

PRIME CONTRACT REQUIREMENTS

*This Draft Doc 538 (01-11) was written by ULA to anticipate what will be included in ULA’s prime contract with its Government customers. ULA is in the process of negotiating new prime contracts and will finalize these terms and conditions upon award of definitized prime contracts. Any such revision would be subject to the Changes clause.*

A. The following clauses of the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), Air Force Federal Acquisition Regulation Supplement (AFFARS), National Aeronautics and Space Administration Federal Acquisition Regulation Supplement (NFS) and NRO Acquisition Manual (NAM) 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.arnet.gov/far> or contact the Procurement Representative. Supplies and Services procured under this Contract may be used to support multiple prime contracts for U.S. Air Force, NASA, other U.S. Government Agencies, and commercial customers. All clauses apply unless otherwise indicated.

- 52.227-14 RIGHTS IN DATA- GENERAL (DEC 2010) ALT II (DEC 07) ALT III (DEC 07) (Applies for work under a NASA contract only.)
- 5352.223-9000 ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS) (APR 2003) (The blank in paragraph (d) is completed with “NONE”. In paragraph (d) Note 2 applies. This clause does not apply to Contracts for commercial items.)
- 1852.219-74 USE OF RURAL AREA SMALL BUSINESSES (SEP 1990)
- 1852.219-75 SMALL BUSINESS SUBCONTRACTING REPORTING (MAY 1999) (Applies if FAR 52.219-09 is applicable.)
- 1852.219-76 NASA 8% GOAL (JUL 1997)
- 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.)
- 1852.223-75 MAJOR BREACH OF SAFETY OR SECURITY (FEB 2002)
- 1852.225-70 EXPORT LICENSES (FEB 2000) ALT 1 (FEB 2000)
- 1852.228-75 MINIMUM INSURANCE COVERAGE (OCT 1988)
- N52.203-001 NRO INSPECTOR GENERAL AND THE NRO HOTLINE (AUG 2004) (Applies if this Contract exceeds \$100,000 and items being furnished under this Contract are not commercial items. In paragraph (b) insert “or ULA” after “Director, Office of Contracts”.)
- N52.203-002 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAY 2003) (Applies if this Contract exceeds \$100,000 and items furnished under this Contract are not commercial items.)
- N52.203-003 PERSONAL CONDUCT (MAY 2003)
- N52.204-001 SECURITY REQUIREMENTS (NOV 2007) ALT 1 (AUG 2006) (Applies if access to sensitive compartmented information is required. The reference in paragraph (c) to the Changes clause should be deemed to refer to the Changes clause of this Contract.)
- N52.204-004 TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (JUN 2003) (Applies if this Contract requires COMSEC and/or securing telecommunications.)
- N52.204-005 PROTECTION AGAINST COMPROMISING EMANATIONS (MAY 2005)
- N52.204-006 SECURITY REQUIREMENTS- SIGHT SENSITIVE HARDWARE (JUN 2003)
- N52.204-008 NOTICE OF LITIGATION (AUG 2010)
- N52.204-009 RELEASE OF CONTRACT INFORMATION (JAN 2010)
- N52.209-003 ORGANIZATIONAL CONFLICT OF INTEREST (SEP 2009) (Applies if this Contract exceeds \$100,000.)
- N52.223-006 CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL, OCCUPATIONAL SAFETY AND HEALTH, AND SYSTEM SAFETY REQUIREMENTS (OCT 1997) (Notes 5 and 7 apply.)

N52.227-002	RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE: NONCOMMERCIAL ITEMS (SEP 2008) (This clause applies only to NRO missions. Note 3 applies)
N52.227-003	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA AND COMPUTER SOFTWARE: NONCOMMERCIAL ITEMS (APR 2009) (This clause only applies to NRO missions.)
N52.227-007	RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2004) (This clause only applies to NRO missions.)
N52.227-011	TECHNICAL DATA AND COMPUTER SOFTWARE: WITHHOLDING OF PAYMENT (NOV 2007) (This clause only applies to NRO missions.)
N52.227-015	DATA REQUIREMENTS (JAN 2004) (This clause only applies to NRO missions.)
N52.228-003	ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES AND SPACE LAUNCH VEHICLES (JAN 2004) (Notes 2 and 3 apply.)
N52.231-003	TRAINING AND EDUCATION COSTS (JAN 2004)
N52.244-001	SUBCONTRACTS (EDUCATIONAL INSTITUTIONS) (SEP 1996)
N52.244-002	SUBCONTRACT REPORTING, MONITORING, AND CONSENT (SEP 2009) (Applies unless this Contract is for a fixed price, unclassified commercial product and/or service provided by a US-owned company.)
N52.245-001	CONTRACT ACCOUNTABLE GOVERNMENT PROPERTY: RESPONSIBILITIES, USE, REPORTING AND ADMINISTRATION (AUG 2006)

**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.
6. Insert "and the Procurement Representative" after "Contracting Officer" throughout the clause.
7. Insert "or the Procurement Representative" after "Contracting Officer" throughout the clause.

**B. The following additional provisions apply to this Contract:**

**2) COMMERCIAL SPACE LAUNCH ACT**

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 to the extent claims for bodily injury or property damage are subject to the terms of the CSLA for licensed launch activities. This clause applies in lieu of indemnification under Public Law 85-804 and the NASA Act (42 U.S.C. §2473(c)(13)) for launch services provided to NASA using hardware or services provided by CONTRACTOR under this Contract.

As required by the Commercial Space Launch Act (CSLA), 49 U.S.C. §§ 70101 - 70119 as amended, the Parties agree as follows:

- (a) ULA may provide commercial launch services as a subcontractor to Lockheed Martin Corporation or their affiliates or subsidiaries (Prime Contractor).
- (b) ULA will provide insurance as required by the Launch License obtained by the Prime Contractor should ULA launch a vehicle containing Seller's Work. Such insurance shall protect Seller against launch related third party liability claims as provided for in the CSLA and the Prime Contractor launch license.
- (c) ULA and the 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.
- (d) ULA and the CONTRACTOR 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.
- (e) ULA and CONTRACTOR 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 CONTRACTOR and ULA, its 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.
- (f) 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.
- (g) CONTRACTOR shall defend, hold harmless and indemnify ULA, the Prime Contractor, its 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.

(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.

**3) CONTRACTOR IDENTIFICATION**

(a) Contractor personnel and their subcontractors must identify themselves as Contractors or subcontractors during meetings, telephone conversations, in electronic messages, or correspondence related to this contract.

(b) Contractor-occupied facilities (on AFSPC or other Government installations) such as offices, separate rooms, or cubicles must be clearly identified with Contractor supplied signs, name plates or other identification, showing that these are work areas for Contractor or subcontractor personnel.

**4) COST ANALYSIS IMPROVEMENT GROUP (CAIG) CLAUSE (APR 2005)**

*This clause applies if this Contract exceeds \$7 million.*

(a) The CONTRACTOR shall systematically collect and report actual contract costs to provide ULA and DoD cost analysts with needed data to estimate future costs.

The CONTRACTOR shall:

(1) Provide the final contract WBS and dictionary IAW DI-MGMT-81334 within (sixty) 60 days after contract award. Maintain and update the WBS and dictionary during contract execution. Submittals will be no more frequent than CCDR reports.

(2) Prepare and provide CSDR reports IAW DI-FNCL-81565A and DI-FNCL- 81566A and with the approved contract cost data plan.

(3) Flow down CSDR requirements to any lower tier contractor that will have a contract valued at over \$50 million (FY 2002 dollars) or any contracts valued at between \$7 million and \$50 million (2002 dollars) that are designated by ULA as being high risk or high technical interest.

**5) 1852.228-78 CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (DEVIATION) (OCT 2009)**

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

(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 Space Act 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 Space Act agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch and a party that is neither the prime contractor under this contract nor a subcontractor at any tier hereto.

(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.

(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) The CONTRACTOR agrees to a 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 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 the CONTRACTOR 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.

**6) ENABLING CLAUSE FOR GENERAL SYSTEMS ENGINEERING AND INTEGRATION**

- (a) This Contract covers part of the EELV program which is under the general program management of SMC/LR. The Air Force has entered into a contract with The Aerospace Corporation for the services of a technical group, which will support the DoD program office by performing General Systems Engineering and Integration.
- (b) General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of the CONTRACTORS' technical performance through meetings with the CONTRACTORS and its subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk; providing comments and recommendations in writing to the DoD System Program Manager and/or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting the CONTRACTOR's efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.
- (c) In the performance of this Contract, subject to coordination with ULA, the CONTRACTOR agrees to cooperate with The Aerospace Corporation by responding to invitations from authorized personnel to attend meetings; by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications and procedures, parts and quality control procedures, records and data; manufacturing and assembly procedures; and schedule and milestone data; all in their original form or reproduced form and including cost\* data; by delivering data as specified in the Supplier Data Requirements List; by discussing technical matters relating to this program; by providing access to CONTRACTOR facilities utilized in the performance of this contract; and by allowing observation of technical activities by appropriate Aerospace technical personnel. The Aerospace personnel engaged in general systems engineering and integration effort are authorized access to any technical information pertaining to this contract.
- (d) The CONTRACTOR further agrees to include in each subcontract a clause requiring compliance by subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (c) above, subject to coordination with the CONTRACTOR. This agreement does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and the CONTRACTOR or its subcontractors.
- (e) The Aerospace Corporation personnel are not authorized to direct the CONTRACTOR in any manner. The CONTRACTOR agrees to accept technical direction as follows:
  1. Direction under this Contract will be given to the CONTRACTOR solely by the Procurement Representative.
  2. Whenever it becomes necessary to modify the contract and redirect the effort, a Change Order signed by the designated Procurement Representative or a Contract Modification signed by both the designated Procurement Representative and the CONTRACTOR will be issued.

\* Cost data is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a project or program.

**7) ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS**

(a) The Government has or may enter into contracts with one or more of the following companies to provide Contracted Advisory and Assistance Services (CAAS) and/or Systems Engineering and Technical Assistance (SETA) (hereinafter referred to as CAAS/SETAs).

(b) In the performance of this Contract, subject to coordination with ULA, the CONTRACTOR agrees to cooperate with any CAAS/SETAs. Cooperation includes allowing observation of technical activities by appropriate CAAS/SETA technical personnel, discussing technical matters related to this program; responding to invitations from authorized CAAS/SETA personnel to attend meetings; and providing access to technical information and research and development planning data. The CONTRACTOR shall provide CAAS/SETA personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts, and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data. CAAS/SETA personnel engaged in general systems engineering and integration effort are normally authorized access to any technical information pertaining to this contract. However, exceptions, such as the case where the CONTRACTOR seeks to preclude CAAS/SETA personnel from having access to CONTRACTOR trade secrets, will be handled on a case-by-case basis. If the CONTRACTOR seeks to limit distribution of data to Government personnel only, the CONTRACTOR must submit this request in writing through ULA to the Prime contract contracting officer.

(c) The CONTRACTOR further agrees to include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (b) above, subject to coordination with the Contractor. This agreement does not relieve the CONTRACTOR of responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or CAAS/SETAs and CONTRACTOR or its subcontractors.

(d) CAAS/SETA personnel are not authorized to direct the CONTRACTOR in any manner. The CONTRACTOR agrees to accept technical direction as follows:

1. Technical direction under this contract will be given in accordance with the contract.
2. Whenever it becomes necessary to modify the contract and redirect the effort, a Change Order signed by the designated Procurement Representative or a Contract Modification signed by both the designated Procurement Representative and the CONTRACTOR will be issued.

(e) **CAAS/SETA contracts will contain an organizational conflict of interest clause that requires the CAAS/SETA contractor to protect contract data and prohibits the CAAS/SETA contractor from using such data for any purpose other than that for which the data was presented.**

**8) 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 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 General Provisions.

The following additional paragraph applies for a NASA mission:

(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.

**9) 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.

**10) 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 Related Parties.

(c) Required Insurance for Liability to Third Parties

- (1) The CONTRACTOR 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 NASA and the 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.
- (2) The CONTRACTOR shall provide acceptable evidence to the Contracting Officer of required insurance no later than thirty (30) days prior to the beginning of the covered launch activities. The amount of required insurance and the terms and conditions for the policy or policies shall be subject to review by the Contracting Officer. Once reviewed, the policy or policies may not be modified or cancelled without the prior, written approval of the Contracting Officer.
- (3) The foregoing insurance requirement does not preclude the CONTRACTOR from acquiring or continuing in effect any additional insurance to protect the interests of the CONTRACTOR or its 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 the Contractor 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) The CONTRACTOR (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 the CONTRACTOR for each launch.
- (3) In evaluating Third Party claims against the United States paid by the CONTRACTOR, NASA will consider such a claim to be meritorious unless the claim represents:
  - (i) Liabilities for which 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 the CONTRACTOR has failed to insure or to maintain insurance as required by the Contracting Officer
  - (iii) Liabilities for which the CONTRACTOR 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 the CONTRACTOR's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
    - (a) All or substantially all of the CONTRACTOR's business
    - (b) All or substantially all of 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 Primaries 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, the CONTRACTOR 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.

## 11) MISHAP INVESTIGATION

*(a) This section applies to Air Force Missions. CONTRACTOR's Responsibilities in the Event of Mission Failure of an EELV mission:*

(1) In the event of mission failure(s), as defined herein below, and if directed by ULA, the CONTRACTOR shall support a mishap investigation including engineering analysis that is adequate to determine the cause of the mishap and the corrective action necessary to prevent future mishaps. The CONTRACTOR shall allow Government observers. In the event of a mission failure, CONTRACTOR shall impound and place under positive control all of its or its subcontractors' flight and processing data that is accessible directly or through agreements with other agencies and subcontractors. ULA may provide to CONTRACTOR any applicable data (e.g. radar tracking, camera video, etc.) generated by the Government during the mishap. The CONTRACTOR shall prepare and furnish to ULA all the data and reports applicable to the mishap investigation and corrective action determination, including any revisions or updates of the information, at no increase in contract price. Access to information under this clause does not constitute delivery of data, software, or information. Neither the Government nor ULA shall be held liable for inadvertent release where the CONTRACTOR failed to place appropriate restrictive legends on the data. In the event the Air Force elects to perform its own independent mishap investigations, the CONTRACTOR shall support and cooperate as may be requested by the Government or ULA.

(2) The Parties agree to work in good faith, including escalation of unresolved issues to executive management, to agree on the corrective actions necessary to return to flight. If ULA and/or the Government and the CONTRACTOR cannot agree on the corrective actions necessary to return to flight, ULA and/or the Government shall have the right to direct the CONTRACTOR to proceed with the corrective actions on launch vehicles required for launch Services under this Contract, as deemed necessary by the Government or ULA. CONTRACTOR shall be obligated to proceed upon receipt of the Procurement Representative's direction. Nothing in this paragraph shall preclude ULA from exercising its right to terminate.

(3) If an Air Force Safety Investigation Board (SIB) and an Accident Investigation Board (AIB) are convened, the data arising out of the mishap will be controlled by the Air Force and released in accordance with Air Force policies and 10 USC 2254. This data will be released as quickly as possible to the CONTRACTOR for its use in the engineering analysis. The CONTRACTOR shall not release this data or its engineering analysis to the public without the approval, through ULA, of the Air Force in compliance with 10 USC 2254.

(4) If the SIB or AIB or any other Air Force organizations requires tests, analysis, or investigation in addition to that performed in engineering analysis and as part of the Air Force's independent mishap investigation, the CONTRACTOR shall cooperate and support the independent investigation.

(5) Definitions: For purposes of this clause the following definitions shall apply:

(a) Mission Failure: total or constructive total failure.

(b) Total Failure: The payload is destroyed or lost during the booster processing or launch phase or the payload cannot be separated from the Launch Vehicle, and the Launch Vehicle performed in a manner that caused the payload to be destroyed, lost, or unable to be separated.

(c) Constructive Total Failure: The operational utility loss of the payload is such that no payload mission objectives can be achieved, and it is determined from the flight data that the Launch Vehicle performed in a manner that caused damage to the payload.

(d) Mission Success: ULA did insert the payload in the prescribed orbit under the conditions specified in the approved prime contract Interface Control Document (ICD).

(e) Insertion in the Prescribed Orbit: The release of the payload at the separation from the EELV within the altitude, environmental, and other such conditions as specified in the applicable system specification and the appropriate approved ICD, and at such a point and with such a velocity into an orbit from which a useful payload mission can be established.

(6) In the event of a mishap concerning a mission utilizing the Atlas V system which is procured outside of the EELV Program, the Government nevertheless shall have the right to participate in the mishap investigation in an informational role only to the extent such participation is permitted under the terms of ULA's agreement with its customer for the mission. ULA and the Government shall have access to all data available to the mishap investigation team regarding the mishap, including impounded data.

*(b) This section applies to NASA missions.*

(1) 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.

(2) 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.

(3) 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.

(4) 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.

**12) PATENT INDEMNITY**

**This clause applies to work under a NASA contract.**

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.

**13) PRIORITY RATING**

For work under a NASA prime contract, this Contract has a priority rating of DO-C9 and as such, is certified for national defense use. For work under an Air Force and NRO contracts, this Contract has a priority rating of DX-A2 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).

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