONTRACTOR shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

8) PRIORITY RATING

This Contract has a priority rating of DO-C9 and as such, is certified for national defense use. The CONTRACTOR shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).

9) USE OF GOVERNMENT PROPERTY, FACILITIES, AND ASSETS

(a) The CONTRACTOR may use Government property, facilities, assets or services accountable to another subcontract with ULA if required in performance of this Contract.

(b) The Government and ULA make no warranty whatsoever as to the suitability for use of Government property, facilities and other assets made available. Any costs necessary to maintain, restore, refurbish, and/or replace any assets, for use under this Contract, shall result in no increase in the price of this Contract.

(c) The CONTRACTOR is responsible for determining the suitability for use of all materials, property, and facilities acquired or made available to the CONTRACTOR by the Government or ULA. Any use of Government-Furnished Property (GFP), materials, or facilities and services shall not relieve the CONTRACTOR of full performance responsibility.