



**DOC 7**  
**TERMS AND CONDITIONS FOR ULA INVENTORY AND STANDARD SERVICES**

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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. 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) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (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  - Unlisted and/or unpublished personal telephone number
  - Unlisted and/or unpublished home address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, vendors or suppliers at any tier.

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

(n) "ULA's Customer" means any Government or commercial agency/entity ULA is under or will be under contract to support.

(o) "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, and incorporated into this Contract, 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 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.

(e) The headings and tables used in this Contract are inserted for the convenience of the parties and shall not define or limit the scope or intent of the provisions of this Contract.

(f) The provisions of this Contract, including all exhibits and attachments, shall be binding upon and inure to the benefit of the parties and their respective successors and any permitted assignees.

**2. CHANGES**

(a) Only the Procurement Representative has 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; (vi) place of performance; (vii) delivery schedule; and (viii) terms and conditions of this Contract required to meet ULA's obligations to its customers. 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 may require additional contract scope to meet ULA's Customer contract requirements. CONTRACTOR agrees to negotiate any additional scope necessary to meet ULA Customer contract objectives.

(d) 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.

(e) The parties shall mutually agree to any other changes not specifically identified in (a) – (c).

### **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 conflicts of law provisions. 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. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

(c) Any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulation (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 quasi-judicial agencies of the Federal Government.

(d) 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 CONTRACTOR's technical and quality specifications, drawings, plans, procedures, reports, and other 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 cooperate with, and provide access to, regulatory agencies and authorities acting in an enforcement or compliance role. 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 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 disqualified from receiving federal government contracts, meaning that it is not an excluded party as recorded in the System for Award Management (SAM) exclusion file available at SAM.gov. CONTRACTOR agrees to notify ULA immediately upon learning that it or any of its affiliates and/or Subcontractors have been included or proposed for inclusion in the exclusion file published at SAM.gov.

### **6. ETHICAL BUSINESS PRACTICES**

CONTRACTOR is responsible for maintaining an ethics and compliance program that is consistent with ULA's Supplier Code of Conduct (available on ULA's Supplier website, <https://www.ulalaunch.com/resources/doing-business-with-ula>), as appropriate for its business, throughout the performance of this Contract. CONTRACTOR shall ensure that persons performing work under this Contract are aware of the importance of ethical behavior and comply with ULA's Supplier Code of Conduct. If, at any time, Contractor

becomes aware of a violation of the Supplier Code of Conduct in connection with this Contract, CONTRACTOR agrees to notify ULA, either through communication with ULA's Procurement Representative, or through ULA's Confidential Ethics Helpline, at 1-800-511-4173. Nothing contained herein shall be construed to alter CONTRACTOR's requirements to comply with FAR 52.203-13 Contractor Code of Business Ethics and Conduct.

## **7. CONFLICTS OF INTEREST**

(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. CONTRACTOR is responsible for determining, in good faith, whether its activities or relationships, or those of its employees, present or could present a conflict of interest. CONTRACTOR shall immediately notify ULA of any change in circumstances that creates an actual, apparent, or potential conflict of interest. Prohibited conflicts of interest include those described in FAR Part 9.5.

(b) For the purposes of this clause, a conflict of interest exists if: (i) because of other business or organizational activities or relationships (including relationships with ULA's customers or competitors), CONTRACTOR is unable to render impartial advice or assistance to ULA, or CONTRACTOR's objectivity in performing the Work under this Contract is otherwise impaired; or (ii) an employee of CONTRACTOR performing Work under the Contract has a financial interest, personal activity, or relationship that impairs that employee's ability to act impartially on behalf of CONTRACTOR in the performance of the Contract.

## **8. 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. The substance of this subparagraph shall be flowed down to Subcontractors.

(b) CONTRACTOR certifies that only U.S. Persons, as defined in 22 CFR 120.15, will be recipients of subject data, services, software and/or hardware, and 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 approval received from ULA, to ensure that the appropriate export authorizations are in place. CONTRACTOR shall not distribute, transfer, or transmit any export controlled item, information or services (even if incorporated into other products), except in compliance with applicable export laws and authorities. CONTRACTOR further certifies that it has a US-based information technology system with access controls to prevent access to subject data by Foreign Persons. All work pursuant to this Contract shall be performed in the United States. The substance of this subparagraph shall be flowed down to Subcontractors.

(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. CONTRACTOR's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause. Nothing in this Contract changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations regarding export control. CONTRACTOR should resolve any questions regarding compliance with the ITAR or EAR, including export classification determinations, by consulting with its Empowered Official, other internal global trade resources, or counsel, as applicable. Contractor may also consult with the Department of State regarding any questions relating to compliance with the ITAR, or with the Department of Commerce regarding any questions relating to compliance with the EAR.

(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. The substance of this subparagraph shall be flowed down to Subcontractors.

(f) The CONTRACTOR agrees to provide timely and accurate reporting of fees and commissions paid related to Part 130 of the ITAR, when applicable. CONTRACTOR certifies that, except as otherwise reported to ULA, it has not paid, or offered, nor agreed to pay, and will not pay, offer, or agree to pay, in respect of any sale for which an export license or approval is required, political contributions, fees or commissions in amounts as specified in 22 CFR 130.9. 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) ULA has joined with the U.S. Customs Service in the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Suppliers are advised that shipments through U.S. Importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. Contact the ULA Procurement Representative identified in the solicitation for assistance in identifying transportation companies that are validated under the C-TPAT program.

(j) 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. Any limitation of liability in this Contract shall not apply to this clause.

## **9. FORCE MAJEURE**

(a) Neither ULA nor CONTRACTOR shall be liable for any failure of performance due to events beyond their reasonable control and without their fault or negligence. Such events include: 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. In all cases, the affected party shall use reasonable efforts to avoid or minimize all such failures.

(b) In order to be excused from performance under subparagraph (a) above, CONTRACTOR shall, promptly upon the start of the qualifying event, notify ULA in writing and provide 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 a description of efforts CONTRACTOR will make to minimize the length of delay. Upon the end of the event, CONTRACTOR shall submit a written notice stating the impact to the schedule and evidence justifying the length of the delay. At ULA's option, the Contract may be completed with such adjustments to delivery schedule as are reasonably required by the delay or this Contract may be terminated by ULA without additional cost except for payment for Work completed prior to the commencement of the delay.

## **10. 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) Following a termination for default of this Contract, CONTRACTOR shall be compensated at the Contract price only for Work actually delivered and accepted. In addition, 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 ULA's Customer has an interest. Payment for such deliverables 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 deliverables 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.

(c) Upon the occurrence and during the continuation of a default, ULA may exercise any and all rights and remedies available to it under applicable law and equity including, without limitation, 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 governed by the "Termination for Convenience" clause.

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

## **11. TERMINATION FOR CONVENIENCE**

(a) ULA may terminate part or all of this Contract for its convenience by giving written notice to CONTRACTOR. Such termination shall not constitute default.

(b) Upon termination, in accordance with ULA's 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, except where such other provision governing termination liability has been agreed to between the parties and incorporated into this Contract.

(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.

## **12. 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.

## **13. 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.

## **14. 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.

## **15. 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 difficulty in performing the Work, CONTRACTOR shall timely notify ULA, in writing, giving pertinent details. This notification shall not change any performance or 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 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) Throughout the Contract's period of performance, CONTRACTOR shall monitor and promptly notify ULA of 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.

## **16. 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 (place of shipment, as described in the Uniform Commercial Code Section 2-319).

## **17. INSPECTION AND ACCEPTANCE**

(a) ULA and ULA's Customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. CONTRACTOR shall provide, and shall require its Subcontractors to provide, reasonable support, access, and assistance necessary for the safe and convenient inspection and test of the Work without additional charge.

(b) No inspection, test, payment, or acceptance of Work by ULA shall relieve CONTRACTOR of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract or impair any rights of ULA. 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 and return such Work for credit or refund; or (iii) require CONTRACTOR, at CONTRACTOR's expense, to make all repairs, modifications, or replacements necessary to conform the Work with Contract requirements.

(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 excess Work is manufactured with reference to ULA's proprietary information or materials, CONTRACTOR agrees that, pursuant to the "Protection of Confidential Information" and, as appropriate the "Intellectual Property" 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.

## **18. COUNTERFEIT PARTS**

(a) For the purposes of this clause:

(i) "Counterfeit Part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(ii) "Electronic Part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly.

(b) Counterfeit Parts consist of items delivered under this Contract that are at the lowest level of separately identifiable items (e.g. articles, components, goods, and assemblies).

(c) CONTRACTOR shall not deliver Counterfeit Parts to ULA under this Contract.

(d) CONTRACTOR shall only purchase parts and material, including without limitation, Electronic Parts 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. Parts shall not be acquired from independent distributors or brokers unless approved in advance in writing by ULA.

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

(f) 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.

(g) To the extent that this Contract involves delivery of parts, CONTRACTOR shall develop and implement policies and procedures to eliminate Counterfeit Parts from CONTRACTOR's supply chain, including training of personnel; inspection and testing; mechanisms to enable traceability of parts to OCMs/OEMs; methodologies to identify suspect Counterfeit Parts rapidly; and flow down of Counterfeit Parts avoidance and detection requirements to Subcontractors.

(h) In the event that Work delivered under this Contract constitutes or includes Counterfeit Parts, CONTRACTOR shall, at its expense, promptly replace such Counterfeit Parts with genuine parts 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 Parts including, without limitation, ULA's costs of removing Counterfeit Parts, of installing replacement parts and of any testing necessitated by the reinstallation of parts after Counterfeit Parts have 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.

(i) 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 Counterfeit Parts. Any limitation of liability in this Contract shall not apply to this clause.

(j) If CONTRACTOR is providing Electronic Parts, CONTRACTOR makes the following certification: Acceptance of this Contract constitutes confirmation by CONTRACTOR that it is the Original Equipment Manufacturer (OEM)/Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the Work herein procured. CONTRACTOR further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If CONTRACTOR is not the OEM/OCM or a franchised or authorized distributor, CONTRACTOR confirms by acceptance of this Contract that it has been authorized in writing to procure from the OEM/OCM or a franchised or authorized distributor of the OEM/OCM.

(k) CONTRACTOR shall include paragraphs (a) through (g), (j) and this paragraph (k) 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.

## **19. 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 ULA's Customers for the period set forth in the Maintenance of Records clause of this Contract. 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, change in status, 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, change, 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 to ULA within fifteen (15) days from receipt.

(f) CONTRACTOR shall ensure that persons performing work under this Contract are aware of their contribution to product or service conformity and their contribution to product safety.

## **20. 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 and quality records



pertaining to its performance of the Work. CONTRACTOR shall retain such records for six (6) 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.

## **21. PROTECTION OF CONFIDENTIAL INFORMATION**

(a) 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, except as authorized by any Confidentiality Agreement.

(b) Unless there is a Confidentiality Agreement in effect between the parties, 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 which is incorporated into this Contract.

## **22. 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.

## **23. PUBLIC 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.

## **24. COMMUNICATION WITH ULA'S CUSTOMER**

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

## **25. INTELLECTUAL PROPERTY**

(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 including but not limited to analysis and/or testing in support of ULA's requirements..

(e) 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 section, (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.

(f) 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. 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. Any limitation of liability in this Contract shall not apply to this paragraph.

## **26. FURNISHED PROPERTY**

(a) ULA may provide to CONTRACTOR property owned by either ULA or ULA's Customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain with ULA or ULA's 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.

(e) Any Government Property clause contained in this Contract shall apply in lieu of paragraphs (a) through (d) above with respect to Government Furnished Property, or property to which the Government takes title under this Contract.

## **27. PROHIBITED SOFTWARE**

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

(b) As used herein, "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, Affero GPL, Reciprocal Public License (RPL), the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, Eclipse Public License, Creative Commons CC-BY-SA, IBM Public 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 provide or otherwise deliver to ULA, any Prohibited Software in connection with this Contract.

## **28. CONTRACTOR IDENTIFICATION**

(a) CONTRACTOR personnel and its Subcontractors working at ULA or ULA's 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 ULA's 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.

## **29. 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 or ULA's Customer.

(b) CONTRACTOR shall contact ULA's Ethics Helpline, 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.**

## **30. 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 he/she 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.

## **31. NO SOLICITATION**

During the course of this Contract, if working within ULA or ULA's Customer's site(s), CONTRACTOR shall not actively 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

## **32. INSURANCE**

(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 ULA's Customers to perform Work under this Contract.

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

(1) 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. This policy shall include a Waiver of Subrogation in favor of ULA.

(2) 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) If CONTRACTOR is entering ULA premises at the Cape, Vandenberg or any other 'aviation premises', to work on any aviation product or provide aviation-related services, CONTRACTOR shall maintain Aviation Products and Completed Operations Liability for bodily injury or property damage, independent contractor coverage and contractual liability at a limit no less than \$5M each occurrence and in the annual aggregate.

(b) For Work performed under this Contract, despite location of performance, CONTRACTOR and its Subcontractors shall maintain, for the performance of this Contract, Commercial General Liability covering (as applicable) 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. CONTRACTOR also agrees to provide any other insurance ULA may reasonably require or provide proof that CONTRACTOR already maintains such insurance.

(c) For any insurance required by this clause, insurance must be maintained through an insurer with a minimum AM Best rating of A-VII. Additionally, CONTRACTOR shall provide ULA thirty (30) days advance written notice prior to the effective date of any cancellation or material 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. CONTRACTOR shall send a "Certificate of Insurance" showing CONTRACTOR's compliance with these requirements to the Procurement Representative upon request.

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.

### **33. ACCESS TO ULA FACILITIES**

(a) CONTRACTOR and its Subcontractors granted access to ULA facilities shall comply with all site requirements.

(b) CONTRACTOR is required to perform background checks for all personnel who require regular unescorted access to ULA facilities. Background checks must be performed before CONTRACTOR personnel can receive a ULA access badge. Such background checks shall, at a minimum, verify that the individual regular unescorted access to ULA facilities granted logical access to the ULA network meets the following requirements:

- (1) The individual is a U.S. Person as defined in 22 C.F.R. Part 120
- (2) No state criminal felony convictions – 7 year search using Residence/Academic/Employment for past 5 years
- (3) No federal criminal convictions – 7 year search using Residence/Academic/Employment for past 5 years
- (4) The individual is not on the Global Terrorist Watch Alert

### **34. INFORMATION SECURITY AND ACCESS TO ULA NETWORK**

(a) CONTRACTOR Employees Having Access to ULA Information Systems:

(i) If ULA provides CONTRACTOR or any employees of CONTRACTOR with access to ULA Information Technology Systems (ULA IT Systems), including any ULA networks, intranet, VPN access, ULA-provided email, or ULA-provided computer, but excluding any folders or file transfer protocols established specifically for the sharing of information between ULA and third parties, then CONTRACTOR agrees that it, and its employees, will not transfer any ULA or third party proprietary information found on such ULA IT Systems to any non-ULA IT Systems without first consulting ULA Information Technology Security to establish that appropriate controls are in place.

(ii) CONTRACTOR is required to perform background checks for all personnel granted logical access to the ULA network. Such background checks shall, at a minimum, verify that the individual granted logical access to the ULA network meets the requirements set forth in clause 33 (b).

(b) Adequate Controls for CONTRACTOR Information Systems:

CONTRACTOR shall apply appropriate safeguarding requirements and procedures to protect any CONTRACTOR Information Systems that process, store, or transit any information, not intended for public release (including any proprietary, confidential, or trade secret information, as well as any information subject to other limitations on dissemination), that is generated for, or provided by or on behalf of ULA or ULA's Customer under this Contract. Such safeguarding measures shall, at a minimum, comply with the applicable FAR/DFARS clauses regarding the safeguarding of information incorporated into this Contract unless ULA provides additional guidance, in writing, regarding the measures that should be applied.

### **35. PAYMENTS, TAXES, AND DUTIES**

(a) Unless otherwise provided, terms of payment shall be net sixty (60) 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 identified by CONTRACTOR through any means.

(c) ULA may at any time deduct or set off CONTRACTOR's claims for money due or to become due from ULA against any claims that ULA has or may have arising out of this Contract or any other contract between the parties, including the value of any prepaid Work rejected or returned for nonconformance.

(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.

(f) CONTRACTOR shall not include any export controlled information, covered defense information (if applicable), or any other information whose release is otherwise restricted by federal law or regulation in its invoices.

### **36. 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.

### **37. 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
- Enabling Customer Insight and Access
- Export Control
- Independent Contractor Relationship
- Information of ULA
- Information Security and Access to ULA Network
- Insurance
- Intellectual Property
- Maintenance of Records
- Prohibited Software
- 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.

### **38. WARRANTY**

(a) CONTRACTOR 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.

(b) 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 Parts, 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 or longer as agreed between ULA and CONTRACTOR or as required by any specified shelf-life requirements. 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 at CONTRACTOR's expense. Transportation of replacement Work shall be at CONTRACTOR's expense. If repair or replacement of Work is not timely, ULA may elect to return, repair, replace, or reprocur the Work at CONTRACTOR's expense.

(c) All warranties in this Contract shall run to ULA and ULA's Customers.

(d) The warranties in this Contract are in addition to all other claims, rights, and remedies available to ULA at law.

### **39. INDEMNIFICATION**

CONTRACTOR shall defend, indemnify, and hold harmless ULA, its officers, directors, employees, consultants, agents, affiliates, successors, permitted assigns and customers from and against all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney's fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of CONTRACTOR, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

### **40. ENABLING CUSTOMER INSIGHT AND ACCESS**

(a) CONTRACTOR acknowledges that ULA's Customer may have reserved certain insight and access rights into ULA's performance under ULA's contracts with its customers, and that in order to meet its obligations to ULA's Customer, ULA may require

CONTRACTOR's support and cooperation. If required by ULA, CONTRACTOR shall provide insight into CONTRACTOR tasks and milestones to ULA's Customer ("Customer Insight").

(i) Customer Insight includes:

- (1) Observation and discussion of technical activities
- (2) Access to CONTRACTOR's and its Subcontractors' existing data and documentation
- (3) Meeting attendance, attendance at reviews, tests and compliance evaluations.

(ii) Customer Insight does not include approval/disapproval rights, the right to direct CONTRACTOR action, nor the right to require new data or documents to be created.

(b) Customer Insight may be exercised through ULA's Customer directly, or through support contractors who furnish independent and impartial advice or technical assistance directly to ULA's Customer in support of the Customer's management and oversight of a program or effort. These contractors provide services to ULA's Customer including Advisory and Assistance Services (A&AS), Systems Engineering and Technical Assistance (SETA), Systems Engineering and Integration (SE&I), Independent Verification and Validation (IV&V), or Launch Service Integrating Contractor (LSIC) services. CONTRACTOR agrees to cooperate with such support contractors in the performance of this Contract, subject to coordination with ULA.

## **SECTION II: FAR/DFARS/NFS FLOWDOWN PROVISIONS**

### **A. INCORPORATION OF CLAUSES**

The Federal Acquisition Regulation (FAR) clauses, Defense Federal Acquisition Regulation Supplements (DFARS) clauses, and NASA FAR Supplement (NFS) 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 clause may be accessed electronically at the following address: <https://www.acquisition.gov/far/>

### **B. INTERPRETATION OF TERMS**

As used in the clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.
2. "Contracting Officer" shall mean the U.S. Government Contracting Officer for any ULA government prime contract.
3. "Contractor" and "Offeror" means the CONTRACTOR, as defined in these Terms and Conditions, acting as the immediate (first tier) subcontractor to ULA.
4. "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.

### **C. PRESERVATION OF THE GOVERNMENT'S RIGHTS**

If ULA furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) 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. FLOWDOWN CLAUSES**

(a) 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) (CONTRACTOR's disclosure forms and those of CONTRACTOR's lower tier subcontractors will be provided to ULA.) (Applicable only if the value of this Contract equals or exceeds \$150,000.)

(b) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (Applicable if the 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, with a copy to ULA.) (Applies only if the value of this Contract equals or exceeds \$5.5 Million.)

(c) 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)

(d) 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUNE 2016)(Applicable where CONTRACTOR may have Federal contract information or ULA Proprietary Information residing in or transitioning through its information system. Any reference to Federal contract information shall be interpreted to include ULA Proprietary Information. Any references to the Government shall mean the Government or ULA.)

- (e) 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)
- (f) 52.209-06 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015) (Substitute “Procurement Representative” for “Contracting Officer”, “Administrative Contracting Officer”, and “ACO” throughout this clause. Applies if this Contract exceeds \$35,000 except for the procurement of commercially available off-the-shelf items.)
- (g) 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)
- (h) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (Applies only to CONTRACTS subject to the Equal Opportunity clause).
- (i) 52.222-26 EQUAL OPPORTUNITY (SEP 2016) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended. Paragraph (d) does not apply.)
- (j) 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (Applies only if the value of this Contract equals or exceeds \$150,000) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor).
- (k) 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JULY 2014) (Applies only if the value of this Contract equals or exceeds \$15,000.) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor)
- (l) 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (Applies only if the value of this Contract equals or exceeds \$150,000) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor).
- (m) 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies only if the value of this Contract equals or exceeds \$10,000). (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 3 of Executive Order 13496.)
- (n) 52.222-50 COMBATING TRAFFICKING IN PERSONS (JAN 2019) (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.) (In paragraph (e) insert “and ULA” after “Government”. Communication/notification required under this cause from/to CONTRACTOR to/from the Contracting officer shall be through ULA.)
- (o) 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)
- (p) 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). Any reporting pursuant to this clause shall be submitted through ULA.)
- (q) 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT (MAY 2016) (Insert “or ULA” after “Government” throughout this clause.)
- (r) 1852.246-73 HUMAN SPACE FLIGHT ITEM (MAR 1997)

### **SECTION III: CERTIFICATIONS, REPRESENTATIONS, AND REQUIRED CROSS-WAIVERS**

#### **A. REPRESENTATIONS AND CERTIFICATIONS**

**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) **52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions** (Applies to Contracts that equal or exceed \$150,000.)

(i) CONTRACTOR 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.

(ii) 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 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 CONTRACTOR to whom payments of reasonable compensation were made.

(b) **FAR 52.209-05 Certification Regarding Responsibility Matters.**

(i) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-05):

(1) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) have not, within a three-year period, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(3) are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (2).

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

CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to Equal Opportunity clause (FAR 52.222-26): (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.

(d) **FAR 52.222-25 Affirmative Action Compliance.** CONTRACTOR represents: (i) 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 (ii) 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 one-hundred twenty (120) days from the award of this Contract.

## **B. FEDERALLY-REQUIRED CROSS-WAIVERS**

Federal Regulations may require that ULA extend to CONTRACTOR and its Subcontractors the following reciprocal cross-waivers applicable to launch activity. In consideration for CONTRACTOR's agreement to these cross-waivers, Federal Regulations afford CONTRACTOR certain protections from third party claims. **By Submitting its written offer or accepting any Contract, CONTRACTOR agrees to be bound to each of the required waivers below. Contractor agrees to defend, indemnify, and hold harmless ULA and ULA's Customer from and against any claims, damages, losses, costs, or expenses, including reasonable attorneys' fees, arising out of CONTRACTOR's failure to extend any federally required cross-waivers.**

### **1. WAIVER OF CLAIMS AND ASSUMPTION OF LIABILITY FOR FAA-LICENSED LAUNCH ACTIVITY**

(a) As required by 14 C.F.R. part 440 of the regulations of the Federal Aviation Administration (FAA) of the U.S. Department of Transportation, the reciprocal waiver of claims in this clause between ULA and CONTRACTOR applies when ULA conducts a launch under 51 U.S.C. ch. 509. This reciprocal waiver of claims implements the provisions of §440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This clause applies to ULA's licensed activity, where ULA is the "Licensee" described by the Regulations. In consideration of the mutual releases and promises contained herein, the Parties hereby agree to the provisions contained in subparagraphs (b)-(g):



(b) The following definitions will apply to this clause only:

“Contractors and Subcontractors” means those entities that are involved at any level, directly or indirectly, in Licensed Activities or Permitted Activities, and includes suppliers of property and services, and the component manufacturers of the launch vehicle.

“Customer” means ULA’s Customer or any other customer defined by §440.3 of the Regulations.

“Launch License” means any license issued by the Associate Administrator for Commercial Space Transportation, FAA, to ULA, including all license orders issued in connection with the License, under 51 U.S.C. Subtitle V, chapter 509.

Except as otherwise defined herein, terms used in this Clause and defined in the Regulations shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

(c) Waiver and Release of Claims.

(i) ULA hereby waives and releases claims it may have against CONTRACTOR and each of CONTRACTOR’S Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activity, regardless of fault.

(ii) CONTRACTOR hereby waives and releases claims it may have against ULA, the United States, any Customer, and each of their respective Contractors and Subcontractors, and against any space flight participant, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activity, regardless of fault.

(e) Assumption of Responsibility.

ULA and CONTRACTOR shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. ULA and CONTRACTOR shall each hold harmless and indemnify each other, the United States, any Customer, and the Contractors and Subcontractors of each, and any space flight participant, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(f) Extension of Assumption of Responsibility and Waiver and Release of Claims.

(i) ULA shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs (c)(i) and (e), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against CONTRACTOR and each of its Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless, and indemnify CONTRACTOR and each of its Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(ii) CONTRACTOR shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless and indemnification, as set forth in paragraphs (c)(i(ii)) and (e), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against ULA, the United States, and any Customer, and each of their respective Contractors and Subcontractors, and any space flight participant and to be responsible, hold harmless and indemnify ULA, the United States, and any Customer, and each of their respective Contractors and Subcontractors, and any space flight participant, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(g) Indemnification.

(i) ULA shall hold harmless and indemnify CONTRACTOR and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims that ULA's Contractors, and Subcontractors, or any Customer, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of ULA’s failure to implement properly the waiver requirement of 14 C.F.R. §440.17.

(ii) CONTRACTOR shall hold harmless and indemnify ULA, any Customer, and the United States, and any of their directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims that CONTRACTOR's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of CONTRACTOR’S failure to implement properly the waiver requirement of 14 C.F.R. § 440.17.

(h) Miscellaneous.

(i) Nothing contained herein shall be construed as a waiver or release by ULA or CONTRACTOR of any claim by an employee of ULA or CONTRACTOR, respectively, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(ii) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, the United States, the Contractors and Subcontractors of the United States, any Customer, the Contractors and Subcontractors of any Customer, any space flight participant, and in the case of ULA, CONTRACTOR, any Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(iii) CONTRACTOR and ULA shall each be responsible for such insurance as they deem necessary to protect their respective property. Any such insurance procured by one Party shall provide that the insurers shall waive all rights of subrogation against the other Party and, in the case of insurance procured by ULA, a waiver of subrogation for the benefit of CONTRACTOR's Contractors Subcontractors and, in the case of CONTRACTOR, a waiver of subrogation for the benefit of ULA's Contractors and Subcontractors, ULA's Customers, the United States, and their respective Contractors and Subcontractors and space flight participants.

(iv) This clause shall be governed by and construed in accordance with United States Federal law.

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

(a) This clause applies when Work procured under this Contract is used to provide launch services to NASA in support of a mission unrelated to the International Space Station (ISS). The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for Work done in support of Agreements between Parties involving Science or Space Exploration activities, unrelated to ISS, but which involve a launch not licensed by the FAA. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

(i) "Agreement" refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR 1266.104.

(ii) "Damage" means:

- (1) Bodily injury to, or other impairment of health of, or death of, any person;
- (2) Damage to, loss of, or loss of use of any property;
- (3) Loss of revenue or profits; or
- (4) Other direct, indirect, or consequential Damage;

(iii) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(iv) "Party" means a party to a NASA Space Act agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. For purposes of this cross-waiver of liability, "Party" also means a contractor or subcontractor of a party to such a NASA agreement.

(v) "Payload" means all property to be flown or used on or in a Launch Vehicle.

(vi) "Protected Space Operations" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. Protected Space Operations begins at the signature of the Agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(1) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and

(2) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. Protected Space Operations excludes activities on Earth which are conducted on return from space to develop further a Payload's product or process other than for the activities within the scope of an Agreement for launch services.

(vii) "Related entity" means:

- (1) A contractor or subcontractor of a Party at any tier;

- (2) A user or customer of a party at any tier; or
  - (3) A contractor or subcontractor of a user or customer of a Party at any tier.
- The terms "contractors" and "subcontractors" include suppliers of any kind.

(c) Cross-waiver of liability:

(i) ULA and CONTRACTOR each agree to a waiver of liability pursuant to which each waives all claims against any of the entities or persons listed in paragraphs (c)(i)(1) through (c)(i)(4) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

- (1) A Party;
- (2) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;
- (3) A Related Entity of any of the entities identified in (c)(i)(1) or (c)(i)(2) of this clause; or
- (4) The employees of any of the entities identified in (c)(i)(1) through (c)(i)(3) of this clause.

(ii) CONTRACTOR agrees to extend the cross-waiver of liability as set forth in paragraph (c)(i) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

- (1) Waive all claims against the entities or persons identified in paragraphs (c)(i)(1) through (c)(i)(4) of this clause; and
- (2) Require that their Related Entities waive all claims against the entities or persons identified in paragraph (c)(i)(1) through (c)(i)(4) of this clause.

(iii) For avoidance of doubt, this cross-waiver includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(iv) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

- (1) Claims between a Party and its own Related Entities or between its Related Entities;
- (2) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;
- (3) Claims for Damage caused by willful misconduct;
- (4) Intellectual property claims;
- (5) Claims for damages resulting from failure of a Party to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(ii) of this clause; or
- (6) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(d) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(e) This cross-waiver shall not apply when 51 U.S.C. ch. 509 applies.

### **3. CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (NFS 1852.228-76) (OCT 2012) (DEVIATION)**

(a) This clause applies when Work procured under this Contract is ultimately used to provide launch services to NASA in support of ISS activities. The Intergovernmental Agreement for the ISS contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS. The cross-waiver of liability in this clause is intended to be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(i) "Agreement" refers to any NASA Space Act agreement or contract that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(ii) "Damage" means:

- (1) Bodily injury to, or other impairment of health of, or death of, any person;
- (2) Damage to, loss of, or loss of use of any property;
- (3) Loss of revenue or profits; or
- (4) Other direct, indirect, or consequential Damage.

(iii) "Launch" means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:

- (1) in a suborbital trajectory;
- (2) in Earth orbit in outer space; or
- (3) otherwise in outer space, including activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.

(iv) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth or returning to Earth, which carries Payloads or persons, or both.

(v) "Partner State" includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, The Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor Agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.

(vi) "Party" means a party to a NASA Agreement involving activities in connection with the ISS. For purposes of this cross-waiver of liability, "Party" also means a contractor or subcontractor of a party to such a NASA agreement.

(vii) "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.

(viii) "Protected Space Operations" means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space performed in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA's obligations under these Agreements. It includes, but is not limited to:

- (1) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and
- (2) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. "Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. "Protected Space Operations" excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(ix) "Related Entity" means:

- (1) A contractor or subcontractor of a Party or a Partner State at any tier;
  - (2) A user or customer of a Party or a Partner State at any tier; or
  - (3) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.
- The terms "contractor" and "subcontractor" include suppliers of any kind.

(x) "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(i) ULA and CONTRACTOR each agree to a cross-waiver of liability pursuant to which each waives all claims against any of the entities or persons listed in paragraphs (c)(i)(1) through (c)(i)(4) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

- (1) A Party as defined in (b)(vii) of this clause;
- (2) A Partner State, including the United States of America;
- (3) A Related Entity of any entity identified in paragraph (c)(i)(1) or (c)(i)(2) of this clause; or
- (4) The employees of any of the entities identified in paragraphs (c)(i)(1) through (c)(i)(3) of this clause.

(ii) In addition, CONTRACTOR shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(i) of this clause, to its Related Entities by requiring them, by contract or otherwise, to:

- (1) Waive all claims against the entities or persons identified in paragraphs (c)(i)(1) through (c)(i)(4) of this clause; and
- (2) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(i)(1) through (c)(i)(4) of this clause.

(iii) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(iv) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

- (1) Claims between a Party and its own Related Entities or between its Related Entities;
- (2) Claims made by a natural person (with the exception of Passengers and Commercial Cargo Customers), his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;
- (3) Claims for Damage caused by willful misconduct;
- (4) Intellectual property claims;
- (5) Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its subcontractors or related entities, pursuant to paragraph (c)(2) of this clause;
- (6) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.
- (7) Claims against Passengers or Commercial Cargo Customers.

(d) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(e) This cross-waiver shall not apply when 51 U.S.C. ch. 509 applies.