



**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>

**1. FAR FLOWDOWN CLAUSES**

<u>Clause Number</u>	<u>Title/Applicability</u>
52.215-21	REQUIREMENT FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN CERTIFIED COST AND PRICING DATA – MODIFICATIONS (OCT 2010) ALT IV (OCT 2010) (Note 2 applies. ALT IV applies in lieu of ALT III of 52.215-21)
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011) ALT II (OCT 2001) (Applicable if the CONTRACTOR is not a small business and this contract equals or exceeds \$650,000. Note 2 applies to paragraph (c) only. The CONTRACTOR's subcontracting plan is incorporated herein by reference.)
52.227-11	PATENT RIGHTS- OWNERSHIP BY THE CONTRACTOR (DEC 2007) (Applies if this Contract, at any tier, is for experimental, developmental, or research work. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the Procurement Representative identified on the face of the Contract.)
52.227-14	RIGHTS IN DATA-GENERAL (DEC 2007)
52.227-16	ADDITIONAL DATA REQUIREMENTS (JUN 1987)

**2. NFS FLOWDOWN CLAUSES**

<u>Clause Number</u>	<u>Title/Applicability</u>
1852.204-76	SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2011) (Applies if this Contract includes processing, managing, access or storage NASA Electronic Information. Notes 2 and 3 apply.)
1852.211-70	PACKAGING, HANDLING, AND TRANSPORTATION (SEP 2005)
1852.219-74	USE OF RURAL AREA SMALL BUSINESSES (SEP 1990)
1852.219-75	SMALL BUSINESS SUBCONTRACTING REPORTING (MAY 1990) (Applies if FAR 52.219-9 is included in this contract.)
1852.219-76	NASA 8% GOAL (JUL 1997) (Applies if Contractor is not a small business or if not a commercial item.)
1852.223-72	SAFETY AND HEALTH (SHORT FORM) (APR 2002) (Note 4 applies in (c) and (d). Applies if contract exceeds \$3,000.)
1852.225-70	EXPORT LICENSES (FEB 2000) ALT I (FEB 2000)
1852.225-71	RESTRICTION ON FUNDING ACTIVITY WITH CHINA (FEB 2012). Note 2 applies in (c).
1852.227-14	RIGHTS IN DATA- GENERAL (JAN 1980)
1852.227-70	NEW TECHNOLOGY (MAY 2002) (Does not apply if selling a commercial item.)
1852.227-72	DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (JUL 1997) (Note 5 applies)
1852.228-76	CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCT 2012)
1852.237-72	ACCESS TO SENSITIVE INFORMATION (JUN 2005) (Applies if Contract may involve access to sensitive information.)
1852.237-73	RELEASE OF SENSITIVE INFORMATION (JUN 2005) (Applies if Contract may involve furnishing of sensitive information.)
1852.244-70	GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)
1852.245-73	FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2011) (CONTRACTOR will submit annual reports to ULA no later than October 10 <sup>th</sup> .)
1852.245-74	IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011) (Note 1 applies. Paragraph (e) should be revised to read "The data required in paragraphs (c) and (d) of this clause shall be delivered to ULA as required by this Contract.")
1852.245-78	PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (JAN 2011)

**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. COUNTERFEIT WORK SUPPLEMENT**

In addition to the requirements in the Counterfeit Work clause, CONTRACTOR shall implement an appropriate strategy to ensure that Work furnished to ULA under this Contract are not Counterfeit Work. CONTRACTOR's strategy shall include, but is not limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-authorized suppliers, obtaining from such non-authorized suppliers appropriate certificates of conformance that provide one or more of the following: (i) the OEM's original certificate of conformance for the item; (ii) sufficient records providing unbroken supply chain traceability to the OEM; or (iii) test and inspection records demonstrating the item's authenticity.

**2. ENVIRONMENTAL HEALTH AND SAFETY PERFORMANCE**

a. CONTRACTOR acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract. ULA expects that CONTRACTOR's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. CONTRACTOR will convey the substance of this clause on all new subcontracts under this contract.

b. If Work performed under this Contract is on a Government installation, CONTRACTOR will (i) conform to the specific safety requirements contained in this Contract, (ii) for those related activities not directly addressed by this Contract, conform to the applicable safety rules prescribed by the Government installation applicable to physically entering the installation, but not applicable to utilization of and/or reporting through Government safety-related systems, and (iii) take such additional precautions as ULA or the Contracting Officer under ULA's Government contract may reasonably require for safety and accident prevention purposes.

**3. PROTECTION OF PROPERTY AND EVIDENCE OF CITIZENSHIP**

a. Protection of Property. CONTRACTOR assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed or otherwise. CONTRACTOR waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against ULA and its customers, its subsidiaries and their respective directors, officers, employees and agents for any such loss or destruction of or damage to any property of CONTRACTOR, any subcontractor or their respective employees. At all times CONTRACTOR shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to ULA or customer's property. If any such property is damaged by the fault or negligence of CONTRACTOR or any subcontractor thereof, CONTRACTOR shall, at no cost to ULA, promptly and equitably reimburse ULA for such damage or repair or otherwise make good such property to ULA or its customer's satisfaction. If CONTRACTOR fails to do so, ULA may do so and recover from CONTRACTOR the cost thereof.

b. Evidence of Citizenship or Immigrant Status.

(i) ULA may be required to obtain information concerning citizenship or immigrant status of CONTRACTOR's personnel or CONTRACTOR's subcontractor personnel entering the premises of ULA. Consistent with all applicable local statutes and regulations including those provisions that permit CONTRACTOR to provide such information when such provision is consented to by CONTRACTOR's personnel or CONTRACTOR's subcontractor personnel, CONTRACTOR shall furnish such information before commencement of work and at any time thereafter before substituting or adding new personnel to work on ULA's premises. If CONTRACTOR determines that it may submit such information, it shall be certified by an authorized representative of CONTRACTOR as being true and correct. CONTRACTOR acknowledges that if it is unable to provide such information and certification, access to ULA premises may be limited due to ULA compliance with applicable U.S. export control statutes and regulation.

(ii) With respect to CONTRACTOR personnel or CONTRACTOR's subcontractor personnel entering the premises of ULA to perform work under this Contract, CONTRACTOR specifically agrees that it is, and will remain, in compliance with the United States statute known as the Immigration Reform and Control Act of 1986, as amended, and will permit ULA, upon reasonable notice, to inspect and audit CONTRACTOR's records documenting such compliance with respect to said personnel to the extent allowable under all applicable local statutes and regulations. CONTRACTOR subcontracts for work under this Contract shall suitably modify the parties in this paragraph and include the substance of this paragraph in subcontracts such that the subcontractor has the same obligation as CONTRACTOR.

**4. CUSTOMER INSIGHT AND ACCESS**

a. CONTRACTOR shall provide ULA and its customers insight, to include watchful observation, documentation, meeting attendance, reviews, tests, and compliance evaluations, into the following tasks and milestones:

- i. Fleet changes or any changes that may affect the Work
- ii. Baseline vehicle design, analyses, and configuration management
- iii. Production program reviews, plans, and schedules
- iv. Production and systems test Material Review Boards
- v. Safety and Mission Assurance compliance evaluations (prime and subcontractors)
- vi. Pre-ship reviews
- vii. Design and qualification reviews
- viii. Major/critical problems
- ix. Major system and integrated systems tests
- x. Post-test data
- xi. Anomaly resolutions
- xii. Failure analysis
- xiii. Vehicle/ground support equipment procedures
- xiv. Launch site support work schedules and plans
- xv. Launch site vehicle preparations and closeout data
- xvi. Vehicle walk down inspections
- xvii. Operations and procedure discipline
- xviii. Work practices and documentation
- xix. Conduct of Contractor chaired Mission, launch, and Flight Readiness Reviews
- xx. Post-flight vehicle, tracking, and range data
- xxi. Post-flight anomaly investigations/close-outs

xxii. Critical flight hardware pedigrees

b. CONTRACTOR shall notify the appropriate ULA of meetings, reviews, or tests in sufficient time to permit meaningful participation by ULA and its Customers.

c. ULA's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and configuration control shall extend to the ULA's customers including those that are departments, agencies or instrumentalities of the United States Government, including the United States Government Federal Aviation Administration and any successor agency or instrumentality of the United States Government. Nothing in this Contract shall be interpreted to limit United States Government access to CONTRACTOR's facilities pursuant to law or regulation.

#### **5. PERFORMANCE OF WORK ON GOVERNMENT PREMISES**

Any Work under this Contract which is performed by CONTRACTOR or any of its subcontractors on premises under Government control is subject to all provisions of this Contract governing such work and to the following:

a. All CONTRACTOR and subcontractor personnel shall at all times conspicuously display a distinctive badge provided by CONTRACTOR, identifying such personnel as employees of CONTRACTOR and shall observe and otherwise be subject to such security regulations as are in effect for the particular premises involved.

b. Except as may be otherwise specified in this Contract, CONTRACTOR shall furnish all supplies, material and equipment required for the work to be performed.

c. CONTRACTOR shall provide direct supervision of its own employees but shall not supervise or accept supervision from any Government personnel.

d. CONTRACTOR shall designate to ULA in writing an on-the-premises representative to serve as point of contact for CONTRACTOR with the Contracting Officer or his duly authorized representative.

e. Performance of Work on Government premises shall be confined to the area(s) specified by the Contracting Officer or his duly authorized representative.

#### **6. OFFSET CREDITS AND FOREIGN CONTENT REPORTING (This article applies only if this Contract exceeds \$500,000.)**

a. CONTRACTOR shall use its best efforts to cooperate with ULA and its customers in the fulfillment of any Industrial Participation (IP), Offsets, Co-Production or similar obligations to certain foreign governments that ULA's customers may have accepted as a requirement for the sale of products to foreign customers.

b. CONTRACTOR agrees to use reasonable efforts to identify the foreign content of goods or services that CONTRACTOR either produces itself and/or procures from subcontractors for work directly related to this Contract. For purposes of establishing "offset causality" under a contract, the CONTRACTOR shall provide ULA advance notification for any foreign bidder under consideration for any subcontract that is anticipated to exceed \$50,000. Promptly after selection of a non-U.S. subcontractor for work under this Contract, CONTRACTOR shall notify ULA of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.

#### **7. MATERIAL SUBSTITUTION PROHIBITION**

##### **a. Unauthorized Material Substitution (General)**

Unauthorized material substitutions are not permitted on any Work under this Contract. Unauthorized material substitution includes any deviation from the engineering definition of a raw material. Engineering definition includes design drawing and applicable specifications, product specification, form, size, shape, chemistry, melt method, origin, temper/condition, product testing or surface finish. Alternate materials specified in the engineering definition (and often described as approved material substitutions therein) do not constitute unauthorized material substitution.

Contact the Procurement Representative for details regarding definitions for metallic materials and processing and deviations to authorized materials. CONTRACTOR agrees and understands that such deviations only apply to this purchase contract.

##### **b. Metallic Materials (Specific)**

Temper or Condition Conversion - Unless specifically authorized by the engineering definition, conversion of a raw material (i.e. heat treat to change the temper or condition of the material) constitutes material substitution of the condition provided by the manufacturer.

Metallic Raw Materials – Engineering drawings may refer to obsolete or superseded specifications covering several forms, thicknesses, widths, etc. of the alloy or alloys. The required characteristics of these materials are defined not only by the objective test standards of the specification, but by the processes/methods by which this final form is achieved. These requirements are often captured in the definitions of the required material forms, and may not be explicitly called out in the detailed requirements. The raw material certification results from both the process used to make it and the tests to verify basic properties. CONTRACTOR shall ensure that metallic materials covered by current or obsolete/superseded specifications are produced using the standard industry practices designed strictly for the production of stock to the specified thickness, diameter, width or cross sectional area, achieved by thermo-mechanical processing or casting process. Chemical, electrochemical and mechanical methods used for the removal of surface scale or contamination, or the production of the required surface finish, in accordance with the material specification are acceptable. Raw material must not be re-certified with respect to thickness, diameter, width or cross sectional area or product form. Machining or cutting of thicker product or other product forms shall not be supplied in lieu of specified product unless specifically authorized by ULA. Raw material certifications for material or parts shall reflect the form and size of the raw material as originally manufactured by the raw material producer.

##### **c. Specification Supersession:**

For government specifications and standards canceled after June 1994, CONTRACTOR and subcontractors at all tiers shall use the last active revision of the canceled specification and standard until an acceptable replacement is included in the requirements of this Contract. Contact the Procurement Representative in the event of any inconsistency in applicable specification or standard.

d. Reports (Full Pedigree from melt to final product) - Raw material certifications shall show clear traceability to the manufacturer(s) of the raw material including ingot source, all thermo-mechanical processing (i.e. forging, rolling, drawing, etc), heat treatment, chemical processing and inspections as required by applicable raw material specification requirements.

e. Chain of Custody (Disguising intermediate ownership) – Suppliers shall not disguise the pedigree of material or chain of ownership by removal of a previous supplier's name, nomenclature or identification.

f. Source of Additional Information - Addition information and guidance may be found through the Procurement Representative.

g. The substance of this clause shall be flowed in all subcontracts at every tier.

#### **8. INDEMNIFICATION AND CROSS WAIVERS OF LIABILITY**

**a. COMMERCIAL SPACE LAUNCH ACT INDEMNIFICATION**

The following shall apply to articles and services to be utilized on launch vehicles launched pursuant to the Commercial Space Launch Act. Insurance requirements under the, "Insurance/Entry on ULA Property" provision of the General Provisions, would not be applicable for third party liability incurred in connection with licensed launch activities, but would otherwise be applicable.

As required by the Commercial Space Launch Act (CSLA), 51 U.S.C. §§ 50914 as amended, the Parties agree as follows:

- i. ULA will provide commercial launch services as a subcontractor to The Boeing Company (Prime Contractor). Contractor will provide Work as a subcontractor to ULA.
- ii. ULA will provide insurance as required by the Launch License obtained by ULA for launch activities containing CONTRACTOR's Work through orbital insertion. Such insurance shall protect Customers, ULA, and Space Flight Participants against launch related third party liability claims as provided for in the CSLA and the ULA launch license. ULA's Customer will acquire and maintain appropriate licenses and insurance protection for on-orbit and re-entry activities.
- iii. ULA and CONTRACTOR hereby agree to a reciprocal waiver of liability as specified in the CSLA pursuant to which each Party agrees not to bring a claim in arbitration or otherwise or sue the other Party, the United States Government and its contractors and subcontractors at every tier or any Related Third Parties of the other Party, as defined in paragraph (f), for any property loss or damage it sustains and any property loss or personal injury, including death, sustained by any of its Related Third Parties, arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.
- iv. Each Party shall each be responsible for property damage which they sustain and for bodily injury or property damage sustained by their employees arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.
- v. Each Party shall extend the waiver and release of claims and assumption of responsibility described in paragraphs (a) and (b) above to its Related Third Parties (other than employees, directors and officers) by requiring them (1) to waive and release all claims of liability they may have against ULA AND CONTRACTOR, their Related Third Parties, and the United States Government and its contractors and subcontractors at every tier, and (2) to agree to be responsible for any property loss or damage or bodily injury, including death, sustained by any of them or their employees and arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.
- vi. The waivers described in this paragraph shall extend to and bind the successors and assigns of each Party and its Related Third Parties, whether by subrogation or otherwise. Each Party shall obtain a waiver of subrogation and release of any right of recovery against the other Party and its Related Third Parties from any insurer providing coverage for the risks of loss for which the Party hereby waives claims under this paragraph.
- vii. CONTRACTOR and its subcontractors shall defend, hold harmless and indemnify ULA, the Prime Contractor, their Related Third Parties and the United States Government and its contractors and subcontractors, from and against any and all liabilities, costs and expenses (including attorneys' fees) arising out of (1) any failure by CONTRACTOR to obtain the waivers and releases of claims of liability and the assumption of responsibility described in this paragraph, and (2) bodily injury or property damage sustained by CONTRACTOR's own employees in connection with the performance of or activities carried out pursuant to a CSLA license.
- viii. (h) For purposes of this paragraph, Related Third Parties shall mean (1) directors, officers, employees and agents of either Party or of any customer to whom ULA may provide launch services; (2) parties having any right, title or interest in any of the vehicles or equipment utilized by ULA in providing launch services, including but not limited to satellites, transponders and launch vehicles; (3) contractors, subcontractors and suppliers at any tier, of either Party or of any customers of ULA; and (4) additional parties involved in the launch services provided by ULA or other activities governed by the CSLA.

**b. NASA ACT INDEMNIFICATION**

The following shall apply to articles and services to be utilized on launch vehicles launched pursuant to the NASA Act.

- i. NFS 1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES. (OCT 2012) (Deviation)
- (a) The Intergovernmental Agreement for the International Space Station (ISS) contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS. The cross-waiver of liability in this clause is intended to be broadly construed to achieve this objective.
- (b) As used in this clause, the term:
  - 1) "Agreement" refers to any NASA Space Act agreement or contract that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.
  - 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" means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:
    - i. in a suborbital trajectory;
    - ii. in Earth orbit in outer space; or
    - iii. otherwise in outer space, including activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.
  - 4) "Launch Services" means:
    - i. Activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, Payload, or crew (including crew training), if any, for launch; and
    - ii. The conduct of a Launch.
  - 5) "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.
  - 6) "Partner State" includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, The Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor Agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.
  - 7) "Party" means a party to an Agreement involving activities in connection with the ISS, including this contract.
  - 8) "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.
  - 9) "Protected Space Operations" means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space performed in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA's obligations under these Agreements. It includes, but is not limited to:
    - i. Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, 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” also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. “Protected Space Operations” excludes activities on Earth which are conducted on return from the ISS to develop further a Payload’s product or process for use other than for ISS-related activities in implementation of the IGA.
  - 10) “Reentry” means to return or attempt to return, purposefully, a Transfer Vehicle, Payload, or crew from the ISS, Earth orbit, or outer space to Earth.
  - 11) “Reentry Services” means:
    - i. Activities involved in the preparation of a Transfer Vehicle, Payload, or crew (including crew training), if any, for Reentry; and
    - ii. The conduct of a Reentry.
  - 12) “Related Entity” means:
    - i. A contractor or subcontractor of a Party or a Partner State at any tier;
    - ii. A user or customer of a Party or a Partner State at any tier; or
    - iii. A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms “contractor” and “subcontractor” include suppliers of any kind.
  - 13) “Transfer Vehicle” means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.
- (c) Cross-waiver of liability:
- 1) The Contractor agrees to a cross-waiver of liability pursuant to which it 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 crosswaiver 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 cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:
    - i. A Party as defined in (b)(7) of this clause;
    - ii. A Partner State, including the United States of America;
    - iii. A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or
    - iv. The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.
  - 2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause, to its Related Entities 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 paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.
  - 3) For avoidance of doubt, this cross-waiver of liability 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 cross-waiver of liability shall not be applicable to:
    - i. Claims between the Contractor and its own Related Entities or between its Related Entities;
    - ii. Claims made by a natural person (with the exception of Passengers and Commercial Cargo Customers), 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 of, or death of, such person;
    - iii. Claims for Damage caused by willful misconduct;
    - iv. Intellectual property claims;
    - v. Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors or related entities, pursuant to paragraph (c)(2) of this clause;
    - vi. Claims by the Government arising out of or relating to the contractor’s failure to perform its obligations under this contract.
    - vii. Claims against Passengers or Commercial Cargo Customers.
  - 5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (d) Waiver of claims Between the Government and Contractor:
- 1) This clause provides for a reciprocal waiver of claims between the Government and the Contractor and their Related Entities as described in paragraph (c) above, except that the Government shall waive such claims only to the extent such claims exceed the maximum amount of the Contractor’s insurance or financial capability required under paragraph (f) below. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this contract.
  - 2) Pursuant to paragraph (c)(2), the Contractor shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government and its Related Entities.
- (e) ULA must obtain a Federal Aviation Administration (FAA) license, in accordance with 51 U.S.C. 50901 *et seq.*, for Launch and Reentry Services performed under specific missions. The waivers of claims shall not apply to Launch Services and Reentry Services that are subject to the FAA license under the CSLA.
- (f) ULA or Prime Contractor shall maintain insurance, or demonstrate financial capability to compensate, for damages (as defined in paragraph (b)(2)(ii)) to U.S. Government property, except for damage to all on orbit ISS structures, modules, and systems required for functionality of the ISS, during Launch Services, Reentry Services, or transportation to, from, in proximity of, or docking with the ISS under this contract. For purposes of this paragraph (f), “preparation” of a Launch Vehicle or Transfer Vehicle includes test, assembly, integration or operations of the Launch Vehicle, Transfer Vehicle or their Payloads on a Government installation. Such insurance shall be an amount up to \$100 million, or the maximum amount available in the market at reasonable cost, subject to approval by the Contracting Officer. Financial capability, if authorized by the Contracting Officer, shall be in the amount of \$100 million. The Contractor shall provide acceptable evidence of the insurance or financial capability to the Contracting Officer, subject to Contracting Officer approval. Insurance policies shall name the United States Government as an additional insured party. Once approved by the Contracting Officer, insurance policies may not be modified or canceled without the prior, written approval of the Contracting Officer.

## 9. EXPORT LICENSING INFORMATION/OFFSHORE PROCUREMENT

- a. This Contract, including any attachments or exhibits hereto, may contain information which is subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) which may not be released to foreign concerns or foreign persons either inside or outside the United States without first obtaining the proper export authority. CONTRACTOR shall obtain an export license pursuant to the requirements set forth herein for any items that CONTRACTOR either manufactures or subcontracts outside the U.S or before allowing access to any technical data by a foreign person in the United States. If CONTRACTOR is a “Foreign Person” (as defined by the International Traffic in Arms Regulations [ITAR] reference 22 CFR Sub-chapter M) the CONTRACTOR shall, upon request of the

Procurement Representative and without additional cost, provide such information as may be necessary to support ULA's application for export license(s) covering any items ordered from CONTRACTOR hereunder.

b. This Contract may contain defense related technical data. ULA has obtained, or will obtain, the approval of the U.S. Government to furnish to CONTRACTOR the data, and any other items hereunder requiring such approval, which are necessary for CONTRACTOR to perform this Contract. U.S Government approval is based upon the following ITAR requirements with which CONTRACTOR agrees to comply:

(1) CONTRACTOR shall use the technical data furnished by ULA only in the manufacture of defense articles in accordance with this Contract.

(2) CONTRACTOR shall not disclose or provide technical data furnished by ULA to any person except authorized U.S. citizen, protected person, permanent resident alien (immigrant alien). If CONTRACTOR is a "Foreign Person," it may also disclose or provide technical data furnished by ULA to its employees who are citizens of the same country and qualified subcontractors in the same country which require the data in performance of the subcontracts.

(3) CONTRACTOR shall not disclose or provide technical data furnished by ULA to any foreign person either in the U.S. or abroad unless obtaining prior authorization directly from the U.S. Department of State Office of Defense Trade Controls (ODTC). ITAR defines a "foreign person" as any person who is not a U.S. citizen, permanent resident alien, or a protected individual as defined by 8 USC 1324B(a)(3). Foreign person also means a foreign corporation (corporation not incorporated in the U.S.), foreign government, and any agency or subdivision of foreign governments (i.e. diplomatic mission).

(4) CONTRACTOR shall not acquire any rights in the data furnished by ULA except to use it in the performance of this Contract. CONTRACTOR also shall not convey to its qualified subcontractors any greater rights in the data than CONTRACTOR has. CONTRACTOR's qualified subcontractors shall only have the right to use the data as required in performance of their subcontracts.

(5) CONTRACTOR shall deliver the defense articles manufactured in accordance with this Contract only to ULA or to the U.S. Government.

(6) Upon completion or termination of this Contract, CONTRACTOR shall destroy or return to ULA all technical data furnished to CONTRACTOR by ULA pursuant to this Contract. At ULA's election, ULA may direct CONTRACTOR to return or destroy the data and may require CONTRACTOR to certify in writing that CONTRACTOR has complied.

(7) CONTRACTOR shall impose these requirements, (1) through (7), suitably revised to identify the parties properly, on all of its subcontractors to which CONTRACTOR intends to furnish technical data provided by ULA for use by the subcontractors in performance of the subcontracts.

#### **10. RELEASE OF INFORMATION SUPPLEMENT**

CONTRACTOR shall flowdown requirements of Release of Information clause in all subcontracts under this Contract.