



**DOC 1 T&M**  
**TIME AND MATERIALS COMMERCIAL SUBCONTRACT/PURCHASE ORDERS**

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**DEFINITIONS**

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

- (a) "Background Intellectual Property" means all Intellectual Property Made by or for a party apart from the performance of Work under this Contract.
- (b) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, that includes these General Provisions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (c) "CONTRACTOR" means the party identified on the face of this Contract with whom ULA is contracting.
- (d) "Foreground Intellectual Property" means all Intellectual Property Made by or for a party in the performance of Work under this Contract.
- (e) "Intellectual Property" means all (i) inventions, discoveries and improvements, (ii) all documented information in whatever form such as information embodied in drawings, 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.
- (f) "Made" means conceived, developed, first produced, or created.
- (g) "Procurement Representative" means the person authorized by ULA's cognizant procurement organization to administer and/or execute this Contract.
- (h) "ULA" means ULA, LLC, as identified on the face of this Contract.
- (i) "Work" means all required labor, articles, materials, supplies, goods, services and deliverable information and materials constituting the subject matter of this Contract.

**1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS**

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

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

## **2. APPROVALS**

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

## **3. 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.

## **4. AUDIT**

At any time or times before final payment, ULA may have CONTRACTOR's invoice or vouchers and statements of cost audited. Any payment may be (i) reduced by amounts found not to have been properly payable or (ii) adjusted for prior overpayments or underpayments.

## **5. 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.

## **6. CHANGES**

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

(b) 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) description of services; (ii) drawings, designs, or specifications; (iii) method of shipping or packing; (iv) place of inspection, acceptance, or point of delivery; (v) time of performance; and (vi) place of performance.

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

(d) If any such change causes a change in the labor mix, or the time required for performance of any part of this Contract, CONTRACTOR may request an equitable adjustment in this Contract price and/or delivery schedule.

(e) 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.

(f) 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.

## **7. COMPLIANCE WITH EXPORT AND IMPORT LAWS**

(a) In performing the obligations of this Contract, the CONTRACTOR shall comply with export, import and sanctions laws, regulations, orders, and authorizations to include without limitation, Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control. Such performance shall apply to the export, re-export and import of controlled technology, data, software, services, and/or hardware. Before exporting or re-exporting any technology, data, software, services and/or hardware, CONTRACTOR must independently verify whether such items are subject to the export, import and sanctions laws, regulations, orders, or authorizations.

(b) If CONTRACTOR is a US Person (as defined in the ITAR) and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles, or furnishing defense services, CONTRACTOR represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program.

## **8. COMPLIANCE WITH LAWS**

(a) In performing this Contract, CONTRACTOR agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, codes and ordinances ("Laws") that may affect performance of this Contract. CONTRACTOR shall indemnify 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 list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

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

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

## **9. 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) becomes insolvent or suffers a material adverse change in financial condition. SELLER 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. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

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

(c) Following a termination for default of this Contract, CONTRACTOR shall be compensated only for Work actually delivered and accepted. Payment for Manufacturing Materials accepted by ULA and for the protection and preservation of property shall be at a price determined by both parties, except that CONTRACTOR shall not be entitled to profit. 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. ULA shall pay the Contract price for Work accepted.

(d) 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.

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

## **10. DISPUTES**

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. 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.

## **11. EXTRAS**

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 the Work is manufactured with reference to ULA's proprietary information or materials, CONTRACTOR agrees that, pursuant to 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.

## **12. FORCE MAJEURE**

(a) Subject to (b) and when mutually agreed by the parties, CONTRACTOR shall be excused from, and shall not be liable for, failure of performance due to one or more of the following qualifying events (such list being exclusive): (i) War; warlike operation; insurrection; riot; fire; explosion; accident; act of God; act of a public enemy; epidemic; and quarantine restrictions; and if (ii) Such event was beyond CONTRACTOR's control and not occasioned by its negligence or default. This Contract will be extended for that period of time attributable to such event.

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

## **13. FURNISHED PROPERTY**

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

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

(c) Except for reasonable wear and tear, CONTRACTOR shall be responsible for, and shall promptly notify ULA of, any loss or damage. Without additional charge, CONTRACTOR shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

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

## **14. GOVERNING LAW AND VENUE**

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

## **15. GRATUITIES/KICKBACKS**

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

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

## **16. INDEMNIFICATION BY CONTRACTOR**

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

(i) "Claims" means all claims, liabilities, damages, losses, and judgments, including costs and expenses and attorney's fees incident thereto, which may be suffered by, accrue against, be charged to or be recoverable from CONTRACTOR by reason of (i) injury to or death of any person or persons due to CONTRACTOR's negligence; (ii) loss of or damage to property of third persons due to CONTRACTOR's negligence; (iii) failure by CONTRACTOR to comply with any applicable law; or (iv) failure by CONTRACTOR to comply with provisions of this Contract. The term Claim also includes any action to establish entitlement to receive indemnification.

(ii) "ULA Indemnitees" means United Launch Alliance, L.L.C., its subsidiaries and all ULA Personnel.

(iii) "ULA Personnel" means officers, directors, personnel, employees, agents, or representatives of United Launch Alliance, L.L.C. and its subsidiaries and their spouses and dependents.

(b) CONTRACTOR will defend, indemnify and hold harmless ULA Indemnitees from and against all Claims arising out of or in any way connected with performance by CONTRACTOR of this Contract, to the extent that such Claims arise due to the fault or negligence of CONTRACTOR or its employees or subcontractors. Such indemnification will be effective upon signing of this Contract and will permanently remain in effect for all such Claims.

(c) Promptly after receipt by ULA Indemnitee of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a Claim in respect of which ULA will seek indemnification (in whole or in part) pursuant hereto, ULA shall notify CONTRACTOR of such Claim in writing.

(d) If CONTRACTOR accepts that the Claim is in its entirety one which CONTRACTOR is required to indemnify ULA, then CONTRACTOR shall assume sole control over the defense of such Claim; provided, however, that (i) ULA shall be entitled to participate in the defense of such Claim and to employ counsel at its own expense to assist in the handling of such Claim; (ii) where ULA is so represented, CONTRACTOR shall keep ULA's counsel informed in the handling of any such Claim; and (iii) ULA shall provide, at CONTRACTOR's request and expense, such assistance and information as is available to ULA for the defense and settlement of such Claim.

(e) If CONTRACTOR does not accept that the Claim is one for which CONTRACTOR is obligated to indemnify ULA, and if the Claim is the subject of a formal legal proceeding, then ULA shall defend and/or settle the Claim in such manner as it may deem appropriate. ULA may either join CONTRACTOR as a party to the legal proceeding in which the Claim is being considered, or may bring a subsequent legal action to seek indemnification to the extent permitted by provision of the Contract.

#### **17. INDEPENDENT CONTRACTOR RELATIONSHIP AND CONTRACTOR PERSONNEL**

CONTRACTOR is an independent contractor for all purposes. CONTRACTOR shall have complete control over the performance of, and the details for accomplishing, the terms of the Contract. In no event shall CONTRACTOR or its agents, representatives or employees be deemed to be agents, representatives or employees of ULA. CONTRACTOR's employees shall be paid exclusively by CONTRACTOR for all Work performed. CONTRACTOR shall comply with all requirements and obligations relating to such employees under federal, state and local law. Such compliance shall include, but not be limited to, laws regarding minimum wages, social security, unemployment insurance, federal and state income taxes and workers' compensation insurance.

#### **18. INFORMATION OF ULA**

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

#### **19. INFORMATION OF CONTRACTOR**

ULA personnel are not authorized to receive any information in confidence from CONTRACTOR. All communications of any kind from CONTRACTOR to ULA, accordingly, shall be deemed to be on a non-confidential basis unless CONTRACTOR and ULA have executed a Confidentiality Agreement protecting CONTRACTOR information.

#### **20. INSPECTION AND ACCEPTANCE**

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

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

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

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

#### **21. INSURANCE/ENTRY ON ULA PROPERTY**

(a) In the event that CONTRACTOR, its employees, agents, or subcontractors enter the site(s) of ULA or its customers for any reason in connection with this Contract then CONTRACTOR and its subcontractors shall procure and maintain for the performance of this Contract the following types of insurance:

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

(b) CONTRACTOR may also have to provide other insurance as ULA may reasonably require.

(c) CONTRACTOR shall provide ULA thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of CONTRACTOR's required insurance, provided however such notice shall not relieve CONTRACTOR of its obligations to carry the required insurance. At Contract inception and annually thereafter, CONTRACTOR shall send a "Certificate of Insurance" showing CONTRACTOR's compliance with these requirements. 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.

(d) In addition, CONTRACTOR and its subcontractors shall comply with all site requirements.

(e) "Subcontractor" as used in this clause shall include CONTRACTOR's subcontractors at any tier. CONTRACTOR's obligations to carry insurance coverages are freestanding and are not affected by any other language in this Contract.

## **22. INTELLECTUAL PROPERTY AND INDEMNITY**

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

a) All Foreground Intellectual Property Made by or for CONTRACTOR, either alone or with others, in the performance of this Contract will be (i) the exclusive property of ULA ("Assigned Intellectual Property"), (ii) delivered to ULA promptly upon request, and (iii) protected and used in accordance with paragraph 18, INFORMATION OF ULA.

(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, 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, suppliers, and subcontractors, an irrevocable, nonexclusive, 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 would otherwise interfere with ULA's or ULA's customers', subcontractors', or suppliers' use or enjoyment of the Work being delivered under this Contract or the Assigned Intellectual Property.

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

(f) CONTRACTOR shall defend and hold harmless and shall indemnify ULA, its customers, agents, employees, and contractors 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 Assigned 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 Assigned Intellectual Property provided hereunder in any suit is held to constitute 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 Assigned Intellectual Property, or (ii) modify the same to make it non-infringing, or (iii) replace the same with Work and/or Assigned 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 Assigned Intellectual Property or unauthorized combination with other articles, materials, supplies, goods or Intellectual Property.

(g) The license granted to ULA and its customers hereunder shall survive expiration or termination of the Contract.

### **23. MAINTENANCE OF RECORDS**

(a) CONTRACTOR shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate CONTRACTOR's charges hereunder. Such records shall include, but not be limited to, applicable time sheets, job cards, phone bills, travel receipts and job summaries. CONTRACTOR shall retain such records for three (3) years from final payment of this Contract.

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

### **24. PACKING AND SHIPMENT**

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(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.

### **25. PAYMENT, TAXES, AND DUTIES**

(a) Payment to CONTRACTOR shall be made upon the basis of invoices submitted in such form and detail as ULA may require. ULA shall make payment within thirty (30) days after receipt and approval of such invoices.

(b) Payment for labor shall be computed by multiplying the appropriate hourly rate(s), set forth in this Contract by the number of direct labor hours performed. Rates shall include wages, overhead, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.

(c) No overtime will be paid by ULA unless approved in advance by the Procurement Representative. If no overtime rates are provided in this Contract, overtime rates will be negotiated.

(d) Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts actually paid by CONTRACTOR to lower-tier subcontractors.

(e) CONTRACTOR shall procure required materials at the most advantageous prices available. Cash and trade discounts, rebates, allowances, credits, and other amounts, which have been accrued to the benefit of CONTRACTOR, are for the account of ULA. All residual material shall belong to ULA who shall provide disposition instructions to the CONTRACTOR.

(f) ULA may audit invoices and substantiating books and records as ULA deems necessary. Each payment made shall be subject to reduction to the extent of amounts which are found by ULA or CONTRACTOR not to have been properly payable, and shall also be subject to reduction for overpayments. CONTRACTOR shall promptly notify ULA of any such overpayments found by CONTRACTOR.

(g) 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 item(s) purchased qualify for tax exemption, then an exemption certificate will be presented from ULA to vendor.

### **26. 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.

**27. PROHIBITED SOFTWARE**

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

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

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

(d) Unless CONTRACTOR has obtained ULA's prior written consent, which ULA may withhold in its sole discretion, CONTRACTOR shall not use in connection with this Contract, or deliver to ULA, any Prohibited Software.

**28. QUALITY CONTROL SYSTEM**

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

(b) All quality records to Work performed under this Contract shall be kept complete and available to ULA and its customers.

**29. 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.

**30. RIGHTS AND REMEDIES**

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.

**31. SEVERABILITY**

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.

**32. 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, 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.

**33. SURVIVABILITY**

(a) If this Contract expires, is completed, or is terminated, CONTRACTOR shall not be relieved of those obligations contained in the following clauses:

- Compliance with Export and Import Laws
- Compliance with Laws
- Disputes
- Governing Law and Venue
- Indemnification by CONTRACTOR



Independent Contractor Relationship and CONTRACTOR Personnel  
Information of ULA  
Insurance/Entry on ULA Property  
Intellectual Property and Indemnity  
Maintenance of Records  
Prohibited Software  
Release of Information  
Warranty

(b) Any Confidentiality Agreement entered into by the parties applicable to this Contract.

### **34. TERMINATION FOR CONVENIENCE**

(a) ULA may terminate part or all of this Contract for its convenience by giving written notice to CONTRACTOR.

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

(c) CONTRACTOR's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

(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.

### **35. TIMELY PERFORMANCE**

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

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

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

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

### **36. TRAVEL COSTS**

CONTRACTOR travel expenses shall be reimbursed by ULA for expenses that are authorized under this Contract and approved by the ULA designated Project Manager in advance of the requested travel. Travel reimbursement shall be in accordance with the GSA per diem guidelines as established on the GSA website at [www.gsa.gov](http://www.gsa.gov) <<http://www.gsa.gov/>>. ULA shall not reimburse any of the following travel expenses: alcohol, entertainment, telephone bills, airfare other than coach airfare, rental cars larger than midsize, laundry or per diem expenses that exceed GSA per diem rates unless approved in advance by the ULA designated Project Manager. Any travel expenses that exceed per diem rates must be approved in advance under the 300% per diem rule by the ULA designated Project Manager. To be eligible for reimbursement, copies of travel expense receipts \$50 or greater must be submitted with invoices for payment. Reimbursement shall be for actual and reasonable expenses only without any markup rate.

### **37. WAIVERS**

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.

### **38. WARRANTY**

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

(b) CONTRACTOR warrants that it will perform the services under this Contract with the degree of high professional skill and sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.

(c) CONTRACTOR warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable, statement of work, specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of two (2) years. If any non-conforming Work is identified within the warranty period, CONTRACTOR, at ULA's option, shall promptly repair, replace, or reperform the non-conforming Work. Transportation of replacement Work, return of non-conforming Work, and reperformance of Work shall be at CONTRACTOR's expense. If repair, or replacement, or reperformance of Work is not timely, ULA may elect to return, reperform, repair, replace, or reprocur the Work at CONTRACTOR's expense. All warranties shall run to ULA and its customers.