



America's Ride to Space

Flowdown Provisions
STP-3 Contract FA8811-17-C-0008

PRIME CONTRACT REQUIREMENTS

This Draft Doc 542 (10-17) was written by ULA to anticipate what will be included in ULA's contract with its Customer. ULA is in the process of negotiating certain terms with our Customer and will finalize these terms and conditions upon conclusion of negotiations. Any such revision would be subject to the Changes clause.

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

1. FAR FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (Applies in lieu of 52.203-13 (APR 2010) (Applicable if the Contract exceeds \$5.5 million and period of performance is 120 days or over. Paragraph (c) does not apply if this Contract is for a commercial item or if the CONTRACTOR is a small business. Disclosures made under this clause shall be made directly to the Government entities identified in the clause and notification to ULA is not required.)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014) (Applies in lieu of 52.219-8 (JAN-2011))
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (Applies in lieu of 52.222-21 (FEB 1999)) (Applies to Contracts that are subject to the Equal Opportunity clause in this Contract.)
52.222-26	EQUAL OPPORTUNITY (APR 2015) (Applies in lieu of 52.222-26 (MAR 2007)) (Paragraph (d) does not apply.) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended.)
52.222-35	EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (Applies in lieu of 52.222-35 (SEP 2010) and if Contract equals or exceeds \$150,000, unless exempted by rules, regulations, or orders of the Secretary of Labor.)
52.222-36	EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014) (Applies in lieu of 52.222-36 (OCT 2010) and if Contract exceeds \$15,000, unless exempted by rules, regulations, or orders of the Secretary of Labor.)
52.222-37	EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (Applies if Contract equals or exceeds \$150,000, unless exempted by rules, regulations, or orders of the Secretary of Labor.)
52.222-50	COMBATING TRAFFICKING IN PERSONS (MAR 2015) ALT I (MAR 2015) (Applies in lieu of 52.222-50 (FEB 2009)) (The requirements in paragraph (h) of this clause apply only to any portion of the Contract that is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and exceeds \$500,000.) (Note 2 applies. In paragraph (e) Note 3 applies.)
52.222-54	EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (Applies in lieu of 52.222-54 (JUL 2012) and if the Contract exceeds \$3,500, is performed in the United States, and is for commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider and are normally provided for that COTS item); or Construction.)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
52.226-6	PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS (MAY 2014) (Applies to CONTRACTOR's or subcontractors at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.)
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (Applies only when the CONTRACTOR is a small business concern.)
52.247-64	PREFERENCE FOR PRIVATELY-OWNED U.S. FLAG COMMERCIAL VESSELS (FEB 2006) (Applicable if Work under this Contract requires transportation on ocean vessels.) (Note 2 applies.)

2. DFARS FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
252.204-7008	COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (OCT 2016) (Applicable to contracts for operationally critical support, or for which contract performance will involve Covered Defense Information (CDI). In the event of doubt regarding whether contract performance will involve CDI, ULA will determine if information required for CONTRACTOR performance retains its identity as CDI and will require protection under this clause, consulting with the Contracting Officer if necessary.) (Note 2 applies.)

252.204-7012	SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016) (Applicable to contracts for operationally critical support, or for which contract performance will involve Covered Defense Information (CDI). In the event of doubt regarding whether contract performance will involve CDI, ULA will determine if information required for CONTRACTOR performance retains its identity as CDI and will require protection under this clause, consulting with the Contracting Officer if necessary. Any reporting or request for authorization or variance pursuant to this clause shall be submitted through ULA.)
252.204-7015	NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT (MAY 2016)
252.225-7048	EXPORT-CONTROLLED ITEMS (JUN 2013)
252.227-7015	TECHNICAL DATA—COMMERCIAL ITEMS (FEB 2014) (Applies in lieu of 252.227-7015 (JUN 2013) (Applicable if technical data related to commercial items and developed exclusively at private expense is to be delivered under this Contract.)
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988) (Note 4 applies.)
252.244-7000	SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013)
252.246-7003	NOTIFICATION OF POTENTIAL SAFETY ISSUES (JUN 2013) (Applies if the Contract is for parts identified as critical safety items; systems and subsystems, assemblies, and subassemblies integral to a system; or repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system. The notification required by paragraph (c) shall be provided to ULA, and shall be provided to the ACO and PCO if the CONTRACTOR is aware of the ACO and PCO.)
252.247-7023	TRANSPORTATION OF SUPPLIES BY SEA – BASIC (APR 2014) (Applies in lieu of 252.247-7023 (MAY 2012)) (Applicable if this Contract meets the criteria set forth in paragraph (b) (2) of the clause. If the Contract is at or below \$150,000 only paragraphs (a)-(e) and (h) apply.)
252.249-7002	NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (OCT 2015) (Applies if Contract exceeds \$150,000.) (Note 2 applies.)
252.204-7000	DISCLOSURE OF INFORMATION (AUG 2013) (Note 2 applies to paragraphs (a) and (b).)

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) ENABLING CLAUSE FOR GOVERNMENT PROGRAM CONTRACTS REQUIRING INTERFACE WITH AEROSPACE FFRDC CONTRACT SUPPORT

(a) This contract covers part of the Phase 1A program which is under the general program management of the Air Force Space and Missile Systems Center (SMC). The Air Force has entered into a contract with The Aerospace Corporation, a California nonprofit corporation operating a Federally Funded Research and Development Center (FFRDC), for the services of a technical group that will support the DoD/U.S. Government program office by performing General Systems Engineering and Integration, Technical Review, and/or Technical Support including informing the commander or director of the various Department of Defense ("DoD") organizations it supports and any U.S. Government program office of product or process defects and other relevant information, which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.

1. General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of the contractors' technical performance through meetings with contractors and subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk; providing comments and recommendations in writing to the applicable DoD System Program Manager and/or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting the contractor's efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.
2. Technical Review (TR) includes the process of appraising the technical performance of the contractor through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to contract technical objectives, and providing comments and recommendations in writing to the applicable Air Force Program Manager as an independent technical assessment for consideration for modifying the program or objectives.
3. Technical Support (TS) deals with broad areas of specialized needs of customers for planning, system architecting, research and development, horizontal engineering, or analytical activities for which The Aerospace Corporation is uniquely qualified by virtue of its specially qualified personnel, facilities, or corporate memory. The categories of TS tasks are: Selected Research, Development, Test and Evaluation; Plans and System Architecture; Multi-Program Systems Enhancement; International Technology Assessment; and Acquisition Support.

b. In the performance of this contract, the CONTRACTOR agrees to cooperate with The Aerospace Corporation by 1) responding to invitations from authorized U. S. Government personnel to attend meetings; 2) by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including toplevel life cycle cost* data, where available; 3) by delivering data as specified in the Contract Data Requirements List; 4) by discussing technical matters relating to this program; 5) by providing access to contractor facilities utilized in the performance of this contract; 6) and by allowing

observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, and/or TS efforts: (i) are authorized access to all such technical information (including proprietary information) pertaining to this contract and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know.

c. The CONTRACTOR further agrees to include in all subcontracts a clause requiring compliance by subcontractor and supplier and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of this Enabling Clause, subject to coordination with the contractor, except for subcontracts for commercial items or commercial services. This agreement does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as indicated in paragraph (d) below.

d. The Aerospace Corporation shall protect the proprietary information of contractors, subcontractors, and suppliers in accordance with the Master Non-disclosure Agreement The Aerospace Corporation entered into with the Air Force, a copy of which is available upon request. This Master Non-disclosure Agreement satisfies the Nondisclosure Agreement requirements set forth in 10 U.S.C. §2320 (f)(2)(B), and provides that such contractors, subcontractors, and suppliers are intended third-party beneficiaries under the Master Non-disclosure Agreement and shall have the full rights to enforce the terms and conditions of the Master Non-disclosure Agreement directly against The Aerospace Corporation, as if they had been signatory party hereto. Each such contractor, subcontractor, or supplier hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other non-disclosure agreements.

e. Aerospace shall make the technical information (including proprietary information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know, and Aerospace shall maintain between itself and the foregoing binding agreements of general application as may be necessary to fulfill their obligations under the Master Nondisclosure Agreement referred to herein, and Aerospace agrees that it will inform contractors, subcontractors, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of such contractor, subcontractor, or supplier, to have its consultants and contract labor personnel execute non-disclosure agreements directly therewith.

f. The Aerospace Corporation personnel are not authorized to direct the CONTRACTOR in any manner. The CONTRACTOR agrees to accept technical direction as follows:

1. Technical direction under this contract will be given to the CONTRACTOR solely by ULA.
2. Whenever it becomes necessary to modify the contract and redirect the effort, a change order signed by the Procurement Representative or a Supplemental Agreement signed by both ULA and the CONTRACTOR will be issued.

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

2) ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS (JUL 2014)

a) The Government has, or may enter into, contracts with one or more of the following companies, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort):

Scitor Corp. [OSL SETA]
Tecolote Research, Inc. [Cost & Budget]
Northrop Grumman Information Systems [IT Support]
QuanTech, Inc. [Management Support]
Joint Synergy (JS) Corp. [Data Management]
ManTech International Corp. [LR SE&I]
General Dynamics - Advanced Information Systems [My Mission Link (MML) Support]
Analex [OSL IV&V]
L3 Communications [OSL IV&V]
Booz Allen Hamilton (BAH) [RN SE&I][OSL SETA]
Harris IT Services Corporation [Launch Support]
Engility [AD A&AS]
Omni Consulting Solutions [OSL SETA]

(b) In the performance of this Contract, the CONTRACTOR agrees to cooperate with the companies listed above (hereafter referred to as support contractors). Cooperation includes, but is not limited to, allowing the listed support contractors to attend meetings; observe technical activities; discuss with the contractor technical matters related to this program at meetings or otherwise; and access contractor integrated data environments and facilities used in the performance of the contract.

(c) The CONTRACTOR must provide the support contractors access to data such as, but not limited to, design and development analyses; test data, procedures, and results; research, development, and planning data; parts, equipment, and process specifications; testing and test equipment specifications; quality control procedures; manufacturing and assembly procedures; schedule and milestone data; and other contract data. To fulfill contractual requirements to the Government, support contractors engaged in general systems engineering and integration efforts and technical support are normally authorized access to information pertaining to this Contract. Exceptions, such as when the CONTRACTOR seeks to restrict access to CONTRACTOR trade secrets, will be handled on a case-by-case basis. If the CONTRACTOR seeks to limit distribution of data to Government personnel only, the CONTRACTOR must submit this request in writing through ULA to the prime contract contracting officer.

(d) The CONTRACTOR further agrees to include in all subcontracts, a clause requiring the subcontractor and succeeding levels of subcontractors to comply with the response and access provisions of paragraph (b) above, subject to coordination with the contractor. This clause does not relieve the CONTRACTOR of the responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or support contractors and such subcontractors.

(e) The CONTRACTOR and its subcontractors are not authorized to take contractual direction from support contractors.

(f) NRO support contracts will contain clauses that require the support contractor to protect data and software related to this contract, and prohibit the support contractor from using such data for any purpose other than performance of the support contract.

(g) Support contractors shall protect the proprietary information of disclosing contractors, subcontractors, suppliers, and vendors in accordance with clause SMC-H107, Support Contractor Corporate Non Disclosure Agreement. Because this clause provides that such disclosing contractors, subcontractors, suppliers, and vendors are intended to be third-party beneficiaries, all such disclosing parties agree that these terms satisfy the non-disclosure agreement requirements set forth in 10 U.S.C. §2320(f)(2)(B), and hereby waive any requirement that the support contractors enter into separate non-disclosure, confidentiality, proprietary information, or similar agreement unless the prime contract contracting officer is notified prior to execution of the agreement. The Government and the disclosing contractors, subcontractors, suppliers, and vendors agree to cooperate to ensure the execution of any exceptions to this waiver do not delay or inhibit performance of this Contract. Any such additional agreements shall not otherwise restrict any rights due the Government under this Contract. Exceptions to the waiver may be made when:

1. The support contractor is a direct competitor of the disclosing party in furnishing end items or services of the type developed or produced for the program or effort;
2. The support contractor will require access to extremely sensitive business data; or
3. Other unique business situations exist in which the disclosing party can clearly demonstrate that clause SMC-H107, Support Contractor Corporate Non Disclosure Agreement, does not adequately protect their competitive interests.

(h) Any proprietary information furnished to support contractors shall be:

1. Disclosed in writing and clearly marked "proprietary" or with other words of similar meaning; or
2. Disclosed orally or visually (for instance, during a plant tour, briefing, or demonstration) and identified as proprietary information at the time of the oral or visual disclosure by the Government or a disclosing party. The support contractors shall treat all such information as proprietary unless within fifteen (15) days the support contractor coordinates with the Government or disclosing party to obtain a written version of the proprietary information and determine the extent of the proprietary claims; or
3. Disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.) in either human readable form or machine readable form, and the CONTRACTOR marks it electronically as proprietary within the electronic transmissions, such marking to be displayed in human readable form along with any display of the proprietary information; or
4. Disclosed by delivery of an electronic storage medium or memory device, and the CONTRACTOR marks the storage medium or memory device itself as containing proprietary information and electronically marks the stored information as proprietary, such marking to be displayed in human readable form along with any display of the proprietary information.

(i) The CONTRACTOR agrees not to hold the support contractor liable for unauthorized disclosure of proprietary information if it can be demonstrated in written documentation or other competent evidence that the information was:

1. Already known to the support contractor without restriction on its use or disclosure at the time of its disclosure by the disclosing party;
2. In the public domain or becomes publicly known through no wrongful act of the support contractor;
3. Proprietary information disclosed by the support contractor with the CONTRACTOR's prior written permission;
4. Independently developed by the support contractor, subsequent to its receipt, without the use of any proprietary information;
5. Disclosed to the support contractor by a third party who was legally entitled to disclose the same and who did not acquire the proprietary information from the disclosing party; or
6. Specifically provided in writing by the U.S. Government to the support contractor with an unlimited rights license; or
7. Disclosed by the support contractor as required by law, regulatory or legislative authority, including subpoenas, criminal or civil investigative demands, or similar processes, provided the support contractor provides the disclosing party that originated the proprietary information with prompt written notice so that the disclosing party may seek a protective order or other appropriate remedy, and provided that, in the absence of a timely protective order, the support contractor furnishes only that minimum portion of the proprietary information that is legally required.

(j) Any notice to the support contractor(s) required or contemplated under the provisions of this clause or clause SMC-H107, Support Contractor Corporate Non Disclosure Agreement, shall be in writing and shall be deemed to have been given on:

1. The date received if delivered personally or by overnight courier;
2. The third day after being deposited in the U.S. mail, postage prepaid; or
3. The date sent if sent by facsimile transmission or e-mail with a digital copy.

(k) The contractor agrees in the event of an unauthorized disclosure, whether suspected or actual, to conduct reasonable fact-finding efforts and to implement mutually agreed upon resolution actions. Any costs incurred by the contractor in said fact-finding efforts will not be passed on to the Government.