



DOC 4 INT

COST REIMBURSEMENT SUBCONTRACTS/PURCHASE ORDERS (ALL AGENCIES) FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

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SECTION I: GENERAL PROVISIONS

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- (a) "Background Intellectual Property" means all Intellectual Property Made by or for a party apart from the performance of Work under this Contract.
(b) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, that includes these General Provisions, all referenced documents, exhibits, and attachments.
(c) "CONTRACTOR" means the party identified on the face of this Contract with whom ULA is contracting.
(d) "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method.
(e) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
(f) "Foreground Intellectual Property" means all Intellectual Property Made by or for a party in the performance of Work under this Contract.
(g) "Government" means the Government of the United States of America or any department or agency thereof.
(h) "Intellectual Property" means all (i) inventions, discoveries and improvements, (ii) all documented information in whatever form such as information embodied in drawings, test data, specifications, process documents, technical reports, and computer software (e.g., object code and source code) and related computer software documentation, and (iii) all domestic and foreign legal and statutory rights to the foregoing, including but not limited to, patents, trade secrets, copyrights, mask work registrations, and the like.
(i) "Made" means conceived, developed, first produced, or created.
(j) "Personal Information" means any non-public personal information provided by an individual to ULA, including any Personally Identifiable Information or Protected Health Information.

(k) "Personally Identifiable Information (PII)" means any information which can potentially be used to uniquely identify, contact, or locate a single person. Items which might be considered PII include, but are not limited to:

- Social security number
- Unlisted and/or unpublished personal telephone number
- Unlisted and/or unpublished home address
- Personal email address
- IP address (in some cases)
- Vehicle registration plate number
- Driver's license number
- Credit card numbers
- Digital identity

(l) "Procurement Representative" means the person authorized by ULA's cognizant procurement organization to administer and/or execute this Contract.

(m) "Protected Health Information (PHI)" means medical records and information of an individual as defined by HIPAA (Health Insurance Portability and Accountability Act of 1996).

(n) "Subcontractor" means CONTRACTOR's subcontractors at any tier.

(o) "ULA" means ULA, LLC as identified on the face of this Contract.

(p) "Work" means all required labor, articles, materials, supplies, goods, services and deliverable information and records embodying such information constituting the subject matter of this Contract.

1. ACCEPTANCE, LANGUAGE, MERGER AND SEVERABILITY

(a) CONTRACTOR's acknowledgment, acceptance of payment, or commencement of performance, shall constitute CONTRACTOR's unqualified acceptance of this Contract.

(b) Unless expressly accepted in writing by ULA, additional or differing terms or conditions proposed by CONTRACTOR or included in CONTRACTOR's acknowledgment are objected to by ULA and have no effect.

(c) All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of United States Standard weights and measures.

(d) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.

(e) Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

2. CONTRACT DIRECTION

(a) Only the Procurement Representative has authority to make changes to this Contract. All changes to this Contract must be in writing and executed by the parties.

(b) ULA personnel other than the Procurement Representative may from time to time render assistance or give technical advice or discuss or effect an exchange of information with CONTRACTOR's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Under the "Changes" clause of this Contract, the Procurement Representative may direct changes as to the terms and conditions of this Contract required to meet ULA's obligations under Government prime contracts.

(d) Except as otherwise provided herein, all notices to be furnished by the CONTRACTOR shall be in writing and sent to the Procurement Representative.

3. DISPUTES AND ARBITRATION

(a) **Continuation of Performance.** CONTRACTOR will perform the Work as set forth in this Contract. If ULA requires CONTRACTOR to perform work that CONTRACTOR does not believe this Contract requires it to perform (hereafter referred to as

“Disputed Work”), then CONTRACTOR will perform the Disputed Work and will start the dispute resolution procedure in accordance with this clause, to determine whether CONTRACTOR should be paid additional money for this work.

(b) **Management Consultation.** Any dispute between the parties will first be referred to each party’s senior management for resolution. The senior managers will meet and confer with respect to the subject under dispute.

(c) **Arbitration.** Any dispute arising out of or relating to this Contract, or any breach of this Contract, that the parties have been unable to resolve by management consultation as provided in paragraph (b), will be resolved exclusively by arbitration. The arbitration will be in accordance with the rules prepared by the American Arbitration Association except as specifically modified in this Contract.

(i) **Agreement to Arbitrate.** The award of the arbitrator shall be final and binding upon the parties.

(ii) **Governing Rules.** The arbitration shall be in accordance with the rules of commercial arbitration of the American Arbitration Association, except that in the event of any conflict between those rules and the arbitration provisions of this Contract, the provisions of this Contract shall govern.

(iii) **Appointment of Arbitrator.** The number of the arbitrators shall be one. Upon application of one of the parties to this Contract, the American Arbitration Association in Denver, Colorado shall appoint the arbitrator. The arbitration, including the making of the award, shall take place in Denver, Colorado.

(iv) **Commencement of Arbitration.** Either party may commence an arbitration by applying to the American Arbitration Association office in Denver for appointment of an arbitrator. The application for appointment will identify the other party to this Contract by name and address. A copy of the application for appointment of an arbitrator will be sent to the other party.

(v) **Issues in Dispute.** The application for appointment will specify the issues that are in dispute, the position of the initiating party as to those issues, the identity of the parties with whom the initiating party is in dispute, and will state the remedy that the initiating party seeks.

(vi) **Award.** The arbitrator is authorized to award damages to the prevailing party and to order specific performance of any contractual obligation that he finds a party is failing to perform. The arbitrator will make the award within thirty (30) business days from the date established for final submittal of oral or written statements and documents to the arbitrators. An award will be in writing, will state the precise reasons for the award and will specify the remedy or relief granted, if any.

(vii) **Enforcement.** An award by the arbitrator will be final and conclusive as to the issue or issues that were the subject of the arbitration. The parties to this Contract exclude any right of application or appeal to any court and, in particular, in connection with any questions of jurisdiction or question of law arising in the arbitration or out of the award. The award will be enforceable in any court having jurisdiction over the party against whom enforcement is sought.

(viii) **Language.** The parties will use English as the single language for the arbitration proceeding. Simultaneous interpretation shall be allowed.

(ix) **Interim or Provisional Remedies.** Any party commencing an arbitration under this Contract may seek from any court of competent jurisdiction a temporary remedy (such as an injunction or order to refrain from taking certain action) that is needed to preserve assets or the rights of that party while the arbitration is being conducted. Once an arbitrator is appointed, the arbitrator may impose a temporary remedy, in addition to or to supplement any temporary remedy imposed by the court.

(x) **Attorneys’ Fees and Expenses.** Each party shall bear its own costs, including attorneys’ fees, related to any arbitration proceeding brought pursuant to this Contract.

4. GOVERNING LAW

(a) This Contract, and all claims relating to or arising out of this Contract, or the breach thereof, whether sounding in contract, tort or otherwise, shall be governed in accordance with the laws of the State of Colorado, excluding that State’s choice-of-law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

(b) Any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasijudicial agencies of the Federal Government.

5. RIGHTS AND REMEDIES

(a) Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

(b) ULA's approval of documents shall not relieve CONTRACTOR of its obligations to comply with the requirements of this Contract.

6. COMPLIANCE WITH LAWS

(a) In performing this Contract, CONTRACTOR agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, codes and ordinances ("Laws") that may affect performance of this Contract. CONTRACTOR shall indemnify, defend and hold harmless ULA against any liability, fine or penalty that may be imposed upon ULA as a result of CONTRACTOR's failure to comply with such Laws.

(b) CONTRACTOR represents that each chemical substance constituting or contained in Work sold or otherwise transferred to ULA hereunder is on the approved list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(c) CONTRACTOR shall provide to ULA, with each delivery, any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

(d) CONTRACTOR represents and warrants that it is not included on the Excluded Parties List System (EPLS) and agrees to notify ULA immediately upon learning that it or any of its affiliates and/or Subcontractors has been proposed for inclusion in the Excluded Parties List System (EPLS).

7. EXPORT CONTROL

(a) Technical data, defense services, software and/or hardware furnished under or in connection with this Contract may be subject to U.S. export or import control laws and regulations, and may be subject to export or import laws and regulations of other countries. All Parties agree to comply with all such laws and regulations.

(b) The CONTRACTOR agrees to reasonably cooperate with ULA for assessments, audits and other fact-finding required to ensure compliance to U.S. export/import laws and regulations or as part of an investigation or corrective action related to a potential or actual violation of U.S. export/import laws and regulations. The CONTRACTOR will provide input for such activities in a timely and accurate manner. This subparagraph shall be flowed down to any authorized Subcontractors, as applicable.

(c) Where applicable, CONTRACTOR as the Foreign Principal Party in Interest (FPPI) agrees to notify its designated U.S. freight forwarder in writing that ULA will submit its own Automated Export System (AES) authorizations. CONTRACTOR additionally agrees to advise its forwarder to furnish ULA a copy of the export bill of lading verifying that the AES authorization provided by ULA has been properly listed.

(d) Where the CONTRACTOR is a signatory or party under a ULA export agreement (e.g. TAA, MLA, DWA) or license, CONTRACTOR shall provide prompt notification to ULA in the event of changed circumstances including, but not limited to, change in name, address, ownership, organization restructure with another company, ineligibility in accordance with ITAR, part 126.13(a)(3), violation or potential violation of the ITAR, or the initiation or existence of a U.S. Government investigation, that could affect CONTRACTOR's performance under this Contract. This subparagraph shall be flowed down to any authorized Subcontractors as applicable.

(e) For imported, duty paid merchandise that ULA subsequently re-exports, ULA retains all duty-drawback rights. The CONTRACTOR agrees to support ULA in a timely manner by providing necessary documentation to claim duty drawbacks.

(f) Should an item imported directly from a foreign supplier be eligible for a free or reduced duty rate under a specific trade program such as NAFTA, Generalized System of Preferences-GSP, or other region/country specific free trade agreement, the CONTRACTOR agrees to provide and maintain documentation necessary to support such claims. ULA will provide information to the CONTRACTOR regarding any duty minimization opportunities.

(g) When CONTRACTOR is responsible for clearing the Work through United States Customs, CONTRACTOR will neither cause nor permit ULA's name to be shown as "Importer Of Record" on any customs declaration form or other documentation.

(h) For any shipment arriving in the U.S. by ocean transport vessel, U.S. Customs & Border Protection (CBP) requires an Importer Security Filing (ISF) to be completed 24 hours PRIOR to vessel departure from the originating country. ULA will submit the Importer Security Filing, but must obtain certain data elements from the CONTRACTOR in order to accomplish this task. CONTRACTOR agrees to cooperate with ULA in order to meet this requirement. Failure to submit an ISF to CBP in a timely manner can subject ULA to fines and/or penalties. Under no circumstances should a shipment to ULA be made without advance coordination.

(i) CONTRACTOR will notify the Procurement Representative five (5) days in advance of any delivery of Work under this Contract so that the Procurement Representative can provide instructions as to the shipping and customs forms that will need to accompany the Work. CONTRACTOR agrees to provide the documentation that is required by ULA, completed in accordance with ULA's instructions. CONTRACTOR agrees to take all other action reasonably requested by ULA to expedite customs clearance in the United States for the Work.

(j) The CONTRACTOR agrees to provide timely and accurate reporting of fees and commissions paid related to Part 130 of the ITAR, when applicable. This subparagraph shall be flowed down to any authorized Subcontractors, as applicable.

(k) CONTRACTOR agrees to identify and obtain ULA approval prior to permitting third country/dual nationals to perform under this Contract. In addition, since the State Department currently considers birth country as a factor in determining nationality, for export purposes, the CONTRACTOR agrees to identify any individual whose birth country is different than their nationality/citizenship promptly upon discovery. For all Work on this Contract CONTRACTOR agrees to comply with U.S. export and import laws relating to third country/dual nationals, including the obtainment of State-mandated Non-Disclosure Agreements with such individuals, as applicable. This clause shall be flowed down to any authorized Subcontractors, as applicable.

(l) United States Customs and Border Protection's Customs Trade Partnership Against Terrorism (C-TPAT) is an initiative between business and government to protect global commerce from terrorism and increase the efficiencies of global transportation. The program calls for importers, carriers and brokers to establish policies to enhance their own security practices and those of their business partners involved in their supply chain. Such practices may include but are not limited to the following:

- 1) Procedural Security – Procedures in place to protect against unmanifested material being introduced in the supply chain.
- 2) Physical Security – Buildings constructed to resist intrusion, perimeter fences, locking devices, and adequate lighting.
- 3) Access Controls – Positive identification of all employees, visitors, and suppliers.
- 4) Personnel Security – Employment screening, background checks and application verifications.
- 5) Education and Training Awareness – Security awareness training, incentives for participation in security controls.

CONTRACTOR agrees to work with ULA and appropriate industry and governmental agencies, as necessary, to develop and implement policies and processes consistent with the C-TPAT initiative to ensure the safe and secure transport of Work under this Contract. CONTRACTOR should not make changes and/or modifications, billable to ULA, to current security systems and procedures without first obtaining ULA's concurrence.

(m) CONTRACTOR shall use export-controlled technical data and/or hardware, only in the provision of data and/or services and manufacture of Work in accordance with this Contract and within the constraints of any applicable U.S. export license or agreement. CONTRACTOR will not retransfer ULA-provided export-controlled hardware or data, including derived or extracted data, to a sub-tier supplier(s) or any other party without prior approval from ULA. CONTRACTOR may have to obtain U.S. State Department-mandated Non-Disclosure Agreements, Non-Transfer and Use Certificates, or other required documentation before ULA can approve a retransfer. Upon retransfer approval, CONTRACTOR shall ensure ULA's export-controlled legends are maintained on all retransferred controlled data received from ULA, or derived from ULA data. This clause shall be flowed down to any authorized Subcontractors, as applicable.

(n) CONTRACTOR shall indemnify, defend and hold harmless ULA, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney fees, all expenses of litigation and/or settlement, and court costs caused in whole or in part by the actions or omissions of CONTRACTOR, its officers, employees, agents, suppliers, or Subcontractors in relation to its export/import activities.

8. ASSIGNMENT

CONTRACTOR shall not assign any of its rights or interest in this Contract or subcontract all or substantially all of its performance of this Contract, without ULA's prior written consent. CONTRACTOR may assign rights to be paid amounts due, or to become due, to a financing institution if ULA is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of ULA against CONTRACTOR. ULA shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

9. REPORTING REQUIREMENTS (52.204-10)

This requirement applies if this Contract is valued at \$25,000 or more.

As required by the Federal Funding Accountability and Transparency Act (Transparency Act), Public Law 109–282, CONTRACTOR shall provide to ULA within 10 days of contract award and annually thereafter Form RF 316, Executive Compensation Certification. The law requires that all reported information required in FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards, be made public. ULA will post all required information at <https://www.ftrs.gov>.

10. COMMUNICATION WITH ULA CUSTOMER

ULA shall be solely responsible for all liaison and coordination with ULA's customer unless explicitly required in another clause, including the U.S. Government, as it affects the applicable prime contract, this Contract, and any related contract. If another clause requires direct communication with ULA's customer, CONTRACTOR shall notify ULA immediately and provide ULA a copy of the communication.

11. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense use, and the CONTRACTOR shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 CFR Part 700) when placing orders with United States suppliers.

12. TIMELY PERFORMANCE

(a) CONTRACTOR's timely performance is of essence and is a material element of this Contract.

(b) Unless advance shipment has been authorized in writing by ULA, ULA may store at CONTRACTOR's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If CONTRACTOR becomes aware of difficulty in performing the Work, CONTRACTOR shall timely notify ULA, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(d) If CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, CONTRACTOR shall immediately give notice, including all relevant information, to the Procurement Representative.

(e) In the event of a termination for convenience or a Contract change, no claim will be allowed for any manufacture or procurement in advance of CONTRACTOR's normal flow time unless there has been prior written consent by ULA.

(f) Work shall not be supplied in excess of quantities specified in this Contract. CONTRACTOR shall be liable for handling charges and return shipment costs for any excess quantities. If Work is manufactured with reference to ULA's proprietary information or materials, CONTRACTOR agrees that, pursuant to the "Information of ULA" and, as appropriate the "Intellectual Property and Indemnity" clause of this Contract, it will not sell or offer such Work for sale to anyone other than ULA without ULA's prior written consent.

(g) CONTRACTOR shall monitor and report any and all obsolescence issues that can be reasonably anticipated to adversely affect the availability of items or materials currently used in production for ULA. CONTRACTOR shall report this information in writing to the Procurement Representative promptly, and in no event later than seven (7) days of CONTRACTOR's first knowledge.

13. PACKING AND SHIPMENT

(a) CONTRACTOR shall be responsible for ensuring the proper packaging of goods hereunder in accordance with best commercial practice in accordance with ASTM D3951 "Commercial Packaging", unless specific packing instructions are provided. Except as included in this Contract, CONTRACTOR shall not charge ULA for packing, crating, freight, local cartage, and/or any other related packaging and shipment services. CONTRACTOR shall comply with ULA's written shipping instructions at all times.

(b) A complete packing list shall be enclosed with all shipments. CONTRACTOR shall mark containers or packages with necessary lifting, loading, and shipping information, including the ULA Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery is FCA Free Carrier, in accordance with INCOTERMS 2010. Carrier and site of delivery for the Work shall be specified in the Contract.

14. FINAL ACCEPTANCE

(a) ULA's final acceptance shall be at destination.

(b) If CONTRACTOR delivers non-conforming Work, ULA may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work.

(c) CONTRACTOR shall not re-tender rejected Work without disclosing the corrective action taken.

15. QUALITY CONTROL SYSTEM

(a) CONTRACTOR shall provide and maintain a quality control system to an industry-recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

(b) All quality records to Work performed under this Contract shall be kept complete and available to ULA and its customers. Quality records include receiving and inspection records consisting of reports reflecting receipt and inspection of supplies, equipment, and materials; and production records of quality control, reliability, and inspection. The CONTRACTOR shall contact ULA for approval prior to disposal of quality records.

(c) CONTRACTOR shall promptly notify ULA of any violation of or deviation from CONTRACTOR's approved quality control system. CONTRACTOR shall notify ULA of any Work delivered to ULA during the period of any such violation or deviation.

(d) If CONTRACTOR becomes aware of any nonconformance in the Work purchased under this Contract, CONTRACTOR shall notify the Procurement Representative immediately.

(e) In the event CONTRACTOR receives a Supplier Corrective Action Request (SCAR), CONTRACTOR shall respond within fifteen (15) days from receipt.

16. COUNTERFEIT WORK

(a) For purposes of this clause and the definition of "Counterfeit Work", Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g. articles, components, goods, and assemblies).

(b) CONTRACTOR shall not deliver Counterfeit Work to ULA under this Contract.

(c) CONTRACTOR shall only purchase products to be delivered or incorporated as Work to ULA directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall not be acquired from independent distributors or brokers unless approved in advance in writing by ULA.

(d) CONTRACTOR shall immediately notify ULA with the pertinent facts if CONTRACTOR becomes aware or suspects that it has furnished Counterfeit Work. When requested by ULA, CONTRACTOR shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

(e) This clause applies in addition to any quality provision, specification, statement of work or other provision included in this Contract addressing the authenticity of Work. To the extent such provisions conflict with this clause, this clause prevails.

(f) CONTRACTOR shall develop and implement policies and procedures to eliminate counterfeit electronic parts from the defense supply chain as required under the National Defense Authorization Act for Fiscal Year 2012 and any subsequent law or regulation implementing such Act. Such requirements include: (i) the training of personnel; (ii) the inspection and testing of electronic Counterfeit Work, including criteria for acceptance and rejection; (iii) processes to abolish Counterfeit Work proliferation; (iv) mechanisms to enable traceability of parts to OCMs/OEMs; (v) use and qualification of trusted OCMs/OEMs and OCM/OEM authorized distributor chains; (vi) the reporting and quarantining of electronic Counterfeit Work and suspect electronic Counterfeit Work; (vii) methodologies to identify suspect Counterfeit Work and to rapidly determine if a suspect Counterfeit Work is, in fact, counterfeit; (viii) the design, operation, and maintenance of systems to detect and avoid electronic Counterfeit Work and suspect electronic Counterfeit Work; and (ix) the flow down of counterfeit avoidance and detection requirements to Subcontractors.

(g) In the event that Work delivered under this Contract constitutes or includes Counterfeit Work, CONTRACTOR shall, at its expense, promptly replace such Counterfeit Work with genuine Work conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, CONTRACTOR shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation ULA's costs of removing Counterfeit Work, of installing replacement

Work and of any testing necessitated by the reinstallation of Work after Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies ULA may have at law, equity or under other provisions of this Contract.

(h) CONTRACTOR further agrees to defend, indemnify and hold harmless ULA, its officers, employees, and agents from any losses, costs, claims, causes of action, penalties, liabilities, expenses, including attorney fees, all expenses of litigation and/or settlement, and court costs caused in whole or in part by the actions or omissions of CONTRACTOR, its officers, employees, agents, suppliers, or subcontractors in relation to its export/import activities. Any limitation of liability in this Contract shall not apply to this paragraph.

(g) CONTRACTOR shall include paragraphs (a) through (f) and this paragraph (i) of this clause or equivalent provisions in lower tier subcontracts for the delivery of items that will be included in or furnished as Work to ULA.

17. MAINTENANCE OF RECORDS

(a) CONTRACTOR shall maintain complete and accurate records relating to its performance of the Work to substantiate that CONTRACTOR performed all tasks required by the Contract. CONTRACTOR shall maintain all financial records pertaining to its performance of the Work, including but not limited to time sheets, job cards, phone bills travel receipts and job summaries. CONTRACTOR shall retain such records for three (3) years from final payment of this Contract.

(b) ULA shall have access to such records, and any other records CONTRACTOR is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained.

18. INFORMATION OF ULA

CONTRACTOR agrees to comply with the terms of any Confidentiality Agreement entered into by the parties and respect any proprietary and other restrictive markings that may be applied by ULA to anything provided hereunder to CONTRACTOR. Information provided by ULA to CONTRACTOR remains the property of ULA and such information, including tangible items conveying or embodying such information, is deemed the proprietary, confidential and/or trade secret information of ULA. Such information may be used by CONTRACTOR solely in accordance with the terms of any Confidentiality Agreement and for the purposes of this Contract. CONTRACTOR may not disclose such information to any third party without prior written consent of ULA.

19. INFORMATION OF CONTRACTOR

ULA personnel are not authorized to receive any information in confidence from CONTRACTOR. All communications of any kind from CONTRACTOR to ULA, accordingly, shall be deemed to be on a non-confidential basis unless CONTRACTOR and ULA have executed a Confidentiality Agreement protecting CONTRACTOR information. Except as otherwise agreed in writing between the parties, all specifications, information, data, drawings, software and other items supplied to ULA by CONTRACTOR shall be disclosed to ULA on a non-proprietary basis and may be used and/or disclosed by ULA without restriction.

20. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by CONTRACTOR without the prior written approval of ULA. All requests for release of information must be received by ULA no later than fifty five (55) days before release.

21. INTELLECTUAL PROPERTY AND INDEMNITY

(a) All Foreground Intellectual Property Made by or for CONTRACTOR, either alone or with others, in the performance of this Contract will be (i) the exclusive property of ULA, (ii) delivered to ULA promptly upon request, and (iii) protected and used in accordance with the "Information of ULA" clause.

(b) CONTRACTOR will (i) promptly disclose in writing all inventions conceived, developed or first reduced to practice in the performance of this Contract to ULA and (ii) execute all papers, cooperate with ULA and perform all acts necessary in connection with the filing, prosecution or assignment of related patents or patent applications on behalf of ULA.

(c) To the extent permitted under United States or foreign copyright law, all works of authorship, including documents, drawings, test data, software, software documentation, photographs, videotapes, sound recordings and images, created by or for CONTRACTOR, either alone or with others in the performance of this Contract, will be works made for hire, with the copyrights therein vesting in ULA. The copyrights in all other such works that fall under this paragraph, including the exclusive rights therein, will be promptly transferred and formally assigned free of charge to ULA.

(d) CONTRACTOR grants to ULA, and to ULA's customers and subcontractors, an irrevocable, nonexclusive, royalty-free, fully paid-up, transferable, worldwide license under any Background Intellectual Property owned or controlled by CONTRACTOR, but only to the extent that such Background Intellectual Property of CONTRACTOR is necessary to facilitate ULA's or ULA's

customers', subcontractors', or suppliers' use or enjoyment of the Work being delivered under this Contract or the Foreground Intellectual Property.

(e) CONTRACTOR warrants that the Intellectual Property and/or Work performed or delivered under this Contract will not infringe or otherwise violate the Intellectual Property rights of any third party.

(f) All authorizations with respect to the provision and sharing of Foreground Intellectual Property, Background Intellectual Property and/or the Work performed under this Contract shall be governed by (i) this Paragraph (f), (ii) the terms of the Confidentiality Agreement executed by and between Contractor and ULA which Confidentiality Agreement is incorporated by reference and made a part of this Contract, and (iii) the regulatory data rights clauses incorporated into and made a part of this Contract.

(g) CONTRACTOR shall indemnify, defend and hold harmless ULA, its customers, agents, employees, and subcontractors from and against any loss, damage or liability including attorney's fees and costs, based on a claim of infringement or misappropriation of any third party's Intellectual Property rights by the Work or Intellectual Property performed or delivered hereunder. ULA shall notify CONTRACTOR promptly of any such claim and, at CONTRACTOR'S option and expense, shall provide to CONTRACTOR reasonable and necessary information, assistance (at CONTRACTOR'S expense) and authority to defend or settle said claim. If required by ULA, CONTRACTOR shall provide proof of having sufficient resources or insurance to support this indemnification obligation. In case any Work or Intellectual Property provided hereunder in any suit is held to constitute a violation of such third party's Intellectual Property rights and its use is enjoined, CONTRACTOR shall at its option and expense (i) procure for ULA the right to continue using the Work and/or Intellectual Property, or (ii) modify the same to make it non-infringing, or (iii) replace the same with Work and/or Intellectual Property that is non-infringing and acceptable to ULA. CONTRACTOR shall not have any liability for infringement or misappropriation if the alleged infringement or misappropriation would not have occurred except for ULA's unauthorized modification of the Work and/or Intellectual Property or unauthorized combination with other articles, materials, supplies, goods or Intellectual Property.

22. FURNISHED PROPERTY

(a) ULA may provide to CONTRACTOR property owned by either ULA or its non-U.S. Government customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in ULA or its non-U.S. Government customer. CONTRACTOR shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, CONTRACTOR shall be responsible for, and shall promptly notify ULA of, any loss or damage. CONTRACTOR shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At ULA's request, and/or upon completion of this Contract, the CONTRACTOR shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by ULA.

(e) The Government Property Clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government-furnished property, or property to which the Government may take title under this Contract.

23. PROHIBITED SOFTWARE

(a) This clause only applies to Work that includes the delivery of software.

(b) As used herein, "Prohibited License" means (b) the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL Compatible, Free Software License."

(c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates ULA to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(d) Unless CONTRACTOR has obtained ULA's prior written consent, which ULA may withhold in its sole discretion, CONTRACTOR shall provide or otherwise deliver to ULA, any Prohibited Software.

24. CONTRACTOR IDENTIFICATION

(a) CONTRACTOR personnel and its Subcontractors working within ULA or its customer's site(s) must identify themselves as contractors or subcontractors during meetings, telephone conversations, in electronic messages, or correspondence related to this Contract and shall not hold themselves out as ULA employees.

(b) CONTRACTOR-occupied facilities within ULA or its customer's site(s) 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.

25. GRATUITIES/KICKBACKS

(a) No gratuities (in the form of entertainment, gifts or otherwise) for the purpose of obtaining or rewarding favorable treatment as a supplier, and no kickbacks, shall be offered or given by CONTRACTOR to any employee of ULA.

(b) CONTRACTOR shall contact ULA's Office of Internal Governance, at 1-800-511-4173, if any employee of ULA requests a gratuity and/or kickback.

(c) By accepting this Contract, CONTRACTOR certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

26. INDEPENDENT CONTRACTOR RELATIONSHIP

CONTRACTOR is an independent contractor for all purposes. CONTRACTOR shall have complete control over the performance of, and the details for accomplishing, the Work. In no event shall CONTRACTOR or its agents, representatives or employees be deemed to be agents, representatives or employees of ULA. CONTRACTOR shall be solely responsible for its employees to include payment of all compensation and benefits for all Work performed. CONTRACTOR shall comply with all requirements and obligations relating to such employees under employment contracts and federal, state and local laws. Should a CONTRACTOR employee claim that it is an employee of ULA or file a claim for compensation or benefits, CONTRACTOR shall indemnify and defend ULA against any such claim. CONTRACTOR shall also indemnify and defend ULA against any liability, fine or penalty that may be imposed upon ULA for CONTRACTOR's failure to comply with its employment contracts or federal, state or local law.

27. NO SOLICITATION

If working within ULA or its customer's site(s), CONTRACTOR shall not recruit or solicit ULA's personnel or employees that have become known to CONTRACTOR as a result of the Work performed under this Contract without ULA's approval.

28. PROTECTION OF PERSONAL INFORMATION

CONTRACTOR personnel and its Subcontractors shall take reasonable and prudent action to protect against unauthorized use or disclosure of any Personal Information that CONTRACTOR personnel or its Subcontractors receive or come into contact with. CONTRACTOR personnel and its Subcontractors shall not disclose any Personal Information to entities or persons who do not have a need to receive such information or who are located outside the United States. CONTRACTOR shall use encryption if, as part of Work under this Contract, CONTRACTOR must send Personal Information electronically.

29. INSURANCE AND ENTRY ON ULA PROPERTY

(a) The provisions of this subparagraph (a) shall apply only in the event that CONTRACTOR, its employees, agents, or Subcontractors enter the site(s) of ULA or its customers to perform Work under this Contract.

(i) CONTRACTOR and its Subcontractors shall procure and maintain for the performance of this Contract the following types of insurance:

(a) Worker's Compensation in amounts as required by law, including U.S. Longshoreman and Harbor Worker's Act, if applicable, and Employer's Liability at a limit no less than \$1 Million.

(b) Commercial General Liability covering Premises Liability, Contractual Liability, Products and Completed Operations and Personal Injury Liability at a limit no less than \$3 Million each occurrence and annual aggregate. This policy shall name ULA as an additional insured and include a Waiver of Subrogation in favor of ULA; and

(c) Commercial Automobile Liability covering all owned, non-owned and hired vehicles, including loading and unloading thereof at a limit of no less than \$1 Million.

(ii) CONTRACTOR and its Subcontractors shall comply with all site requirements.

(b) For Work performed under this Contract despite location of performance, CONTRACTOR agrees to provide such other insurance as ULA may reasonably require or provide proof that CONTRACTOR already maintains such insurance.

(c) For any insurance required by this clause, CONTRACTOR shall provide ULA thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of CONTRACTOR's required insurance, provided however such notice shall not relieve CONTRACTOR of its obligations to carry the required insurance. At Contract inception and at each renewal/replacement thereafter, CONTRACTOR shall send a "Certificate of Insurance" showing CONTRACTOR's compliance with these requirements and including this Contract number, to the Procurement Representative. Insurance maintained pursuant to this clause shall be considered primary as respects to the interest of ULA and is not contributory with any insurance which ULA may carry. CONTRACTOR's obligations to carry insurance coverages are freestanding and are not affected by any other language in this Contract.

30. ALLOWABLE COST AND PAYMENT (FAR 52.216-7, Allowable Cost and Payment)

(a) **Invoicing.** ULA shall make payments to CONTRACTOR when requested as Work progresses, but (except for Small Business Concerns) not more often than once every two (2) weeks, in amounts determined to be allowable by ULA in accordance with the terms of this Contract and Subpart 31.2 of the FAR, and agency supplements as appropriate, in effect on the date of this Contract. If the Contract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a non-profit organization other than an educational institution, FAR Subpart 31.7 shall apply. CONTRACTOR may submit to the Procurement Representative, in such form and reasonable detail as the Representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of the clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only: (i) Those recorded costs that, at the time of the request for reimbursement, CONTRACTOR has paid by cash, check, or other form of actual payment for items or services purchased directly for this Contract; (ii) When CONTRACTOR is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for— (A) Work purchased directly for the Contract and associated financing payments to subcontractors, provided payments determined due will be made— (1) In accordance with the terms and conditions of a subcontract or invoice; and (2) Ordinarily within thirty (30) days prior to the submission of CONTRACTOR's payment request to ULA; (B) Materials issued from CONTRACTOR's inventory and placed in the production process for use on this Contract; (C) Direct labor; (D) Direct travel; (E) Other direct in-house costs; and (F) Properly allocable and allowable indirect costs, as shown in the records maintained by CONTRACTOR for purposes of obtaining reimbursement under Government contracts; and (iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to CONTRACTOR's subcontractors.

(2) Accrued costs of CONTRACTOR contributions under employee pension plans shall be excluded until actually paid unless:

(i) CONTRACTOR's practice is to make contributions to the retirement fund quarterly or more frequently; and (ii) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from CONTRACTOR's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at CONTRACTOR's expense or at no cost to the ULA shall be disregarded for purposes of cost-reimbursement under this clause.

(c) **Small business concerns.** A small business concern may receive more frequent payments than every two (2) weeks.

(d) **Final indirect cost rates.** ULA shall reimburse CONTRACTOR on the basis of final annual indirect cost rates and the appropriate bases established by CONTRACTOR and the Government in effect for the period covered by the indirect cost rate proposal. Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR Subpart 42.7 in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution of a written settlement of rates by the CONTRACTOR and the appropriate Government representative.

(e) **Billing Rates.** There shall be included as allowable indirect costs such overhead rates as may be established by CONTRACTOR and the cognizant Government agency in accordance with the principles of the FAR and applicable FAR supplement. Pending establishment of final indirect overhead rates for any period, CONTRACTOR shall be reimbursed at billing rates approved by the cognizant Government agency, which billing rates may be revised from time to time subject to such approval and subject to

appropriate adjustment when the final rates for that period are established. The CONTRACTOR shall update the billings on this CONTRACT to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, within sixty (60) days after settlement of final indirect cost rates.

(f) **Quick-closeout procedures.** When CONTRACTOR and ULA agree, quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(g) **Audit.** At any time or times before final payment, ULA or the Contracting Officer may have CONTRACTOR's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) **Final payment.**

(1) CONTRACTOR shall submit a completion invoice or voucher reflecting the settled amounts and rates, designated as such, promptly upon completion of the Work, but no later than one hundred and twenty (120) days (or longer, as ULA may approve in writing) from the completion date. The completion invoice or voucher shall include settled Subcontract amounts and rates. Upon approval of that completion invoice or voucher and upon CONTRACTOR's compliance with all terms of this Contract, ULA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) CONTRACTOR shall pay to ULA any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by CONTRACTOR or any assignee under this Contract to the extent that those amounts are properly allocable to costs for which CONTRACTOR has been reimbursed by ULA. Reasonable expenses incurred by CONTRACTOR for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by ULA. Before final payment under this Contract, CONTRACTOR and each assignee whose assignment is in effect at the time of final payment shall execute and deliver: (i) An assignment to ULA, in form and substance satisfactory to ULA, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which CONTRACTOR has been reimbursed by ULA under this Contract; and (ii) A release discharging the ULA, Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract, except: (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known; (B) Claims (including reasonable incidental expenses) based upon liabilities of CONTRACTOR to third parties arising out of the performance of this Contract; provided, that the claims are not known to CONTRACTOR on the date of the execution of the release, and that CONTRACTOR gives notice of the claims in writing to ULA within six (6) years following the release date or notice of final payment date, whichever is earlier; and (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by CONTRACTOR under the patent clauses of this Contract, excluding, however, any expenses arising from CONTRACTOR'S indemnification of ULA and the Government against patent liability.

(i) **Subcontracts.** No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursements type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c) of the FAR.

31. PAYMENTS, TAXES, AND DUTIES

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) ULA's receipt of the CONTRACTOR's proper invoice; (ii) scheduled completion of performance of the Work; (iii) scheduled delivery date of the Work; (iv) actual completion or performance of the Work; or (v) actual delivery of the Work.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by ULA or CONTRACTOR not to have been properly payable, and shall also be subject to reduction for overpayments. CONTRACTOR shall promptly notify ULA of any such overpayments found by CONTRACTOR.

(c) ULA shall have a right of setoff or recoupment against payments due or at issue under this Contract or any other contract between the parties.

(d) If, during an audit of a contractor business system as defined in DFARS 252.242-7005, the Government issues a final determination to CONTRACTOR to withhold payments on amounts due, CONTRACTOR shall immediately notify ULA. Once notified of a significant deficiency, ULA shall have the right to direct the CONTRACTOR in writing to withhold 5% from all invoices on cost, labor-hour, and time-and-materials contracts and ULA may withhold 5% of amounts due from all invoices for progress payments or performance based payments until the Government has determined that CONTRACTOR has corrected all significant deficiencies.

(e) Payment shall be deemed to have been made as of the date of mailing ULA's payment or electronic funds transfer.

(f) Unless otherwise specified, prices include all applicable federal, state, local and foreign taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. When taxable and non-taxable items are invoiced

under this Contract, taxable versus non-taxable items shall be separately stated. If Work purchased qualifies for tax exemption, then an exemption certificate will be presented from ULA to CONTRACTOR.

(g) The prices stated in the Contract are in United States dollars.

(h) CONTRACTOR agrees to submit upon the request of the Procurement Representative a release of claims upon final payment under this Contract.

32. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Face of the Purchase Order and/or Task Order, release document, the schedule of this Contract, (including any continuation sheets), and/or any special terms and conditions; (ii) Terms and Conditions, including this Document; (iii) Statement of Work; (iv) Specifications; (v) Drawings; and (vi) any other exhibits of this Contract.

33. SURVIVABILITY

If this Contract expires, is completed or is terminated, CONTRACTOR shall not be relieved of those obligations contained in:

(a) the following clauses:

Acceptance, Language, Merger and Severability
Allowable Cost and Payment
Compliance with Laws
Counterfeit Work
Disputes and Arbitration
Export Control
Governing Law and Legal Notification
Independent Contractor Relationship
Information of ULA
Insurance and Entry on ULA Property
Intellectual Property and Indemnity
Maintenance of Records
No Solicitation
Prohibited Software
Protection of Personal Information
Quality Control System
Release of Information
Warranty

(b) those U. S. Government flowdown provisions that by their nature should survive.

(c) any Confidentiality Agreement entered into by the parties applicable to this Contract.

34. WARRANTY

(a) CONTRACTOR warrants that it is and shall remain free of any obligation or restriction that would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by CONTRACTOR under this Contract.

(b) CONTRACTOR further warrants that it will perform any services under this Contract in a non-negligent manner and with the highest degree of professional skill and sound practices and judgment recognized in the industry with respect to services of a similar nature.

(c) CONTRACTOR warrants that all Work furnished pursuant to this Contract must (i) strictly conform to the applicable statement of work, specifications, drawings, samples, descriptions, and other requirements of this Contract, (ii) be free from defects in design, material, and workmanship, (iii) not be or contain Counterfeit Work, as defined in this Contract, and (iv) comply with all applicable legislative and regulatory requirements in effect during the term of this Contract. This warranty shall begin upon final acceptance of the Work by ULA and extend for a period of two (2) years thereafter. If any non-conforming Work is identified within the warranty period, CONTRACTOR, at ULA's option, shall promptly repair or replace the non-conforming Work. Transportation of replacement goods and return of non-conforming goods shall be at CONTRACTOR's expense. If repair or replacement of goods is not timely, ULA may elect to return, repair, replace, or reprocur the nonconforming goods at CONTRACTOR's expense.

(d) All warranties in this Contract shall run to ULA and its customers.

- (e) The warranties in this Contract are in addition to all other claims, rights, and remedies available to ULA at law.
- (f) For purposes of this clause, the terms “goods” and “services” shall be considered a part of the Work performed under this Contract.

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. The Contracts Disputes Act shall have no application to this Contract. Any reference to a “Disputes” clause shall mean the “Disputes” clause of this Contract. The full text for a FAR clause may be accessed electronically at the following address:
<https://www.acquisition.gov/far/>

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the parties in support of a U.S. Government Contract. As used in the FAR clauses referenced below and otherwise in this Contract:

1. “Commercial Item” means a commercial item as defined in FAR 2.101.
2. “Contract” has the meaning provided in Section I, Definitions Paragraph (b).
3. “Contracting Officer” shall mean the U.S. Government Contracting Officer for ULA’s government prime contract under which this Contract is entered.
4. “Contractor” or “Offeror” means the CONTRACTOR, as defined in these terms and conditions, acting as the immediate (first-tier) subcontractor to ULA.
5. “Prime Contract” means the contract between ULA and the U.S. Government or between ULA and its higher-tier contractor who has a contract with the U.S. Government.
6. “Subcontract” means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. NOTES

1. Substitute “ULA” for “Government” or “United States” 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.

D. PRESERVATION OF THE GOVERNMENT’S RIGHTS

If ULA furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that ULA, acting on its own behalf, may modify or limit any rights the Government may have to authorize the CONTRACTOR’s use of such Furnished Items in support of other U. S. Government prime contracts.

E. FAR FLOWDOWN CLAUSES REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

- (a) 52.203-08 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (This clause applies to this Contract if the CONTRACTOR, its employees, officers, director or agents participated personally and substantially in any part of the preparation of a proposal for this Contract. The CONTRACTOR shall indemnify ULA for any and all losses suffered by ULA due to violations of the Act (as set forth in this clause) by CONTRACTOR or its Subcontractors at any tier.)
- (b) 52.204-04 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)
- (c) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 2010) (Note 2 applies.)

- (d) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 2010) Alt III (Oct 1997) (Note 2 applies. Insert "CD/DVD" in paragraph (c) of Alt III.)
- (e) 52.216-08 FIXED FEE (JUN 2011) (Applicable only if this Contract includes a fixed fee. Notes 1 and 2 apply. Delete the last two sentences of the clause.)
- (f) 52.216-10 INCENTIVE FEE (JUN 2011) (Applicable only if this Contract includes an incentive fee. Notes 1 and 2 apply, except in subparagraphs (e) (v) and (e) (vi) where "Government" is unchanged. In subparagraph (e) (iv) and the last two sentences of paragraph (c) is deleted. The amounts in paragraph (e) are set forth on the face of the contract.)
- (g) 52.216-11 COST CONTRACT – NO FEE (APR 1984) (Applicable only if this Contract is placed on a cost reimbursement - no fee basis. Notes 1 and 2 apply.)
- (h) 52.222-02 PAYMENT FOR OVERTIME PREMIUMS (JUL 1990) (Insert zero in the Blank. Notes 2 and 3 apply.)
- (i) 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Note 2 applies. In paragraph (e), Note 3 applies.)
- (j) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)(Note 5 applies.)
- (k) 52.232-17 INTEREST (OCT 2010) (Note 1 applies.)
- (l) 52.232-20 LIMITATION OF COST (APR 1984) (Applicable when this Contract becomes fully funded. Notes 1 and 2 apply.)
- (m) 52.232-22 LIMITATION OF FUNDS (APR 1984) (Applicable if this Contract is incrementally funded. When the Contract becomes fully funded 52.232-20 shall apply in lieu of this clause. Notes 1 and 2 apply.)
- (n) 52.234-01 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (Notes 1 and 2 apply.)
- (o) 52.242-13 BANKRUPTCY (JUL 1995) (Notes 1 and 2 apply.)
- (p) 52.242-15 STOP-WORK ORDER (AUG 1989) with ALT I (APR 1984) (Notes 1 and 2 apply.)
- (q) 52.242-17 GOVERNMENT DELAY OF WORK (APR 1984) (In paragraph (b)(1) insert "10" for the number of days.)
- (r) 52.243-02 CHANGES - COST REIMBURSEMENT (AUG 1987) (Notes 1 and 2 apply.)
- (s) 52.244-06 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUL 2013)
- (t) 52.246-05 INSPECTION OF SERVICES - COST REIMBURSEMENT (APR 1984) (Note 3 applies in paragraphs (b) and (c). Note 1 applies in paragraphs (d) and (e).)
- (u) 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applicable if Contract involves international air transportation.)
- (v) 52.249-06 TERMINATION (COST-REIMBURSEMENT) (MAY 2004) (Notes 1 and 2 apply. Substitute "90 days" for "120 days" and "90-day" for "120-day" in paragraph (d). Substitute "180 days" for "1 year" in paragraph (f). In paragraph (j) "right of appeal", "timely appeal" and "on an appeal" shall mean the right to proceed under the "Disputes" clause of this Contract. Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)
- (w) 52.249-14 EXCUSABLE DELAYS (APR 2004) (Note 2 applies. Note 1 applies to (c). In (a)(2) delete "or contractual".)

2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$30,000:

- (a) 52.209-06 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010) (Note 2 applies.)

3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$150,000:

- (a) 52.203-06 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)

(b) 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (If the Government reduces ULA's price or fee for violation of the Act by CONTRACTOR or its subcontractors at any tier, ULA may withhold from sums owed CONTRACTOR the amount of the reduction. Note 1 applies to paragraph (d).)

(c) 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) (CONTRACTOR disclosure forms and those of Contractor's Subcontractors will be provided to ULA.)

(d) 52.215-02 AUDIT AND RECORDS-NEGOTIATION (OCT 2010) (Applicable if: (1) CONTRACTOR is required to furnish cost or pricing data, or (2) the Contract requires CONTRACTOR to furnish cost, funding, or performance reports. If this is a cost type contract with an educational institution or other non-profit organization, add ALT II (APR 1998). Note 3 applies.)

(e) 52.227-01 AUTHORIZATION AND CONSENT (DEC 2007) (This clause only applies when Work supplied under this Contract is performed under a prime contract that contains this clause.)

(f) 52.227-02 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Notes 2 and 3 apply. This clause only applies when Work supplied under this Contract is performed under a prime contract that contains this clause.)

4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$700,000:

(a) 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010) (Applicable if not otherwise exempt under FAR 15.403.)

(b) 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 2010) (Applicable for modifications if not otherwise exempt under FAR 15.403.)

(c) 52.251-23 LIMITATION OF PASS THROUGH CHARGES (OCT 2009)

5. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$5 Million:

(a) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010) (Applicable if 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 and notification to ULA is not required.)

6. The following FAR clauses apply to this Contract as indicated:

(a) 52.204-02 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work requires access to classified information.)

(b) 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011) (Applicable if submission of cost or pricing data is required. Notes 2 and 4 apply except the first time "Contracting Officer" appears in paragraph (c)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

(c) 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (AUG 2011) (Applicable if submission of cost or pricing data is required for modifications. Notes 2 and 4 apply except the first time "Contracting Officer" appears in paragraph (d)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

(d) 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) (Applicable if this Contract meets the applicability requirements of FAR 15.408(g). Note 5 applies.)

(e) 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003) (Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the CONTRACTOR proposed facilities capital cost of money in its offer.)

(f) 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the CONTRACTOR did not propose facilities capital cost of money in its offer.)

(g) 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j). Note 5 applies.)

(h) 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(k). Note 5 applies.)

(i) 52.227-09 REFUND OF ROYALTIES (APR 1984) (Applies when reported royalties exceeds \$250. Notes 1 and 2 apply.)

(j) 52.227-10 FILING OF PATENT APPLICATIONS- CLASSIFIED SUBJECT MATTER (DEC 2007) (Applies if this Contract involves classified subject matter.)

(k) 52.230-03 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (MAY 2012) (When referenced in this Contract, modified CAS coverage applies. "United States" means "United States or ULA." Delete paragraph (b) of the clause.)

(l) 52.230-06 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010) (Applicable FAR 52.230-3 applies.)

(m) 52.233-03 PROTEST AFTER AWARD (AUG 1996) ALT I (JUN 1985) (In the event ULA's customer has directed ULA to stop performance of the Work under the prime contract under which this Contract is issued pursuant to FAR 33.1, ULA may, by written order to CONTRACTOR, direct CONTRACTOR to stop performance of the Work called for by this Contract. "30 days" means "20 days" in paragraph (b)(2). Note 1 applies except the first time "Government" appears in paragraph (f). In paragraph (f) add after "33.104(h)(1)" the following: "and recovers those costs from ULA".)

(n) 52.243-06 CHANGE ORDER ACCOUNTING (APR 1984) (Applicable only if Prime Contract requires Change Order Accounting. Note 2 applies.)

(o) 52.245-01 GOVERNMENT PROPERTY (APR 2012) Alt I (APR 2012) ("Contracting Officer" means "ULA" except in the definition of Property Administrator and in paragraph (h)(1)(iii) and where it is unchanged, and in paragraphs (c) and (h)(4) where it includes ULA. "Government" is unchanged in the phrases "Government property" and "Government furnished property" and where elsewhere used except in paragraph (d)(1) where it means "ULA" and except in paragraph (d)(2) and (g) where the term includes ULA. The following is added as paragraph (n) "CONTRACTOR shall provide to ULA immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of property control system.)

(p) 52.248-01 VALUE ENGINEERING (OCT 2010) (Note 1 applies, except in paragraphs (c)(5) and (m) where Note 3 applies and except in (b)(3) where Note 4 applies, and where "Government" precedes "cost" throughout. Note 2 applies.)

7. The following FAR clauses apply to this Contract, if Work under the Contract will be performed in the United States or CONTRACTOR is recruiting employees in the United States to Work on the Contract.

(i) The following FAR clauses apply to this Contract:

(a) 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011)

(ii) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$3,000:

(a) 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JUL 2012)

(a) 52.223-18 ENCOURAGING CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011) (Note 4 applies to paragraph (c).)

(iii) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:

(a) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(b) 52.222-26 EQUAL OPPORTUNITY (MAR 2007) (Only paragraphs (b) (1)-(11) applies.)

(c) 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Note 5 applies to paragraph (f)(4))

(iv) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$15,000:

(a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)

(v) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

(a) 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)

(b) 52.222-37 EMPLOYMENT REPORTS ON VETERANS (SEP 2010)

(vi) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$650,000:

(a) 52.219-09 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011) (Applicable if the CONTRACTOR is not a small business. Note 2 is applicable to paragraph (c) only. The CONTRACTOR's subcontracting plan is incorporated herein by reference.)

(vii) **The following FAR Clause applies to this Contract if the value of this Contract equals or exceeds \$5 Million:**

(a) 52.203-04 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

F. CERTIFICATIONS AND REPRESENTATIONS

(1) **This clause contains certifications and representations that are material representations of fact upon which ULA will rely in making awards to CONTRACTOR. By submitting its written offer, or providing oral offers/quotations at the request of ULA, or accepting any Contract, CONTRACTOR certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any Contract, agreement, other contractual document or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by ULA. CONTRACTOR shall immediately notify ULA of any change of status with regard to these certifications and representations.**

(a) **FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (Applicable to solicitations and contracts exceeding \$100,000)

(1) Definitions. As used in this provision--

“Lobbying contact” has the meaning provided at 2 U.S.C. 1602(8).

The terms “agency,” “influencing or attempting to influence,” “officer or employee of an agency,” “person,” “reasonable compensation,” and “regularly employed” are defined in the FAR clause of this solicitation entitled “Limitation on Payments to Influence Certain Federal Transactions” (52.203-12).

(2) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled “Limitation on Payments to Influence Certain Federal Transactions” (52.203-12) are hereby incorporated by reference in this provision.

(3) Certification. The CONTRACTOR, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Contract.

(4) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the CONTRACTOR with respect to this Contract, the CONTRACTOR shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The CONTRACTOR need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(5) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(b) **FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**

(1) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(2) CONTRACTOR shall provide immediate written notice to ULA if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) **CONTRACTOR Systems.** CONTRACTOR certifies that its business systems (as defined in DFARS 252.242-7005) have not been disapproved by the US Government. CONTRACTOR shall immediately notify ULA of any change in their system approvals.

(2) The following FAR clauses apply to this Contract if Work under this Contract will be performed in the United States or CONTRACTOR is recruiting employees in the United States to work on this Contract.

(a) **FAR 52.222-22 Previous Contracts and Compliance Reports.**

CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) and (i) CONTRACTOR has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(b) FAR 52.222-25 Affirmative Action Compliance.

CONTRACTOR represents (1) that CONTRACTOR has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.

(c) FAR 52.223-13 Certification of Toxic Chemical Release Reporting (Applicable to competitive solicitations/ contracts which exceed \$100,000)

(1) Submission of this certification is a prerequisite for making or entering into this Contract imposed by Executive Order 13148, April 21, 2000.

(2) CONTRACTOR certifies that--

(a) As the owner or operator of facilities that will be used in the performance of this Contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), CONTRACTOR will file and continue to file for such facilities for the life of this Contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(b) None of its owned or operated facilities to be used in the performance of this Contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:

(i) The facility does not manufacture, process or otherwise use any toxic chemicals listed in 40 C.F.R. 372.65 ;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) codes or their corresponding North American Industry Classification System (NAICS); or

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas.