



DOC 1
COMMERCIAL SUBCONTRACTS/PURCHASE ORDERS

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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. If these terms and conditions are incorporated into a “master” agreement that provides for releases, (in the form of a Purchase Order or other such document) the term “Contract” shall also mean the release document for the Work to be performed.
- (c) “CONTRACTOR” means the party identified on the face of this Contract with whom ULA is contracting. CONTRACTOR shall mean the same as supplier, seller, vendor or other such type designation.
- (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. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.
- (e) “Foreground Intellectual Property” means all Intellectual Property Made by or for a party in the performance of Work under this Contract.
- (f) “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.
- (g) “Made” means conceived, developed, first produced, or created.
- (h) “Personal Information” means any non-public personal information provided by an individual to ULA, including any Personally Identifiable Information or Protected Health Information.
- (i) “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

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

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

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

(m) "ULA" means United Launch Alliance, LLC, as identified on the face of this Contract.

(n) "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, 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) 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.

(d) Each clause, paragraph and sub-paragraph 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. CHANGES

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

(b) Within the general scope of this Contract, the Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) description of services; (iii) method of shipping or packing; (iv) place of inspection, acceptance, or point of delivery; (v) time of performance; and (vi) delivery schedule. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, ULA shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule or time of performance will be subject to a price adjustment only. CONTRACTOR must request any equitable adjustment under this clause within thirty (30) days from the date of receipt of the written change order from ULA. If the CONTRACTOR's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, ULA shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse CONTRACTOR from proceeding without delay in the performance of this Contract as changed.

(c) 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 and shall not be the basis for equitable adjustment.

(d) The parties shall mutually agree to any other changes.

3. DISPUTES, GOVERNING LAW AND LEGAL NOTIFICATION

(a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, CONTRACTOR shall diligently proceed with the performance of this Contract as directed by ULA.

(b) 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. Any lawsuit filed regarding this Contract shall be filed in either the Colorado District Court located in Arapahoe County, Colorado or the United States District Court located in Denver, Colorado. CONTRACTOR further agrees that the substantive law of Colorado shall apply in such lawsuit without regard to the conflict of law rules of Colorado. CONTRACTOR hereby consents to the jurisdiction and venue of both the Colorado District Court located in Arapahoe County, Colorado and the United States District Court located in Denver, Colorado. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

(c) CONTRACTOR agrees to provide ULA with prompt written notification of any legal action, subpoena, claim, notice, demand or other legal proceeding brought against CONTRACTOR relating to or arising out of the Work performed under this Contract.

4. 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.

5. 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).

6. 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, including obtaining the appropriate USG authorization prior to exporting to a Foreign Person within the U.S. or abroad, as applicable.

(b) CONTRACTOR certifies that only U.S. Persons, as defined in 22 CFR 120.15, will participate directly in telecons, meetings and/or email with ULA. If direct participation by Foreign Persons is required, prior notice must be provided by CONTRACTOR and prior written approval received from ULA for Foreign Person participation to ensure that the appropriate export authorizations are in place.

(c) CONTRACTOR is required to be registered with the State Department, Directorate of Defense Trade Controls, if it engages in the business of either exporting or manufacturing (whether exporting or not) defense articles (i.e. ITAR-controlled parts, technical data) or furnishing of defense services, and represents that it maintains an effective export and import compliance program.

(d) The exporter of record, who directly exports to a Foreign Person, has the ultimate responsibility to determine export jurisdiction, applicable license requirements, and to meet the applicable export laws and regulations.

(e) 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.

(f) 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.

(g) For any shipment exported from the United States in which ULA is the U.S. Principal Party in Interest (USPPI), ULA prohibits the filing of Electronic Exporter Information (EEI) via the Automated Export System (AES) by any party except ULA or a ULA-approved forwarder.

(h) 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.

(i) CONTRACTOR shall indemnify 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.

7. FORCE MAJEURE

(a) Except for a default of CONTRACTOR's subcontractor at any tier, CONTRACTOR shall be excused from, and shall not be liable for, failure of performance due to one or more of the following qualifying events (such list being exclusive): War; warlike operation; insurrection; riot; fire; flood; explosion; accident; act of God; act of a public enemy; terrorism; acts of the government in its sovereign or contractual capacity; epidemic; and quarantine restriction, and further provided that such event was beyond CONTRACTOR's control and not occasioned by its negligence or default. This Contract will be extended for that period of time attributable to such event upon written confirmation from ULA, subject to subparagraph (b) below. ULA shall be excused from, and shall not be liable for failure to perform due to any of the causes identified above.

(b) In order to be excused from performance under subparagraph (a) above, CONTRACTOR shall submit, within ten (10) calendar days of the start of the qualifying event, a written notice providing a complete and detailed description of such event, the date of commencement, an estimate of the probable period of delay, an explanation indicating how such event was beyond the control of the CONTRACTOR and not due to its negligence or fault and what efforts CONTRACTOR will make to minimize the length of delay. CONTRACTOR shall submit within ten (10) calendar days of the end of the event a written notice stating the impact to the schedule and evidence justifying the length of the delay. If the delay extends for thirty (30) days or more this Contract may be terminated by ULA without additional cost, except for payment for Work completed prior to the commencement of the delay.

8. DEFAULT

(a) ULA, by written notice, may terminate this Contract for default, in whole or in part, if CONTRACTOR (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) fails to deliver the Work within the time specified by this Contract or any written extension from the Procurement Representative. CONTRACTOR shall have ten (10) days (or such longer period as ULA may authorize in writing) to cure any such failure after receipt of notice from ULA. ULA may also terminate this Contract in whole or in part in the event of CONTRACTOR's suspension of business, insolvency, material adverse change in financial condition, appointment of a receiver for CONTRACTOR's property or business, or any assignment, reorganization or arrangement by CONTRACTOR for the benefit of its creditors. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) ULA may require CONTRACTOR to deliver and transfer title to ULA any supplies and materials, manufacturing materials or drawings, reports or other Contract deliverables that CONTRACTOR has specifically produced or acquired for the terminated portion of this Contract. Upon direction from ULA, CONTRACTOR shall also protect and preserve property in its possession in which ULA or its customer has an interest.

(c) Following a termination for default of this Contract, CONTRACTOR shall be compensated only for Work actually delivered and accepted. Payment for Manufacturing Materials accepted by ULA and for the protection and preservation of property shall be at a price determined by both parties, except that CONTRACTOR shall not be entitled to profit on such materials or property protection activities. ULA may withhold from any amount due under this Contract any sum ULA determines to be necessary to protect ULA or ULA's customer against loss because of outstanding liens or claims of former lien holders. CONTRACTOR shall be liable for ULA's excess re-procurement costs. ULA shall pay the Contract price for Work accepted.

(d) In the event of CONTRACTOR's default, ULA may exercise any and all rights and remedies available to it, both at law, including without limitation, those set forth in Article 2 of the Uniform Commercial Code, or equity, including, but not limited to CONTRACTOR's liability for ULA's excess re-procurement costs for the Work or cancellation of this Contract. If after termination for default under this Contract, it is determined that CONTRACTOR was not in default, such termination shall be deemed a termination for convenience and CONTRACTOR's remedies shall be limited to those contained in the "Termination for Convenience" clause.

(e) CONTRACTOR shall continue all Work not terminated or cancelled.

9. TERMINATION FOR CONVENIENCE

(a) ULA may terminate part or all of this Contract for its convenience and without cause, at any time, by giving written notice to CONTRACTOR. Such termination shall not constitute default.

(b) Upon termination, in accordance with ULA written direction, CONTRACTOR will immediately: (i) Cease work; (ii) Prepare and submit to ULA an itemization of all completed and partially completed deliverables and services; (iii) Deliver to ULA any and all Work completed up to the date of termination at the agreed upon prices; and (iv) Deliver upon request any Work in process. In the event ULA terminates for its convenience after performance has commenced, ULA will compensate CONTRACTOR for the actual, allowable, reasonable, allocable and substantiated costs, plus a reasonable profit for Work performed up to and including the date of termination provided CONTRACTOR uses reasonable efforts to mitigate ULA's liability under this clause.

(c) Any termination settlement proposal shall be submitted to ULA promptly, but in no event later than sixty (60) days from the effective date of the termination, unless otherwise authorized in writing by the Procurement Representative. In no event shall the amount of any settlement be in excess of the Contract value.

(d) CONTRACTOR shall continue all Work not terminated. In no event shall ULA be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price.

10. STOP WORK

(a) CONTRACTOR shall stop Work for up to one hundred (100) days in accordance with any written notice received from ULA, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, ULA shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to CONTRACTOR. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, performance schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

11. 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.

12. BANKRUPTCY

In the event the CONTRACTOR enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the CONTRACTOR agrees to furnish written notification of the bankruptcy to the Procurement Representative. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, the case number, and a listing of all Contracts with ULA. This obligation remains in effect until final payment under this Contract.

13. TIMELY PERFORMANCE

(a) CONTRACTOR's timely performance is of the essence and is a material element of this Contract. No acts of ULA, including without limitation, modifications of this Contract or acceptance of late deliveries, shall constitute waiver of this clause.

(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 a potential or actual difficulty in performing the Work, CONTRACTOR shall timely notify ULA, in writing, giving pertinent details, including a proposed revised schedule. This notification shall not change any performance or delivery schedule.

(d) In the event of a termination for convenience or 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.

(e) Throughout the Contract's period of performance, CONTRACTOR shall notify ULA of any planned obsolescence of the Work in this Contract.

14. 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 shall be FOB Place of Origin.

15. INSPECTION AND ACCEPTANCE

(a) ULA and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. CONTRACTOR shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve CONTRACTOR of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. ULA's final inspection and acceptance shall be at destination.

(c) 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.

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

(e) 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.

16. 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 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. INTELLECTUAL PROPERTY AND INDEMNITY

Paragraphs (a), (b), and (c) are NOT applicable to commercial-off-the-shelf Work unless such Work is modified, further developed or redesigned under this Contract.

(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.

23. FURNISHED PROPERTY

(a) ULA may provide to CONTRACTOR property owned by 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. Without additional charge, 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.

24. PROHIBITED SOFTWARE

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

(b) As used herein, "Prohibited License" means 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 not use, provide or otherwise deliver to ULA, any Prohibited Software.

25. CONTRACTOR IDENTIFICATION

(a) CONTRACTOR personnel and its Subcontractors working with 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.

26. 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.

27. 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 terms of the Contract. 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 law. 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.

28. 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.

29. 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.

30. 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.

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 to setoff or recoupment against payments due or at issue under this Contract or any other contract between the parties.

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

(e) 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.

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, Merger and Severability
Compliance with Laws
Counterfeit Work
Disputes, Governing Law and Legal Notification
Export Control
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) 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.