



DOC 77

TERMS AND CONDITIONS FOR FIXED-PRICE CONSTRUCTION SUBCONTRACTS IN SUPPORT OF ULA
STANDARD SERVICES

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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. Unless specifically enumerated, the Contract does not include other documents, including but not limited to, bidding requirements, advertisement or invitation to bid, instructions to bidders, sample forms, the CONTRACTOR's bid or portions of addenda relating to bidding requirements.
- (c) "CONTRACTOR" means the Party identified on the face of the Contract with whom ULA is contracting. CONTRACTOR shall mean the same as supplier, seller, vendor or other such type designation.
- (d) "Dispute(s)" means any dispute, claim, controversy, or proceeding of whatever nature arising out of, in connection with, or relating to the Contract, or breach thereof, whether sound in contract, tort, or otherwise.
- (e) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- (f) "Foreground Intellectual Property" means all Intellectual Property Made by or for a party in the performance of Work under this Contract.
- (g) "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.

- (h) "Made" means conceived, developed, first produced, or created.
- (i) "Procurement Representative" means the person authorized by ULA's cognizant procurement organization to administer and/or execute this Contract.
- (j) "Project" shall mean the building, facility or other improvements for which the CONTRACTOR is to perform the Work under the Contract
- (k) "Site" shall mean the physical place or places where the construction work called for in this Contract will remain when work on it has been completed. It includes other adjacent or nearby property used by the CONTRACTOR or Subcontractors in such construction, which can reasonably be said to be included in the Site.
- (l) "Subcontract" means all contracts placed by the CONTRACTOR or lower tier subcontractors for the specific purpose of performing any portion of the Work under this Contract, and includes but is not limited to purchase orders and changes, or modifications thereto.
- (m) "Subcontractor" means CONTRACTOR's subcontractors, vendors, or suppliers at any tier.
- (n) "Substantial Completion of the Work", or of a designated portion, occurs at Initial Operational Capability, which is the date upon which all functional testing is complete and validates that all systems are fully functional and operating in accordance with the Contract specifications. This date shall be confirmed by a Certificate of Substantial Completion signed by ULA and the CONTRACTOR.
- (o) "ULA" means United Launch Alliance, LLC, as identified on the face of the Contract.
- (p) "ULA's Customer" means any Government or commercial agency/entity ULA is under or will be under contract to support.
- (q) "Work" means the construction and services required by this Contract whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by CONTRACTOR to fulfill the CONTRACTOR's obligations.

1. ACCEPTANCE, MERGER AND SEVERABILITY

- (a) CONTRACTOR's execution of Contract written 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, proposals, term sheets, 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 or unlawful, 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. GOVERNING LAW AND LEGAL NOTIFICATION

(a) This Contract and any Dispute 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.

(b) 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.

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

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, which shall not be unreasonably withheld. Notwithstanding the foregoing, CONTRACTOR may assign its rights or interests in this Contract to an entity that purchases all or substantially all of the assets of CONTRACTOR without obtaining prior consent, provided that CONTRACTOR provides ULA with notice of the assignment. No assignment by CONTRACTOR will in any way operate to enlarge, alter, or change any obligation of ULA under this Contract.

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.

Any permitted assignment under this provision shall not act to release CONTRACTOR from its obligations under this Contract.

4. 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.

5. CHANGES

(a) Only the ULA Procurement Representative has the authority to make changes to this Contract. All changes must be in writing. All contractual notices to be furnished by CONTRACTOR to ULA shall be in writing and delivered to the ULA Procurement Representative.

(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:

- (1) Drawings, designs, processes, or specifications
- (2) Description of services
- (3) Inspection, delivery, or acceptance methods and/or schedules; and

- (4) Work schedules or time of performance (i.e., hours of the day, days of the week, etc.)
- (5) Terms and conditions of this Contract required to meet ULA's obligations to its customers

CONTRACTOR must request any equitable adjustment to schedule or cost under this clause within thirty (30) days from the date of receipt of the written change order from ULA. A request for an equitable adjustment to cost under this clause must only request actual, allowable, reasonable, allocable and substantiated costs. 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, and subject to the CONTRACTOR's timely request for an equitable adjustment and the request and supporting documentation containing sufficient detail to the satisfaction of ULA, 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. 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.

(c) ULA may require additional contract scope to meet ULA's Customer contract requirements. CONTRACTOR agrees to negotiate in good faith any additional scope necessary to meet ULA Customer contract objectives.

(d) Any other changes not specifically identified in (b) and (c) shall be mutually agreed to and executed by the parties.

(e) Prior to the issuance of a change order under this Contract, ULA may solicit from the CONTRACTOR written agreement as to the maximum (in the case of an increase) or minimum (in the case of a decrease) adjustment to be made in the price and/or in the schedule (or time of performance), by reason of the change. ULA may also solicit such agreement on limitations on the adjustments to any other provisions of the Contract which may be subject to equitable adjustment by reason of the change. The CONTRACTOR shall promptly submit a "not-to-exceed" (or "no-less-than") amount or maximum (or minimum) schedule adjustment when so requested by ULA. Any such written agreement shall then be cited in the change order and upon its issuance shall be deemed to become part of the Contract. In no event shall the definitive equitable adjustment exceed the maximum (or be less than the minimum) price and/or delivery schedule (or time of performance) adjustments so established, nor otherwise be inconsistent with other adjustment limitations so established. Except with respect to such limitations, nothing contained herein shall affect the right of the Parties to an equitable adjustment by reason of the change, pursuant to this clause.

(f) ULA engineering and technical personnel 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. Such actions shall not be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for a Claim. No reimbursement shall be made for any extra work or material unless the same has been ordered in writing by the authorized ULA Procurement Representative.

(g) Unless expressly stipulated elsewhere in the Contract as being excepted from this provision, wherever the Contract provides for submittal of designs, components, processes, or other items for review or approval by ULA, such reviews or approvals shall not be construed as a complete check as to the adequacy of said design or item, nor as an agreement that the design or items will meet the requirements of the Statement of Work, nor as any change to the requirements of the Statement of Work. Such reviews and approvals shall in no way relieve the CONTRACTOR of the responsibility for any error or deficiency which may exist in the submitted design or other items, as the CONTRACTOR shall be responsible for meeting all the requirements of the contract.

(h) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause, including a "Dispute," shall excuse the CONTRACTOR from proceeding with this Contract as changed.

(i) Minor Changes in the Work. When specifically stated in the Contract, the ULA Procurement Representative will have authority to order minor changes in the Work without adjustment in the Contract Price or extension of the Contract Construction Schedule. The threshold, if any, for no cost changes will be referenced in the Contract. Such changes shall be effected by written order and shall be binding on ULA and CONTRACTOR. CONTRACTOR shall carry out such written orders promptly.

6. DISPUTES

(a) WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, CONTRACTOR shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If CONTRACTOR continues to perform, ULA shall continue to make payments in accordance with the Contract.

(b) DIRECT DISCUSSIONS. If the Parties cannot reach resolution on a matter relating to or arising out of the Contract, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the dispute remains unresolved within a reasonable time from the date of first discussion, the Parties may submit such matter to the dispute resolution procedures described below.

(c) MEDIATION. If direct discussions pursuant to Paragraph (b) do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. Either Party may terminate the mediation at any time after the first session, and the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties. The mediation shall be non-binding.

(d) Any Dispute that is not disposed of by mutual agreement or alternative dispute resolution may be decided by recourse to an action at law or in equity. **Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.**

(e) MULTIPARTY PROCEEDING. The Parties agree that all Parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

7. COMPLIANCE WITH LAWS

(a) In performing this Contract, CONTRACTOR agrees to give all notices and comply with all applicable local, state, and federal laws, orders, rules, regulations, codes and ordinances ("Laws") and all licenses issued in connection with the performance of this Contract that may affect performance of this Contract. CONTRACTOR shall not knowingly take any action that would cause ULA to be in violation of any such laws, regulations, or licenses. CONTRACTOR shall cooperate with, and provide access to, regulatory agencies and authorities acting in an enforcement or compliance role. CONTRACTOR shall, (unless otherwise specified in Contract documents), without expense to ULA, obtain all licenses and permits required for the Work. CONTRACTOR shall be responsible for all defense costs, fines, penalties or other sanctions and remedial costs based on CONTRACTOR's failure to comply with applicable laws, rules or regulations which are CONTRACTOR's responsibility under the Contract. CONTRACTOR shall indemnify, defend and hold harmless ULA against any liability, fine or penalty that may be imposed upon ULA as a result of CONTRACTOR's failure to comply with such Laws.

(b) CONTRACTOR represents 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, any controlling owner, or any of its Subcontractor or affiliates performing work on this Contract have been excluded or proposed for exclusion from federal contracting in the exclusion file published at SAM.gov.

(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 as amended and regulations promulgated thereunder, or its State approved counterpart.

8. 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 the 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.

9. 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.

(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.

10. CONSTRUCTION SCHEDULE

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

(b) Unless instructed by ULA in writing, CONTRACTOR shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the CONTRACTOR or ULA.

(c) CONTRACTOR shall, prior to commencement of Work, prepare and submit for approval a practicable construction schedule and report ("Construction Schedule" or "Contract Construction Schedule"), showing the order in which the CONTRACTOR proposes to carry on the Work, the date on which it will start the several salient features of the Work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The Construction Schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion at any time.

(d) CONTRACTOR shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to ensure the performance of the Work in accordance with the approved Construction Schedule. If, in the opinion of ULA, CONTRACTOR falls behind the Construction Schedule, CONTRACTOR shall take such steps as may be necessary to improve its progress, and ULA may require it to increase the number of shifts, overtime operations, days of work, and/or the amount of construction equipment at no additional cost to ULA. Any direction issued to the CONTRACTOR to provide premium labor in any form must first be coordinated with and approved by the Procurement Representative.

(e) If CONTRACTOR is delayed at any time in the commencement or progress of the Work by any unforeseeable cause beyond the reasonable control of the CONTRACTOR, except financial inability to perform, CONTRACTOR shall be entitled to an equitable extension of the Date of Substantial Completion, the Date of final completion or an equitable extension of time in accordance with the Changes clause. Examples of causes beyond the control of CONTRACTOR include, but are not limited to, the following: acts or omissions of ULA or Others; changes in the Work or the sequencing of the Work ordered by ULA which CONTRACTOR cannot reasonably accommodate without modifying the Schedule of Work, or arising from decisions of ULA that impact the time of performance of the Work which CONTRACTOR cannot reasonably accommodate without modifying the Schedule of Work; transportation delays not reasonably foreseeable; labor disputes not involving CONTRACTOR or its Subcontractors impacting the Project; fire, terrorism, epidemics, pandemics, adverse governmental actions, adverse weather conditions not reasonably anticipated for the area in which the Work is being performed, encountering Hazardous Materials, concealed or unknown conditions; or delay authorized by ULA under Section 37. CONTRACTOR acknowledges and agrees that adjustments in the Schedule of Work will not be permitted if such delay (i) is caused by CONTRACTOR, or (ii) could have been limited or avoided by CONTRACTOR's timely notice to ULA of the delay.

(f) In addition, if the CONTRACTOR incurs additional costs as a result of a delay that is caused by acts or omissions of ULA or other changes in the Work or the sequencing of the Work ordered by ULA, or arising from decisions of ULA that impact the time of performance of the Work, discovery of Hazardous Materials, or concealed or unknown conditions, delay authorized by ULA under Section 37 the CONTRACTOR shall be entitled to an equitable adjustment in accordance with Changes clause of the Contract.

(g) Whenever the CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the performance of this Contract, the CONTRACTOR shall immediately give Notice thereof, including all relevant information with respect thereto, to the Procurement Representative. The CONTRACTOR agrees to insert the substance of this paragraph in any Subcontract hereunder as to which a labor dispute may delay the timely performance of the Contract, with notice of all relevant information concerning such dispute to be provided to the next higher tier Subcontractor or ULA

(h) ULA may undertake or award other contracts for additional work to be performed in connection with or in or about the work under the Contract. The CONTRACTOR shall cooperate with ULA and its other CONTRACTORS and coordinate CONTRACTOR work activities with the activities of ULA personnel and other CONTRACTORS so that all work may be promptly and properly performed without undue interference or delay. The CONTRACTOR shall afford ULA and its other CONTRACTORS' reasonable opportunity for the timely execution of their work.

11. DIFFERING SITE CONDITIONS

(a) If in the performance of the Work the CONTRACTOR finds latent, concealed or subsurface physical conditions which materially differ from the conditions the CONTRACTOR reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in the Contract, CONTRACTOR shall promptly, and before the conditions are disturbed, but in no event later than 48 hours after discovery, give a written notice to the Procurement Representative of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

(b) If after the commencement of the Work, hazardous conditions, including hazardous materials, are discovered, that could pose a risk to life, health or the environment, the CONTRACTOR shall immediately stop Work in the affected area and report the condition to ULA. Upon receipt of such report, ULA shall take appropriate measures to further assess the site condition and will meet and confer with the CONTRACTOR to mutually agree upon a course of action. The CONTRACTOR shall resume Work in the affected area after 1) the hazard has been removed or rendered harmless, or 2) alternative safety and health measures have been implemented allowing continuation of the Work.

(c) The ULA Procurement Representative shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and cause an increase or decrease in CONTRACTOR 's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment accounting solely for CONTRACTOR increased costs or additional time of performance (with no allowance for profit) may be made under this clause and this Contract modified in writing accordingly.

(d) No request by CONTRACTOR for an equitable adjustment to this Contract under this clause shall be allowed, unless CONTRACTOR has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Procurement Representative upon good cause shown.

(e) No request by CONTRACTOR for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

12. EXPORT CONTROL

(a) Technical data, defense services, software, and/or hardware furnished under or in connection with the Contract are subject to United States ("U.S.") export or import control laws and regulations and may be subject to export or import laws and regulations of other countries. CONTRACTOR agrees to comply with all such laws and regulations, including obtaining the appropriate USG authorization prior to exporting to a Foreign Person, as defined in 22 CFR 120, 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, who are located in the U.S., will be recipients of subject data, services, software, or hardware and that only U.S. Persons shall participate directly with ULA in any manner, including, but not limited to, phone calls, telecons, meetings, or email. If direct participation by Foreign Persons is required, CONTRACTOR shall seek and receive prior written approval 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 ULA data shall only be stored, processed, or transmitted on Information Technology ("IT") systems located in the U.S. with access controls to prevent access to subject data by Foreign Persons. All work pursuant to this Contract shall be performed in the U.S. The substance of this subparagraph shall be flowed down to Subcontractors.

(c) CONTRACTOR certifies that no item delivered under this Contract, or any component thereof, will be sourced from a country or entity subject to U.S. federal sanctions. CONTRACTOR is responsible for monitoring published lists of sanctioned entities to ensure that the prior statement remains accurate throughout Contract performance. If CONTRACTOR becomes aware that any lower tier subcontractor, or the country of origin of a component, becomes subject to sanctions during Contract performance, CONTRACTOR will immediately notify ULA.

(d) 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., International Traffic in Arms Regulations ("ITAR") controlled parts, technical data) or furnishing of defense services, and represents that it maintains an effective export and import compliance program.

(e) 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 Export Administration Regulations ("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.

(f) 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.

(g) 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.

(h) For any shipment exported from the U.S. 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.

(i) 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. CONTRACTOR shall obtain written approval from ULA prior to drop shipping hardware originating from a foreign country. CONTRACTOR's failure to obtain ULA written approval may result in ULA rejecting the shipment upon delivery.

(j) ULA has partnered with U.S. Customs and Border Protection in the Customs - Trade Partnership Against Terrorism ("C-TPAT") program. For imports into the U.S. in support of this Contract, CONTRACTOR shall only utilize customs brokers, freight brokers, freight forwarders, and carriers that are C-TPAT validated by U.S. Customs and Border Protection. This subparagraph shall be flowed down to any authorized Subcontractors, as applicable.

(k) 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.

13. FURNISHED PROPERTY

(Applicable if any property owned by either ULA or ULA's Customer(s) is furnished to the CONTRACTOR under this Contract.)

(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) **Furnished Property.**

(1) ULA shall deliver to the CONTRACTOR, for use in connection with and under the terms of this Contract, the Furnished Property described in the Contract or Specifications together with any related data and information that the CONTRACTOR may request and is reasonably required for the intended use of the property.

(2) If Furnished Property is received by the CONTRACTOR in a condition not suitable for the intended use, the CONTRACTOR shall, upon receipt, notify ULA detailing the facts, and, as directed by the ULA Procurement Representative and at ULA's expense, either repair, modify, return, or otherwise dispose of the property. This provision does not apply to property furnished "as is".

(c) **Changes in Furnished Property.**

ULA may, by written Notice, (i) decrease the Furnished Property provided or to be provided under this Contract, or (ii) substitute other Furnished Property for the property to be provided by ULA or to be acquired by the CONTRACTOR for ULA, under this Contract. The CONTRACTOR shall promptly take such action as ULA may direct regarding the removal, shipment, or disposal of the property covered by such Notice.

(d) **Title in Furnished Property.**

(1) ULA or ULA's Customer shall retain title to all Furnished Property.

(2) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the CONTRACTOR for ULA under this Contract shall pass to and vest in ULA when its use in performing this Contract commences or when ULA has paid for it, whichever is earlier, whether or not title previously vested in ULA.

(3) If this Contract contains a provision directing the CONTRACTOR to purchase material for which ULA will reimburse the CONTRACTOR as a direct item of cost under this Contract –

(a) Title to material purchased from a vendor shall pass to and vest in ULA upon the vendor's delivery of such material; and

(b) Title to all other material shall pass to and vest in ULA upon -
(i) Issuance of the material for use in Contract performance;
(ii) Commencement of processing of the material or its use in Contract performance; or
(iii) Reimbursement of the cost of the material by ULA, whichever occurs first.

(e) Property administration.

(1) The CONTRACTOR shall be responsible and accountable for all Furnished Property provided under this Contract.

(2) The CONTRACTOR shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Furnished Property.

(f) Access. ULA and its designees shall have access at all reasonable times to the premises in which any Furnished Property is located for the purpose of inspecting the Furnished Property.

(g) Risk of loss. Unless otherwise provided in this Contract, the CONTRACTOR assumes the risk of and shall be responsible for, any loss or destruction of, or damage to, Furnished Property upon its delivery to the CONTRACTOR or upon passage of title to ULA under paragraph (d) of this clause and for any other direct, indirect, special, incidental or consequential damages caused to ULA on account of such loss, destruction or damage. However, the CONTRACTOR is not responsible for reasonable wear and tear to Furnished Property or for Furnished Property properly consumed in performing this Contract. Risk of loss of Government Furnished Property shall be in accordance with the Government Property clause contained in Section II.

(h) ULA shall not be liable for breach of contract or otherwise for –

(1) Any delay in delivery of Furnished Property;

(2) Delivery of Furnished Property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Furnished Property; or

(4) Failure to repair or replace Furnished Property for which ULA is responsible.

(i) Final accounting and disposition of Furnished Property. Upon completing this Contract, or at such earlier dates as may be fixed by ULA, the CONTRACTOR shall submit, in a form acceptable to ULA, inventory schedules covering all items of Furnished Property (including any resulting scrap) not consumed in performing this Contract or delivered to ULA. The CONTRACTOR shall prepare for shipment, delivery f.o.b. origin, or dispose of the Furnished Property as may be directed or authorized by ULA. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to ULA as ULA directs.

(j) Abandonment and restoration of CONTRACTOR's premises. Unless otherwise provided herein, ULA:

(1) May abandon any Furnished Property in place, at which time all obligations of ULA regarding such abandoned property shall cease; and

(2) Have no obligation to restore or rehabilitate the CONTRACTOR's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Contract completion).

14. 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 or favorable treatment for ULA, and no kickbacks, shall be offered or given by CONTRACTOR to any employee of ULA, any ULA Customer, any Government entity or employee, or any foreign official, foreign political party, or official thereof.

(b) CONTRACTOR shall contact ULA's Ethics Helpline, at 1-800-511-4173, if any employee of ULA requests a gratuity and/or kickback, or if any individual or entity requests a gratuity or kickback in relation to this Contract.

(c) By accepting the 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.

15. 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 law. 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.

16. 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 trailers, 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.

17. INSPECTIONS, TESTS, AND ACCEPTANCE

(a) The CONTRACTOR shall provide and maintain its inspection system in accordance with sound business practices and in compliance with any governmental regulations, and as may be otherwise provided in this Contract. The CONTRACTOR shall keep records of all inspections complete and available to ULA during the performance of this Contract and for six (6) years after final payment.

(b) All material and workmanship furnished by the CONTRACTOR, and its Subcontractors shall be subject to inspection, examination and testing by ULA and ULA's Customer during manufacture or construction and at any and all places where such manufacture or construction is performed. ULA and ULA's Customer may also inspect the plant or plants of the CONTRACTOR or of any of its Subcontractors and Suppliers engaged in the performance of this Contract. The CONTRACTOR and its Subcontractors without additional charge, shall promptly provide all data, facilities, labor, materials, and assistance for the inspectors' performance of their duties. The CONTRACTOR shall be charged with any additional cost of inspection when materials and workmanship are not ready at the time specified for inspection. No inspection or test shall relieve the CONTRACTOR from responsibility for defects or other failure to meet the requirements of this Contract.

(c) Should it be considered necessary or advisable by ULA at any time before final acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, the CONTRACTOR shall upon request promptly furnish all necessary facilities, labor and material. If such Work is found to be defective or nonconforming in any material respect, the CONTRACTOR shall defray all the expenses of such examination and of satisfactory reconstruction.

(d) ULA shall have the right to reject defective material and workmanship or to require its replacement or correction. Rejected workmanship shall immediately be corrected and rejected material shall immediately be replaced with proper workmanship and/or proper material at CONTRACTOR's sole expense. The CONTRACTOR shall promptly segregate and remove the rejected material from the premises. If the CONTRACTOR fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, ULA may, at its sole discretion and without further Notice, (i) by contract or otherwise, replace such material or correct such workmanship and charge to the CONTRACTOR the cost incurred by ULA in such replacement or correction; (ii) terminate this Contract for default, in accordance with the clause hereof titled "Termination for Default"; and/or (iii) require a reduction in price.

(e) When CONTRACTOR deems the Work finally complete, CONTRACTOR shall give ULA notice as specified herein. After receipt of notice, ULA will determine if the Work has been completed according to the terms of the Contract. If the Work is incomplete, ULA will give notice to CONTRACTOR of the defects and/or omissions, and CONTRACTOR shall repeat the procedure stated herein until the Work has been accepted by ULA.

(f) Nothing contained in this clause shall in any way restrict ULA's rights under the clause hereof entitled "Warranty and Correction of Defects".

18. INSURANCE

(a) CONTRACTOR'S REQUIRED LIABILITY INSURANCE

(1) Prior to the start of the Work, CONTRACTOR shall procure and maintain for the performance of this CONTRACT the following types of insurance, with coverage levels of at least those listed below, which shall remain in force continuously for the entire period covered by the Contract, to protect CONTRACTOR from claims which may arise out of or result from the CONTRACTOR's operations under the Contract and for which the CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a Subcontractor, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

(i) Worker's Compensation – Statutory benefits

(ii) Employers' Liability insurance

a. Bodily Injury by Accident \$1,000,000 Each accident

b. Bodily Injury by Disease \$1,000,000 Each employee

(iii) Business Automobile Liability Insurance

a. Each accident or occurrence \$2,000,000

(iv) Commercial General Liability Insurance, covering Premises Liability, Contractual Liability, Products and Completed Operations and Personal Injury Liability. The policy shall not contain any exclusions directed toward any type of projects, materials, or processes involved in the Work.

a. Each Occurrence \$2,000,000

b. General Aggregate \$4,000,000

c. Products/Completed Operations Aggregate \$4,000,000

(2) Employers' Liability, Business Automobile Liability and Commercial General Liability coverage required under Subparagraph (a)(1) may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

(3) CONTRACTOR shall maintain in effect all insurance coverage required under Subparagraph (a)(1) with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and with an AM Best rating of A- or better.

(4) CONTRACTOR shall maintain completed operations liability insurance for one year after acceptance of the Work, Substantial Completion of the Project, or to the time required by the Contract, whichever is longer.

(5) CONTRACTOR shall purchase and maintain general liability excess coverage under Subparagraph (a)(1) with limits of \$25,000,000. The amounts of insurance required in subparagraph (a)(1) may be satisfied by CONTRACTOR purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limit specified in this paragraph.

(b) INSURANCE REQUIRED WHEN APPLICABLE

(1) PROFESSIONAL LIABILITY INSURANCE: When the Work involves architectural, engineering (including landscape engineering), and/or surveying services, CONTRACTOR shall obtain professional liability insurance for claims arising from the negligent performance of professional services under the Contract, written for not less than \$5,000,000 per claim and in the aggregate with a deductible not to exceed \$500,000. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by CONTRACTOR. This

coverage shall continue in effect for 10 year(s) after the Date of Substantial Completion, or until the expiration of the period of repose, whichever is shorter.

- (2) AIRCRAFT LIABILITY INSURANCE: If any aircraft is to be used in the performance of this work, (including owned and non-owned aircraft), aircraft liability insurance shall include the following minimum limits: (i) Bodily injury: \$10,000,000 each occurrence; \$2,000,000 each person (ii) Property Damage: \$10,000,000 each occurrence
- (3) POLLUTION LIABILITY INSURANCE: If the Work being performed involves abatement, removal, replacement, repair, enclosure, encapsulation, and/or disposal of any hazardous material or substance, coverage shall be provided on an occurrence basis with limits of \$5,000,000, and shall include coverage for liability to third parties for bodily injury, property damage, remediation, and clean-up costs arising from pollution events or conditions on, at, under, or migrating from the Site and from transportation and disposal of pollutants.

(c) PROPERTY INSURANCE

- (1) ULA shall maintain builders risk property insurance for the Work. Such insurance shall include CONTRACTOR and Subcontractors, and shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed by the parties.
- (2) In the event of a loss which requires ULA to satisfy all or any portion of the deductible or self-insured retention set forth in the builder's risk policy, ULA may, in its sole discretion, seek contribution toward such deductible or self-insured retention from any responsible Contractor or Subcontractor in an amount not to exceed \$1,000,000. The contribution shall not be included in the contract price.

(d) GENERAL REQUIREMENTS: The following requirements are applicable to all of the insurance coverages required under this clause, except to the extent otherwise indicated.

- (1) For any insurance required by this clause, insurance must be obtained 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. If CONTRACTOR fails to obtain or maintain any insurance coverage required under the Contract, ULA may at its option terminate the Contract or charge any associated expenses to CONTRACTOR.
- (2) Additional Insureds. Except with regard to Professional Liability, and Workers' Compensation and Employer's Liability insurance, all insurance required by this Addendum shall name ULA as an additional insured. Each such policy shall provide that the insurance provided to the Additional Insureds is primary and non-contributory, such that no other insurance or self-insured retention carried or held by ULA shall be called upon to contribute to a loss covered by insurance for the named insured.
- (3) Waiver of Subrogation. ULA and CONTRACTOR waive all rights against each other and any of their Subcontractors, consultants, separate contractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work (including without limitation property insurance obtained after completion of the Work), except such rights as they have to proceeds of such insurance held by ULA as fiduciary. ULA or CONTRACTOR, as appropriate, shall require of the consultants, separate contractors, if any, and the Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- (4) No Limitation. Nothing in this Addendum shall be construed as limiting in any way the extent to which CONTRACTOR or any Subcontractor may be held responsible for payment of damages resulting from their operations. CONTRACTOR's obligations to procure insurance are separate and independent of, and shall not limit, CONTRACTOR's contractual indemnity and defense obligations.
- (5) Subcontract Agreements. CONTRACTOR shall ensure that its Subcontractors maintain the coverages described in paragraph (a) of this clause at commercially reasonable amounts. CONTRACTOR shall flow down the requirements for i) the waiver of subrogation for all required insurance, and ii) additional insured coverage for all required insurance and iii) other requirements of this clause to all tiers of Subcontractors for all insurance required of such Subcontractors for the Work.

19. BONDS

(a) If the price of this contract is \$500,000 or greater, CONTRACTOR shall furnish to ULA, within ten (10) days after award of this Contract:

- (1) a performance bond.
- (2) a payment bond.

(or reasonably acceptable industry substitute approved by ULA). Each bond shall be in an amount equal to one hundred percent (100%) of the Contract price and shall be on an approved ULA form.

(b) Bonds must be provided by a Surety company that:

- (1) Is a licensed surety provider in the state in which the work is being performed.
- (2) Carries an AM Best rating of A- (XII) or higher.
- (3) Appear in the US Department of Treasury's List of Certified Companies, Circular 570.

(c) If the price of this Contract is less than \$500,000 and it is determined by ULA to be necessary, CONTRACTOR shall, after receipt of a request from ULA, furnish performance and payment bonds in the amount acceptable to ULA. When so requested, CONTRACTOR shall be entitled to an equitable adjustment reflecting premiums for the bonds. The bonds of any surety company holding a certificate of authority from the Secretary of Treasury as an acceptable surety of Federal bonds will be accepted.

(d) In the event that CONTRACTOR is unable to furnish satisfactory bonds, this contract may be terminated for default, at ULA's sole discretion, in, accordance with ARTICLE 40 - TERMINATION FOR DEFAULT.

(e) Date of Bonds - Bonds required hereunder shall be dated before or within 10 days of the date of execution of this Contract.

(f) In the event any changes, alterations, modifications, or amendments are made from time to time to this Contract or plans or specifications, subsequent to the date of bonds furnished hereunder, CONTRACTOR shall secure a Bond Rider to the effect that the Surety waives notice and Right of Discharge by reason of such action, and increasing the penal sum of the bond to 100% of the Contract Price as modified.

(g) Bonds will also contain a provision to the effect that if CONTRACTOR fails to give the Surety notice of changes, alterations, modifications, or amendments to this Contract, Surety shall not be released of liability under existing bonds or any riders issued thereto. ULA shall have the right to withhold any payments due CONTRACTOR hereunder until such time as the CONTRACTOR secures the bonds required or riders thereto, and the same have been approved by ULA.

20. ACCESS TO ULA FACILITIES

(a) CONTRACTOR and its Subcontractors granted access to ULA facilities shall comply with all site requirements including any health and safety requirements released by ULA.

(b) CONTRACTOR personnel who require regular unescorted access to ULA facilities are required to undergo background checks. Background checks must be performed before CONTRACTOR personnel can receive a ULA access badge. In the case of CONTRACTOR personnel accessing ULA sites at Cape Canaveral Space Force Station (CCSFS) and Vandenberg Space Force Base (VSFB), such background checks are conducted by the U.S. Government as a condition of access to the Government facility. For other ULA facilities, such background checks are the responsibility of the CONTRACTOR. Such background checks shall, at a minimum, verify that the individual granted regular unescorted access to ULA facilities 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

(c) CONTRACTOR shall notify ULA if any individuals who will require regular unescorted access to ULA facilities include former ULA employees. ULA reserves the right to object to facilities access by former ULA employees if such access is deemed to be contrary to ULA's interest or policies.

(d) Pursuant to the Drug Free Workplace Act of 1998 ULA does not allow the presence of illegal drugs, or any person under the influence of such illegal drugs or alcohol, on its premises. All persons, vehicles and materials on ULA premises are subject to search and testing. The CONTRACTOR shall implement its own system to both preclude the presence and influence of alcohol and illegal drugs on ULA premises and to report any violation thereof with corrective action, to the Procurement Representative in writing within 30 days of such violations. Failure to comply with these provisions, including failure of any of CONTRACTOR's employees or Subcontractor's employees to consent to a blood test or urinalysis test when requested, based on reasonable suspicion, will result in removal of the CONTRACTOR's employee or Subcontractor's employee from performance on this Contract. CONTRACTOR shall insert the substance of this clause in all Subcontracts.

(e) ULA shall not be responsible for damages to property or injuries or death to persons which may arise from or be attributable or incident to the condition or state of repair of the Site, or the use and occupation of them, or for damages to the property of CONTRACTOR or the Government, or for damages to the property or injuries or death to the person of CONTRACTOR's officers, agents, servants or employees, or others who may be on the Site at the invitation of any one of them unless caused by the negligence of ULA or covered under policies of insurance provided by ULA.

(f) CONTRACTOR agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to CONTRACTOR's use of the Site, or the activities conducted by the CONTRACTOR under the Contract, provided that CONTRACTOR has acted or failed to act in a negligent manner. CONTRACTOR expressly waives all claims against ULA (except for claims arising from ULA's negligence or covered under policies of insurance provided by ULA under the Contract) for any such loss, damage, personal injury or death caused by or occurring as a consequence of such use of the Site or the conduct of activities or the performance of CONTRACTOR's responsibilities under the Contract. CONTRACTOR further agrees to indemnify, defend, save, and hold harmless ULA, the Government, and their respective officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of the CONTRACTOR's use of the Site or any activities conducted or services furnished in connection with or pursuant to the Contract, provided that CONTRACTOR has acted or failed to act in a negligent manner. The indemnity obligations in the preceding sentence do not extend to claims for damages caused by the gross negligence or willful misconduct of officers, agents or employees of the United States or to damages caused by the negligence of ULA. The Government and ULA will give CONTRACTOR reasonable notice of any claim against them covered by this indemnity after learning of it and cooperate with CONTRACTOR in the defense of any such claim.

21. INFORMATION SECURITY AND ACCESS TO ULA NETWORK

(a) Adequate Controls for CONTRACTOR Information Systems:

(i) This paragraph (a) is applicable if any CONTRACTOR information systems will process, store, or transmit 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 (hereinafter Covered Information Systems). 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. If ULA notifies CONTRACTOR that a Cybersecurity Maturity Model Certification (CMMC) certificate is required, CONTRACTOR will cooperate with ULA to obtain a CMMC certificate at the CMMC level required by ULA.

(ii) Other requirements. This clause does not relieve CONTRACTOR of any other safeguarding requirements specified elsewhere in this Contract.

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

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:

(i) Neither CONTRACTOR nor its employees, shall 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 21(b). In addition, CONTRACTOR shall notify ULA if any individuals who will require access to ULA IT systems include former ULA employees. ULA reserves the right to object to access by former ULA employees if such access is deemed to be contrary to ULA's interests or policies.

(iii) CONTRACTOR shall provide written notification to the Procurement Representative, within 24 hours, when CONTRACTOR or sub-tier contractor personnel who have been granted logical access to ULA and/or ULA customer networks are terminated, transferred, removed or no longer supporting this Contract. Such notice shall reference the actual date of personnel termination, transfer, or removal.

(c) Subcontracts. CONTRACTOR shall include the substance of this clause, including this paragraph (c), in Subcontracts under this contract (including Subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the Subcontractor will operate a Covered Information System or in which Subcontractor employees will have access to ULA networks.

22. 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.

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, or CONTRACTOR's relationship with ULA, to include publication of ULA's logo, will be made by CONTRACTOR or any Subcontractor at any tier 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 this Contract and any related contract. CONTRACTOR shall not engage in direct communication with ULA's Customer related to this Contract unless explicitly required in another clause. If CONTRACTOR engages in direct communication with ULA's Customer related to this Contract, 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 the Contract will be (i) the exclusive property of ULA, (ii) delivered to ULA promptly upon request, and (iii) protected as the proprietary, confidential, and/or trade secret of ULA and used only in accordance with the "Protection of Confidential Information" clause.

(b) CONTRACTOR will (i) promptly disclose in writing all inventions conceived, developed or first reduced to practice in the performance of the 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 the Contract, will be works made for hire, with the copyrights therein vesting in ULA. The copyrights in all other such works that fall under this paragraph, including the exclusive rights therein, will be promptly transferred and formally assigned free of charge to ULA.

(d) CONTRACTOR grants to ULA, and to ULA's Customers and Subcontractors, an irrevocable, nonexclusive, royalty-free, fully paid-up, transferable, worldwide license under any Background Intellectual Property owned or controlled by CONTRACTOR, but only to the extent that such Background Intellectual Property of CONTRACTOR is necessary to facilitate ULA's or ULA's Customers', Subcontractors', or suppliers' use or enjoyment of the Work being delivered under this Contract or the Foreground Intellectual Property.

(e) 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 the 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.

(g) CONTRACTOR'S USE OF DOCUMENTS: CONTRACTOR is expressly prohibited from using documents prepared by it pursuant to the Contract in its practice for other clients, and acknowledges that such documents contain competition sensitive, proprietary information of ULA and ULA's Customers relating to the design and functionality of the systems depicted in such documents.

(h) CONTRACTOR shall obtain from its Subcontractors and consultants rights and rights of use that correspond to the rights given by CONTRACTOR to ULA in the Contract, and the CONTRACTOR shall provide evidence that such rights have been secured.

26. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)

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

(b) CONTRACTOR shall disclose to ULA in writing any FLOSS that will be used or delivered in connection with this Contract and shall obtain ULA's prior written consent before using or delivering such FLOSS in connection with this Contract. ULA may withhold such consent in its sole discretion.

(c) As used herein, "FLOSS License" includes 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."

(d) As used herein, "FLOSS" 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 FLOSS License, or (3) software provided under a license that (a) subjects the delivered software to any FLOSS 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.

27. 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.

(c) CONTRACTOR shall require the substance of this section to be included in any agreement with Subcontractors.

28. MATERIAL AND WORKMANSHIP

(a) Unless otherwise specifically provided in the Contract, all equipment, material, and articles incorporated in the Work covered by the Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the CONTRACTOR may at its option, use any equipment, material, article, or process which, in the judgment of ULA is equal to that named. Approvals of equals will not relieve the CONTRACTOR of responsibility for adequate fulfillment of the various parts of the work, or from specified guarantees and maintenance standards. Any requests for substitution which may be

offered shall have been submitted for approval prior to award of the Contract. Unless specified in the Schedule, no such substitution will be permitted, and the CONTRACTOR will be deemed to have hereby agreed to furnish only the brand names specified in the Contract documents.

(b) No materials or supplies for the Work contracted for shall be purchased by the CONTRACTOR or by any Subcontractor working under CONTRACTOR which shall be subject to any chattel mortgage or under a conditional sale or other agreement in which an interest is retained by another party. The CONTRACTOR warrants that the title to all materials and supplies used by CONTRACTOR in the performance of the Work hereunder shall be clear of all encumbrances of any nature whatsoever.

(c) Unless waived in writing by ULA, all tests or trials shall be made in the presence of a duly authorized representative of ULA. When the presence of the inspector is waived, sworn statements, in triplicate, of the test made and results thereof shall be furnished to ULA by the CONTRACTOR immediately after the tests are made. Costs of all tests and trials, including concrete aggregate and cylinder tests, and soil analysis, shall be borne by the CONTRACTOR.

(d) ULA may, in writing, require the CONTRACTOR to remove from the site any employee ULA deems incompetent, careless, or otherwise objectionable. The CONTRACTOR shall additionally be responsible for requiring each employee engaged on the site to display such identification as may be approved and directed by ULA. All prescribed identification shall immediately be delivered to ULA, for cancellation, when such employee is no longer engaged on the site. When required by ULA, the CONTRACTOR shall also obtain and submit fingerprints of all persons employed or to be employed on the project.

(e) All workers must be sufficiently qualified and possess the necessary skills to perform the Work required in this Contract. For any Work performed on a Government facility, including VSF and CCSFS, CONTRACTOR agrees to pay all personnel engaged in the performance of Work under this Contract wages at or above the prevailing wage as set by the U.S. Department of Labor. The current U.S. Department of Labor wage rate determination can be found at <https://sam.gov/content/wage-determinations>. If union wages under a No Strike and No Lockout agreement exceed those set by the wage rate determination, CONTRACTOR should pay the higher wages.

29. 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.

30. SOURCES OF SUPPLY

(a) CONTRACTOR shall seek, to the greatest extent reasonably practicable, to procure items and services from sources that are located, mined, produced, or manufactured in the United States.

(b) CONTRACTOR shall not deliver items or materials (including end products and any components thereof) sourced from any country listed on the ITAR Proscribed country list located at 22 CFR § 126.1, with the limited exception of raw materials and lower level components available as commercial off the shelf (COTS) items. With respect to such raw materials or COTS items, CONTRACTOR further agrees:

(i) No software that is developed in a proscribed country shall be delivered to ULA

(ii) CONTRACTOR shall not supply to ULA, or incorporate into any product supplied to ULA, any item or component manufactured in a proscribed country that could be attached to a ULA computer or that could connect to a ULA network and is capable of storing, processing, or transmitting information

(iii) CONTRACTOR shall not disclose to any supplier based in a proscribed country information that is proprietary to ULA, relates to ULA, or which could be used to identify ULA as the ultimate customer for any order

(iv) In the event of a failure of any Work delivered under the Contract, CONTRACTOR must be able to support any failure investigation without reliance on the participation of any company or individual from a proscribed country

(c) CONTRACTOR shall notify ULA if it is aware of, or becomes aware of, reliance on specific foreign sources of supply, at any tier, as items critical to the functioning or operation of any Work to be delivered to ULA. For the purposes of this provision, reliance on means that CONTRACTOR could not reasonably procure critical items from an alternate source, and therefore would be unable to deliver Work to ULA if any single foreign source becomes unavailable.

(d) CONTRACTOR is responsible for the continuous monitoring of its supply chain to ensure that any changes that impact the Work to be provided to ULA maintains in compliance with the requirements of this clause.

31. OPERATIONS, STORAGE AREAS AND TEMPORARY FACILITIES

(a) All operations of the CONTRACTOR (including storage of materials) upon ULA premises shall be confined to areas authorized or approved in advance by ULA. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of materials shall be made upon ULA premises. Premises adjacent to the Site may be made available for use by the CONTRACTOR without cost whenever such use will not interfere with other contractors' uses or purposes. The CONTRACTOR shall be liable for any and all damages caused by CONTRACTOR to ULA premises. The CONTRACTOR and its Subcontractors shall hold and save harmless ULA, its officers, employees and agents, from liability of any nature or kind arising from any use, trespass or damages occasioned by its operations on premises of third parties.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the CONTRACTOR only with the advance approval of ULA and shall be built with labor and materials furnished by the CONTRACTOR without expense to ULA. Such temporary buildings and/or utilities shall remain the property of the CONTRACTOR and will be removed by the CONTRACTOR at its sole expense upon the completion of the Work.

(c) The CONTRACTOR shall use only established roadways or construct and use such temporary roadways as may be authorized in advance by ULA. When it is necessary to cross curbing or sidewalks, the CONTRACTOR shall provide protection against damage. Any roads, curbs, or sidewalks damaged by CONTRACTOR or Subcontractors shall be repaired by and at the expense of the CONTRACTOR, to ULA's satisfaction.

(d) The CONTRACTOR shall furnish adequate toilet facilities for its employees. Toilet facilities shall conform to all applicable federal, state and local sanitary regulations and shall be located as approved in advance by ULA.

(e) The Work shall be done without interference with the ordinary use of streets, easements and passages and the CONTRACTOR shall cooperate with other CONTRACTORS of ULA and ULA employees as may be required by ULA. The CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any other CONTRACTORS or ULA employees, whether at the Site or not.

(f) Temporary construction facilities and any connections to utilities shall be removed by and at the sole expense of the CONTRACTOR. The site occupied by such facilities and connections shall be restored to a condition satisfactory to ULA.

32. PRESERVATION OF EXISTING VEGETATION

(a) The CONTRACTOR will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the Site which do not unreasonably interfere with the construction as may be determined by ULA. The CONTRACTOR will be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.

(b) Care shall be taken by the CONTRACTOR in felling trees authorized for removal to avoid any unnecessary damage to vegetation that is to remain in place. Any limbs or branches of trees broken during such operations shall be trimmed with a clean cut and painted with an approved tree pruning compound. The CONTRACTOR may be required to replace or restore, at its own expense, all vegetation not protected and preserved as required herein that is destroyed or damaged.

(c) The Site may contain protected species and their habitat. CONTRACTOR shall take particular care to preserve and protect any such protected species and their habitat. CONTRACTOR shall not disturb the habitat of any protected species, nor shall CONTRACTOR make contact with or feed any wildlife present on Site.

33. PROTECTION OF MATERIALS AND WORK PERFORMED

(a) The CONTRACTOR shall at all times protect and preserve all materials, supplies and equipment of every description (including property which may be ULA furnished or owned) and all Work performed. The CONTRACTOR shall promptly comply with requests of ULA to enclose or specially protect such property. If as determined by the Procurement Representative, material, equipment, supplies and Work performed are not adequately protected by the CONTRACTOR, ULA may protect such property and the cost thereof may be charged to the CONTRACTOR or deducted from any payments due the CONTRACTOR.

(b) Any damage to existing structure or work of any kind or the interruption of a utility service, shall be repaired or restored immediately by and at the expense of the CONTRACTOR.

(c) The necessary materials, tools and equipment to be utilized in the performance of this Contract shall be consigned to and delivered to or by the CONTRACTOR at the site and shall be CONTRACTOR's responsibility to unload and safeguard from all hazards.

(d) The CONTRACTOR shall protect the materials and Work from deterioration and damage during construction and shall store and secure flammable material from fire, remove oily rags, waste, and refuse from buildings each night and during cold weather furnish all heat necessary for the proper conduct of the Work. CONTRACTOR shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide for safety and traffic.

34. USE OF STRUCTURE BEFORE ACCEPTANCE

(a) ULA or others approved by ULA may, during the performance of the Work, enter the structure for the purpose of performing any necessary Work. In doing so ULA shall endeavor not to interfere with the CONTRACTOR and the CONTRACTOR shall not interfere with work being done by or on behalf of ULA.

(b) If, prior to completion and final acceptance of the Work, ULA takes possession of any structure (whether completed or otherwise) comprising a portion of the Work with the intent of retaining possession thereof (as distinguished from temporary possession contemplating return to the CONTRACTOR), then, while ULA is in possession, the CONTRACTOR, notwithstanding any other provision herein, shall be relieved of the responsibility for loss or damage to structure other than that resulting from the CONTRACTOR's fault or negligence. Such taking of possession by ULA shall not relieve the CONTRACTOR from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.

35. REMOVAL OF EQUIPMENT AND CLEANUP

(a) The CONTRACTOR shall at all times keep the Site, including storage areas, free from accumulations of waste material and rubbish. Prior to completion of the Work, CONTRACTOR shall remove any rubbish from the Site. Upon completion of the construction, the CONTRACTOR shall remove all tools, scaffolding equipment, and materials not the property of ULA and leave the Site in a broom clean, neat condition satisfactory to ULA.

(b) Should the CONTRACTOR fail to take prompt action to remove its equipment, tools, materials, and other articles from the site, ULA (at its option and without waiver of such other rights as it may have) may, thirty (30) days after Notice to CONTRACTOR, treat such items as abandoned property and thereby take title to, dispose, or use them as it deems appropriate.

36. SAFETY AND ACCIDENT PREVENTION

(a) In performing Work under this Contract on ULA property, the CONTRACTOR is responsible for the safety and health of the CONTRACTOR'S, and Subcontractors' employees, and shall:

(1) Conform to all safety requirements contained in this Contract;

(2) Comply with the safety rules of ULA, all local, state and federal health and safety regulations, and federal and state regulatory authorities responsible for health and safety;

(3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of all individuals performing the Work or in any way involved with the performance of this Contract;

(4) Take such additional immediate precautions as ULA may reasonably require for safety and accident prevention purposes; and

(5) Be responsible for informing all CONTRACTOR and Subcontractor employees of any hazards associated with the job site.

(b) The Procurement Representative may, by written order, direct additional safety and accident standards as may be required in the performance of this Contract.

(c) The CONTRACTOR shall immediately notify ULA of any accident, incident or exposure resulting in fatality, lost-time, occupational injury or occupational disease, or contamination of property, or any loss of property owned by ULA or ULA's Customer, arising out of Work performed under this Contract; provided, however, the CONTRACTOR will not be required to include in any report an expression of opinion as to fault or negligence. In addition, the CONTRACTOR shall comply with any illness, incident and injury experience reporting requirements set forth in the Contract. The CONTRACTOR will investigate all such work-related incidents or accidents to the extent necessary to positively determine the cause, and furnish ULA with a report, in such form as ULA may require, of the investigative findings, together with proposed and/or completed corrective actions.

(d) Any violation of these safety rules and requirements, unless immediately corrected as directed by the Procurement Representative, shall be a material default and shall be grounds for termination of this Contract in accordance with the "Termination for Default" clause of this Contract.

(e) CONTRACTOR shall be responsible for and hereby agrees to indemnify and save ULA harmless from any and all:

(1) damage to the property of ULA, the CONTRACTOR, or Subcontractors; or

(2) injury to employees of ULA, the CONTRACTOR, or Subcontractors; or

(3) for any liability whatsoever arising out of or in connection with the presence of CONTRACTOR or its Subcontractors pursuant to the Contract.

(f) The CONTRACTOR shall cause the substance of this clause including this paragraph (f) and any applicable Contract Provisions to be inserted in Subcontracts which: (i) amount to \$1,000,000 or more unless ULA makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the CONTRACTOR, regardless of dollar amount, determines that hazardous materials or operations are involved.

37. SITE INVESTIGATIONS AND REPRESENTATIONS

(a) The CONTRACTOR represents that it has investigated and satisfied itself as to the nature and location of the Work, the general and local conditions, including but not limited to those bearing upon transportation, disposal, handling and storage of materials; the availability of labor, water, electric power, and roads; the uncertainties of weather, river stages, tides, or similar physical conditions at the Site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the performance of the Work, and all other matters upon which information is reasonably obtainable and which can in any way affect the Work or the cost thereof under this Contract.

(b) The CONTRACTOR further represents that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory work done by ULA, as well as from information presented by the specifications and drawings.

(c) ULA expressly disclaims the accuracy and reliability of any subsurface tests and/or representations provided with the Bid Documents. Said materials are provided for illustrative purposes only, and CONTRACTOR is required to make and has made its own independent tests of subsurface conditions.

(d) Failure by the CONTRACTOR to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the Work. ULA assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR based on the information made available by ULA or for any understandings reached or representations made by any of its officers, employees or agents prior to the execution of this Contract, unless (1) such understanding or representations are expressly stated in this Contract and (2) this Contract expressly provides that the responsibility therefore is assumed by ULA.

(e) Where alterations of and/or additions to existing construction are required under this Contract, the CONTRACTOR shall verify all dimensions and determine all existing conditions that may affect its Work and shall be responsible for the accuracy of such dimensions and determinations.

38. SPECIFICATIONS AND DRAWINGS

(a) CONTRACTOR shall comply with all specifications and drawings set forth in the Statement of Work hereof. All Work called for in said specifications and drawings shall be accomplished in accordance with all applicable national and local codes.

(b) The CONTRACTOR shall keep on the Site a copy of the specifications and drawings and shall at all times provide ULA access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In any case of discrepancy either in the figures, in the specifications, or in the drawings, the matter shall be promptly submitted to the Procurement Representative, who shall promptly make a determination in writing. Any adjustment by the CONTRACTOR without this determination shall be at its own risk and expense. ULA shall furnish from time to time such detail Drawings and other information as may be considered necessary, unless otherwise provided.

(c) Omissions and Misdescriptions. Omissions from the specifications or drawings or the misdescription of details of Work which are manifestly necessary to carry out the intent of the specifications and drawings, shall not relieve the CONTRACTOR from performing such omitted or misdescribed details of Work, but they shall be performed as if fully and correctly set forth and described in the specifications and drawings.

(d) Checking of Drawings and Dimensions. The CONTRACTOR shall check all drawings furnished it immediately upon their receipt and shall promptly provide notice to ULA of any discrepancies. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Large-scale detail drawings shall in general govern small scale drawings. The CONTRACTOR shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby. When measurements are affected by field conditions, the CONTRACTOR shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings.

(e) Deviations. Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall not be made until written authority is obtained from ULA.

(f) Base Lines and Grades. The CONTRACTOR shall lay out its work from base lines and grades established by ULA and shall be responsible for all measurements in connection therewith. The CONTRACTOR shall, at its own expense, furnish all stakes, templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the Work. The CONTRACTOR will be held responsible for the proper execution of the Work to such lines and grades as may be established or indicated by ULA, and all stakes or other marks thus established shall be preserved by it until their removal is authorized by ULA. ULA will furnish, on request from the CONTRACTOR, all location and limit marks reasonably necessary for the conduct of the Work.

(g) All drawings shall become the property of ULA, and ULA shall be entitled, without further payment or liability to the CONTRACTOR and without further permission, to use such drawings and to reproduce them; provided, however, the use of such drawings shall not imply a license to ULA under any patent or shall not be construed as affecting the scope of any license otherwise granted to ULA under any patent.

(h) The CONTRACTOR shall furnish to ULA for all phases of the Work under specification sections wherein they apply, a sufficient number of submittals so that ULA can retain copies. Submittals include, but are not limited to, complete sets of certified shop drawings, fabrication and welding procedures, specifications, reports, any applicable standards, and/or catalog data including vendors' delivery dates. This information shall be submitted for approval within ten (10) days, in accordance with the Construction Schedule, after award of the Contract. Submittals returned by ULA shall be marked with one of the following notations: (i) NO EXCEPTIONS TAKEN, UNLESS OTHERWISE NOTED; (ii) MAKE CORRECTIONS NOTED; (iii) REVISE AND RESUBMIT; (iv) REJECTED; (v) SUBMIT SPECIFIED ITEM. Marking submittals as "NO EXCEPTIONS TAKEN, UNLESS OTHERWISE NOTED" does not constitute a waiver of detailed or specified requirements unless so stated in writing by ULA. Submittals bearing ULA's review comments of "MAKE CORRECTIONS NOTED", "REVISE AND RESUBMIT", "SUBMIT SPECIFIED ITEM", or "REJECTED" shall be corrected and resubmitted within seven (7) calendar days to comply with the requirements of the review comments and the design documents. All submittals shall be marked as "NO EXCEPTIONS TAKEN" before starting fabrication.

(i) ULA's review and/or approval of submittals shall not relieve the CONTRACTOR from the responsibility of producing completed and installed Work in strict conformance with the Contract requirements. ULA will not assume the responsibility for searching out deviations in the CONTRACTOR's submittals or any specifications indicated by the CONTRACTOR on submittals. It is understood that the review and/or approval by ULA of the CONTRACTOR's submittals shall not be construed as a complete check as to their adequacy, nor as an agreement that the submittal will meet the requirements of the Contract. Such review and/or approvals shall in no way relieve the CONTRACTOR of responsibility for any error or deficiency which may exist in the submittal, as the CONTRACTOR shall be responsible for meeting all requirements of the Contract.

(j) In the event the Work set forth in the specifications and drawings does not comply with requirements within the applicable national or local codes, the CONTRACTOR shall notify ULA of such fact and ULA may, by issuing a Change Order in accordance with the provisions of the Changes clause hereof, authorize compliance by the CONTRACTOR with the requirements of the applicable national or local codes.

(k) The CONTRACTOR shall provide to ULA one (1) set of drawings that accurately portray "as-built" conditions of all construction items within the Contract. Each of these drawings shall be neatly and clearly marked-up (in red) to show all variations between the as-built construction and that indicated or specified by the Contract. Where a choice of material, equipment and/or methods is permitted herein, or where variations in the scope or character of the Work from that indicated or specified is permitted by subsequent modification to the Contract, such choices or variations shall be reflected on these drawings. The as-built drawings shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. All of the required as-built drawings will be delivered to ULA within four (4) weeks after completion of construction.

(l) The CONTRACTOR acknowledges that the specifications and drawings are owned solely by ULA and acknowledges that they contain confidential, proprietary and trade secret information. CONTRACTOR agrees to maintain the confidentiality of these documents so far as is possible within the scope of the Work as provided for in the Contract documents. CONTRACTOR will not at any time provide any of the Contract documents to any person or entity that is not a Subcontractor on an employee or officer of a Subcontractor. CONTRACTOR shall include the substance of this paragraph in all agreements with Subcontractors.

39. SUBCONTRACTORS

(a) The CONTRACTOR shall at all times select qualified vendors and Subcontractors for performance of all Subcontract work and the furnishing of materials and labor. Nothing noted in any Subcontract hereunder shall create any contractual relation between any Subcontractor and ULA. The Contract shall not be nullified, in whole or in part, by any Subcontract.

(b) CONTRACTOR shall keep all invoices for labor, materials, tools, services, etc., incurred in connection with this Contract on a current basis, and if required by ULA, shall present evidence that payment therefore has been made.

(c) The CONTRACTOR shall not contract with a proposed person or entity to whom ULA has made objection. The CONTRACTOR shall not change a Subcontractor, person or entity previously selected without Procurement Representative prior approval to such substitution. The CONTRACTOR shall not retain any Subcontractor to whom ULA has a reasonable and timely objection, provided that ULA agrees to compensate the CONTRACTOR for any additional costs incurred by the CONTRACTOR as a result of such objection pursuant to the changes clause and upon provision of sufficient cost and other data supporting CONTRACTOR's claim.

(d) If the Contract is terminated, ULA reserves the right to require that any Subcontract be assigned by CONTRACTOR to ULA or its designee, subject to the prior rights of any surety.

40. SUPERINTENDENCE

(a) The CONTRACTOR shall provide a competent Superintendent, with necessary assistants, sufficient and competent management and supervisory personnel on the Site during performance of any Work. Such superintendence and management shall efficiently supervise the Work and be responsible for all requirements of the Contract.

(b) The Superintendent is subject to acceptance by ULA and subject to the continuing satisfaction of ULA. If such personnel become unacceptable to ULA, at ULA's sole discretion, the CONTRACTOR shall take immediate steps to replace such person(s).

(c) The Superintendent shall represent the CONTRACTOR, and communications including notices, delivered to the Superintendent shall be deemed delivered to the CONTRACTOR.

(d) CONTRACTOR superintendence and/or management at the Site shall have the authority to commit the CONTRACTOR to Changes under the Changes clause of this Contract. Upon acceptance of the Contract, CONTRACTOR shall provide the Procurement Representative with notice as to personnel designated under this provision, and such authority shall remain in force until Notice otherwise is received by the Procurement Representative.

41. PAYMENTS, TAXES AND DUTIES

(a) ULA shall pay the Contract price as provided in this Contract.

(b) ULA will make progress payments based on CONTRACTOR's proper invoice. CONTRACTOR shall submit invoices no more frequently than monthly as the Work progresses, based on estimates of acceptable Work accomplished submitted by the CONTRACTOR and approved by ULA. If requested by ULA, the CONTRACTOR shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In preparing estimates of Work accomplished, the material delivered on the Site and preparatory work completed may be taken into consideration. Such payments shall be made on submission of itemized requests by the CONTRACTOR and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to the CONTRACTOR.

(c) In making such progress payments there shall be retained, unless otherwise required or limited by applicable law, ten (10) percent of the approved estimated amount until final completion and acceptance of all Work covered by the Contract; provided, that upon completion and acceptance of each building, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made in full, including retained percentage thereon, less authorized deductions.

(d) All material and Work covered by progress payments made shall thereupon become the sole property of ULA but this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for all materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of ULA to require the fulfillment of all of the terms of the Contract.

(e) Unless otherwise provided, terms of payment shall be net sixty (60) days from ULA's receipt of the CONTRACTOR's proper invoice. Payment shall be deemed to have been made as of the date of mailing ULA's payment or electronic funds transfer. 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.

(f) Upon completion and final acceptance of all Work required hereunder as provided in the clause herein entitled "Inspection, Test, and Acceptance", the amount due the CONTRACTOR under this Contract will be paid upon the presentation of a properly executed and duly certified voucher therefore and presentation of release of all claims against

ULA arising by virtue of this Contract, other than claims, in stated amounts, that the CONTRACTOR has specifically excepted from the operation of the release. If the CONTRACTOR's claim to amounts payable under the Contract has been assigned, a release may be required of the assignee at the option of ULA.

(g) Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR delivers to ULA complete releases from itself and each of its Subcontractors of all liens arising out of this Contract, or receipts in full in lieu thereof, and, an affidavit that so far as it has knowledge or information the release includes all the labor and material for which a lien could be filed; but the CONTRACTOR may, if any Subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to ULA, to indemnify ULA against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to ULA all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

(h) The obligation of ULA to make the payments required under the provisions of this Contract shall, in the discretion of ULA, be subject to reasonable deductions on account of defects in material or workmanship. 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. 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.

(i) With the exception of sales/use tax, and 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 (i.e. materials and labor) shall be separately stated. If Work purchased qualifies for tax exemption, then an exemption certificate will be presented from ULA to CONTRACTOR.

42. 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, or long form Contract, (if applicable); (ii) Terms and Conditions, including this Document and any Special Provisions such as Prime Contract Flowdowns and Site Security Documents; (iii) Any Confidentiality Agreement; (iv) Statement of Work; (v) Specifications; (vi) Drawings; and (vii) any other exhibits to this Contract.

43. SURVIVABILITY

If the Contract is terminated for default or convenience, CONTRACTOR shall not be relieved of those obligations contained in:

(a) The following clauses:

- Acceptance, Merger and Severability
- Applicable Laws
- Bankruptcy
- Disputes
- Compliance with Laws
- Counterfeit Parts
- Export Control
- Furnished Property
- Gratuities/Kickbacks
- Independent CONTRACTOR Relationship
- Information Security and Access to ULA Network
- Insurance
- Maintenance of Records
- Intellectual Property
- No Solicitation
- Protection of Confidential Information

Public Release of Information
Termination for Convenience
Termination for Default Use of Free, Libre And Open Source Software (Floss)
Warranty and Correction Of Defects

- (b) Those U. S. Government flowdown provisions that by their nature should survive; and
- (c) Any Confidentiality Agreement entered into by the parties applicable to this Contract.

44. SUSPENSION OR STOPPAGE OF WORK

(a) The Procurement Representative may order the CONTRACTOR in writing to stop or suspend all or any part of the Work of this Contract for such period of time as ULA may determine to be appropriate for the convenience of ULA. CONTRACTOR shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of suspension or stoppage. If, without the fault or negligence of the CONTRACTOR, the performance of all or any part of the Work is suspended for greater than 30 days, or such shorter time as the parties may agree in writing, CONTRACTOR may request an adjustment be made by ULA for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the suspension, and the Contract shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the CONTRACTOR would have been prevented by other causes even if the Work had not been so suspended. Any claim must be asserted to the Procurement Representative in writing within twenty-four (24) hours after the termination of the suspension and a proposal for adjustment must be submitted to the Procurement Representative in writing within twenty (20) days after the termination of suspension and must fully set forth the requested adjustment in the Contract Price and/or adjustment in the Contract Construction Schedule, if any. If an adjustment in the Contract Construction Schedule period of performance is requested, the proposal for adjustment shall also separately set forth the time required, including premium time, to maintain the present period of performance.

(b) In the event the CONTRACTOR is instructed to vacate an area where Work is being performed, the Construction Schedule will be extended by the time lost. If the CONTRACTOR is ordered to vacate for more than one hour at any one time, then the CONTRACTOR will make every reasonable effort to place his labor force in other productive work. If no other work is available, upon receipt request for equitable adjustment acceptable to ULA, ULA will reimburse the CONTRACTOR for the labor cost (without mark-up) of the time lost in excess of one hour per man, but in no event more than fifteen (15) hours per man. If the CONTRACTOR is required to vacate an area for more than sixteen (16) normal working hours the provisions of subparagraph (a) above shall apply in lieu of this paragraph.

45. TERMINATION FOR CONVENIENCE

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

(b) Upon termination, in accordance with ULA's written direction, CONTRACTOR will immediately: (i) Cease work; (ii) Prepare and submit to ULA an itemization of all completed and partially completed Work; (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 that are proven in sufficient detail to the satisfaction of ULA, 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.

46. TERMINATION FOR DEFAULT

(a) ULA, by written notice, may terminate this Contract for default, in whole or in part, if the CONTRACTOR (i) fails to comply with any of the terms of this Contract; (ii) refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or (iii) fails to complete such Work in said time, (iv) fails to perform any other requirement under this Contract or (v) files or has filed against it a petition in bankruptcy. ULA's right to terminate this Contract under subdivisions (b)(i), (b)(ii) and (b)(iv) above may be exercised if the CONTRACTOR does not cure such failure within ten (10) days (or more if authorized in writing by the Procurement Representative) after receipt of notice from ULA specifying the failure. ULA's right to terminate the Contract under subdivision (b)(iii) or (b)(v) is not subject to cure. Any Notice of termination pursuant to subdivision (b)(iii) or (b)(v) is effective upon receipt by CONTRACTOR. . ULA may terminate this Contract in whole or in part, for default if (a) any "person" or "group" (within the meaning of Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), as amended) is or becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of voting securities of CONTRACTOR representing more than fifty percent (50%) of CONTRACTOR's outstanding voting securities or rights to acquire such securities; or (b) any direct or indirect sale, lease or other transfer of all or substantially all of CONTRACTOR's assets.

(b) In the event ULA terminates this Contract in whole or in part, ULA may take over the Work and complete it, by contract or otherwise, and may take possession of and use any materials, appliances and plant on the Site necessary for completing the Work. However, the CONTRACTOR shall continue the Work not terminated. The CONTRACTOR and its sureties shall be liable for any damage to ULA resulting from the CONTRACTOR's refusal or failure to complete the Work within the Contract Construction Schedule, whether or not the CONTRACTOR's right to proceed with the Work is terminated. This liability includes any excess costs incurred by ULA in completing the Work; and, if specified in the Construction Schedule of this Contract, liquidated damages for each calendar day of delay until the Work is finally accepted.

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

(d) The right of the CONTRACTOR to proceed shall not be terminated, nor the CONTRACTOR charged with damages under this clause, if the delay in completing the Work arises from force majeure, which means any unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; pandemics; quarantine restrictions; freight embargoes; unusually severe weather; and delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the CONTRACTOR and such Subcontractors or Suppliers; provided, that the CONTRACTOR shall within ten (10) days from the beginning of any such delay, notify ULA of the cause of delay.

(e) If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".

(f) Following a termination for default of this Contract, CONTRACTOR shall be compensated only for Work actually completed. In addition, ULA may require the CONTRACTOR to transfer title and deliver to ULA any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the CONTRACTOR has specifically produced or acquired for the terminated portion of this Contract. Upon direction of ULA, the CONTRACTOR shall also protect and preserve property in its possession in which ULA or ULA's Customer has an interest. Payment for such items and for the protection and preservation of property shall be at a price determined by both parties after engaging in good faith negotiation, except that CONTRACTOR shall not be entitled to profit on such supplies 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.

(g) Failure of ULA to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of ULA in this clause are in addition to any other rights and remedies provided by law or under this Contract.

47. RIGHTS AND REMEDIES

(a) Failure by ULA to enforce any of the provisions of this Contract shall not be construed as a waiver of the requirements of such provision or provisions, or as a waiver of the right of ULA thereafter to enforce each and every such provision.

(b) ULA's approval of the CONTRACTOR's design or material shall not relieve the CONTRACTOR of any warranties or of any other requirements of this Contract; nor shall waiver by ULA of any drawings or specification requirements for one or more articles constitute a waiver of such requirements for the remaining articles to be delivered under this Contract unless so stated by ULA in writing. The provisions of this clause shall not limit or affect the rights of ULA under the clause entitled "Inspection, Tests, and Acceptance".

(c) The rights and remedies of ULA in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

48. WARRANTY AND CORRECTION OF DEFECTS

(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) In addition to any other warranties in this Contract, and in addition to the warranties provided in paragraph (h) of this clause, the CONTRACTOR warrants that all Work performed under this Contract (i) strictly conforms to the applicable statement of work, specifications, drawings, descriptions, or other requirements of this Contract; (ii) is free of any defects in equipment, material, or design furnished, or workmanship performed by the CONTRACTOR or any Subcontractor, material supplier or manufacturer; (iii) does not contain Counterfeit Parts, and (iv) complies with all applicable legislative and regulatory requirements in effect during the term of this Contract.

(c) This warranty shall continue for a minimum of two (2) years from the date of final acceptance of the entire Work, unless otherwise stated in the Contract.

(d) The CONTRACTOR shall remedy, at the CONTRACTOR's expense, any failure to conform or any defect in the Work. In addition, the CONTRACTOR shall remedy, at the CONTRACTOR's expense, any damage to ULA owned or controlled real or personal property, when that damage is the result of:

- (1) The CONTRACTOR's failure to conform to Contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(e) The CONTRACTOR shall restore any Work damaged in fulfilling the terms and conditions of this clause. The CONTRACTOR's warranty with respect to work repaired or replaced will run for two (2) years from the date of repair or replacement.

(f) ULA shall provide notice to the CONTRACTOR, within a reasonable time after discovery, of any failure, defect, or damage.

(g) If the CONTRACTOR fails to remedy any failure, defect, or damage within a reasonable time after receipt of Notice, ULA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the CONTRACTOR's expense.

(h) With respect to all warranties, express or implied, from Subcontractors, material suppliers, or manufacturers for Work performed and materials furnished under this Contract, the CONTRACTOR shall:

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of ULA; and

(3) Enforce all warranties for the benefit of ULA.

(i) All Subcontractor, material and/or manufacturer warranties shall inure to the benefit of ULA and its assigns.

(j) This warranty shall not limit ULA's rights under the Contract with respect to latent defects, gross mistakes, or fraud.

(k) The remedies provided above shall not be restrictive of, but shall be cumulative and in addition to, all other remedies of ULA.

49. 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.

50. 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.
- (4) Providing access to CONTRACTOR facilities utilized in the performance of this Contract.

(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 FLOWDOWN PROVISIONS

1. INCORPORATION OF FAR/DFARS CLAUSES

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

A. INTERPRETATION OF TERMS

As used in the FAR/DFARS 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 ULA's government prime contract under which this Contract is entered.
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.
5. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

B. NOTES

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

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.

D. FAR FLOWDOWN CLAUSES

1. The following FAR clauses apply to this Contract as indicated:

(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 that will involve storage, processing, or transmitting non-public contract information on CONTRACTOR Information systems. 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) 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)

(g) 52.209-06 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020) (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.)

(h) 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)

(i) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015) (Applies only to CONTRACTS subject to the Equal Opportunity clause).

(j) 52.222-26 EQUAL OPPORTUNITY (JUN 2020) (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.)

(k) 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).

(l) 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)

(m) 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020) (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).

(n) 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.)

(o) 52.222-50 COMBATING TRAFFICKING IN PERSONS (OCT 2020) (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.)

(p) 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (Deviation). (Applicable to subcontracts at any tier that exceed the Simplified Acquisition Threshold, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.)

(q) 252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

(r) 252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019) (Applicable to Contracts for operationally critical support, or for which Contract performance will involve storage, processing, or transmitting Covered Defense Information (CDI) on CONTRACTOR Information systems. Any reporting pursuant to this clause shall be submitted through ULA. CONTRACTOR shall notify ULA when submitting a request to vary from a NIST SP 800-171 security requirement. CONTRACTOR shall report cyber incidents to ULA and shall provide the incident report number, automatically assigned by DoD, to ULA as soon as practicable when reporting a cyber incident to DoD.)

(s) 252.204-7015 NOTICE OF AUTHORIZED DISCLOSURE OF INFORMATION TO LITIGATION SUPPORT (MAY 2016) (Insert "or ULA" after "Government" throughout this clause.)

(t) 252.204-7020 NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS (NOV 2020) (Applicable to Contracts for operationally critical support, or for which Contract performance will involve Covered Defense Information (CDI). CONTRACTOR shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800-171 DoD Assessment, as described in NIST SP 800-171 DoD Assessment Methodology at <https://www.acq.osd.mil/asda/dpc/cyber/safeguarding.html#nistSP800171>, if necessary.)

(u) 252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2013)

(v) 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) FAR 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.

(e) **252.204-7019 NOTICE OF NIST SP 800-171 DOD ASSESSMENT REQUIREMENTS** (Applicable to Contracts for operationally critical support, or for which Contract performance will involve Covered Defense Information (CDI). CONTRACTOR shall have a current assessment (i.e., not more than 3 years old unless a lesser time is specified in the solicitation) (see DFARS 252.204-7020) for each covered contractor information system that is relevant to the offer, contract, task order, or delivery order. The Basic, Medium, and High NIST SP 800-171 DoD Assessments are described in the NIST SP 800-171 DoD Assessment Methodology located at <https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171>.)

(f) **DFARS 252.204-7020 NIST SP 800-171 DoD Assessment Requirements.** CONTRACTOR certifies that it has completed, within the last 3 years, at least a basic NIST SP 800-171 DoD Assessment, as described in <https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171> for all covered contractor information systems relevant to this Contract that are not part of an information technology service or system operated on behalf of the Government.

(g) **Contractor Responsibility Watch List.** CONTRACTOR certifies that it is not listed on the Responsibility Watch List (CRWL) maintained by the United States Space Force Space and Missile Systems Center (SMC), and has not been notified by any of its subcontractors of their inclusion on the CRWL.

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.

(d) 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.

(e) 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)(ii) and (d), 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.

(f) 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.

(g) 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.