



NASA Launch Services (NLS) Contract NAS10-00-060/NAS10-00-001

**PRIME CONTRACT REQUIREMENTS**

A. The following clauses of the Federal Acquisition Regulation (FAR) and National Aeronautics and Space Administration Federal Acquisition Regulation Supplement (NFS) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable during the performance of this Contract. The full text of a clause may be accessed electronically at the following address: <http://www.arnet.gov/far>.

**1. FAR FLOWDOWN CLAUSES**

<u>Clause Number</u>	<u>Title/Applicability</u>
52.227-14	RIGHTS IN DATA-GENERAL (JUN 1987) ALT II (JUN 1987) ALT III (JUN 1987)

**2. NFS FLOWDOWN CLAUSES**

<u>Clause Number</u>	<u>Title/Applicability</u>
1852.219-74	USE OF RURAL AREA SMALL BUSINESSES (SEP 1990)
1852.219-75	SMALL BUSINESS SUBCONTRACTING REPORTING (JULY 1997) (Applicable if FAR 52.219-9 applies to this Contract and if the Contract exceeds \$550,000.)
1852.219-76	NASA 8% GOAL (JUL 1997)
1852.223-70	SAFETY AND HEALTH (MAR 1997) (Applies if (i) the work will be conducted completely or partly on premises owned or controlled by the Government; (ii) the work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold; (iii) the work, regardless of place of performances, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable); and (iv) when the Contractor (or subcontractor or supplier) determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.)
1852.225-70	EXPORT LICENSES (FEB 2000) ALT 1 (FEB 2000)
1852.227-14	RIGHTS IN DATA – GENERAL (UNDATED) (Note 5 applies.)
1852.227-70	NEW TECHNOLOGY (NOV 1998) (Applicable if this Contract is for experimental, developmental, research, design ,or engineering work to be performed by other than a small business firm or non-profit organization. Note 2 applies to (g)(1) the first time “Contracting Officer” appears, (g)(4) and (h); Note 4 applies to (g)(4); as so modified, (g) shall apply to this Contract.)
1852.227-71	REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (APR 1984) (Applicable if 1852.227-70 applies. Note 2 applies. )
1852.227-72	DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (JULY 1997) (The respective representatives referenced in clause (a) are identified as the LOCKHEED MARTIN Purchasing Representative administering this Contract. Note 2 applies.)
1852.228-75	MINIMUM INSURANCE COVERAGE (OCT 1988)
1852.228-78	CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES (SEPTEMBER 1993) (Applies when hardware or services procured under this Contract are used to provide launch services to NASA)

**NOTES**

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

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

**1) GOVERNMENT INSIGHT AND ACCESS**

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

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

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

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

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

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

## 2) INSPECTION SYSTEM RECORDS

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

## 3) KENNEDY SPACE CENTER ("KSC") SECURITY CONTROLS (KSC 52.204-90, SEP 1998)

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

### (a) Identification of Employees

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

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

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

### (b) Access to Controlled Areas within KSC

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

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

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

## 4) Liability for Third Party Claims Arising From NASA Launches

This clause applies to Third Party claims that arise from the conduct of hazardous launch activities when hardware or services procured under this Contract are used to provide launch services to NASA. This clause explains the approach of NASA, ULA and CONTRACTOR to addressing Third Party claims between NASA, ULA and CONTRACTOR for damage to or loss of property or personal injury or death arising from the burning, explosion, detonation, combustion or impact of a Launch Vehicle (LV), its payload, or a component thereof, whether or not the payload is separated from the LV, from the time of launch until thirty (30) days after launch. This clause applies in lieu of indemnification under Public Law 85-804 for launch services provided to NASA using hardware or services provided by CONTRACTOR under this Contract.

### (a) Definitions

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

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

3. Party or Parties: NASA, ULA, and Contractor (for purposes of this clause only).

4. Related Party: (i) Any of the Parties' directors, officers, agents, employees or customers.

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

- (iii) Any entity having any right, title or interest, whether through sale, lease or service arrangement or otherwise, directly or indirectly, in the payload, the LV, or the launch service.

5. Third Party: Any person or entity other than NASA, ULA, CONTRACTOR and Related Parties.

(b) Required ULA Insurance for Liability to Third Parties

1. ULA shall continue in effect or acquire insurance to protect itself and CONTRACTOR from liability for claims from Third Parties for damage to or loss of property or personal injury or death arising in connection with the covered launch activities under ULA's NASA Launch Services (NLS) Contract No. NAS10-00-060. The amount of insurance required under the NLS Contract for each launch shall be the lesser of \$500 million or the maximum amount available in the commercial marketplace at reasonable cost. The insurance coverage required under the NLS Contract shall attach no later than the arrival of the LV at the launch site and shall remain in force for at least thirty (30) days following launch.
2. The foregoing insurance requirement does not preclude ULA from acquiring or continuing in effect insurance in excess of \$500 million; however, such additional insurance is not required under this Contract.

(c) Third Party Claims in Excess of Required Insurance

1. NASA has determined that launches under ULA's NLS Contract, are conducted by NASA in performance of its functions, as specified in 42 U.S.C. § 2473(a). As a result, once ULA or its insurers have paid out for its Third Party claims the amount of required insurance under paragraph (b) above, NASA will consider any additional Third Party claims for damage to or loss of property or personal injury or death arising from the launches as claims against the United States under the authority of 42 U.S.C. § 2473 (c)(13).
2. ULA (once it or its insurers have paid to third party claimants, from their own funds, an amount equal to the amount of required insurance for a Launch) shall adjust, settle and pay meritorious and reasonable additional Third Party claims in excess of the amount of required insurance. To the extent NASA determines that such costs exceed \$25,000, it will forward such claim to the secretary of Treasury for certification and payment pursuant to 31 U.S.C. § 1304(a). Such costs are subject to the usual tests for allowability and the total of such costs shall be paid up to a limit of \$1.5 billion above the insurance obtained by ULA for the benefit of ULA and Contractor for each launch.
3. In evaluating Third Party claims against the United States paid by ULA on behalf of the Contractor, ULA will consider such a claim to be meritorious unless the claim represents:
  - (i) Liabilities for which the Contractor is otherwise responsible under the express terms or conditions of the contract or a task order issued under this contract
  - (ii) Liabilities for which Contractor has failed to insure or to maintain insurance as required by the Contract
  - (iii) Liabilities that result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
    - (a) All or substantially all of the Contractor's business
    - (b) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed
    - (c) Separate and complete major industrial operation in connection with the performance of this contract
  - (iv) Liabilities that arise from the willful misconduct or gross negligence of the claimant or, in the case of a claim based on death, the claimant's descendant.

5) **MISSION SUCCESS: Investigation and Corrective Action**

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

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

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

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

6) **PATENT INDEMNITY**

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

7) **PRIORITY RATING**

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