



DOC 2 INT
INTERNATIONAL SUBCONTRACTS/PURCHASE ORDERS FOR COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

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SECTION I: GENERAL PROVISIONS

DEFINITIONS

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

- (a) "Background Intellectual Property" means all Intellectual Property Made by or for a party apart from the performance of Work under this Contract.
(b) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, that includes these General Provisions, all referenced documents, exhibits, and attachments.
(c) "CONTRACTOR" means the party identified on the face of this Contract with whom ULA is contracting.
(d) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
(e) "Foreground Intellectual Property" means all Intellectual Property Made by or for a party in the performance of Work under this Contract.
(f) "Government" means the Government of the United States of America or any department or agency thereof.
(g) "Intellectual Property" means all (i) inventions, discoveries and improvements, (ii) all documented information in whatever form such as information embodied in drawings, specifications, process documents, technical reports, and computer software, 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) "Subcontractors" means CONTRACTOR's subcontractors at any tier.
(k) "ULA" means United Launch Alliance, LLC as identified on the face of this Contract.

(l) "Work" means all required labor, articles, materials, supplies, goods, services and deliverable information and materials constituting the subject matter of this Contract.

1. ACCEPTANCE OF CONTRACT/TERMS AND CONDITIONS

(a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

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

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

2. APPROVALS

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

3. ASSIGNMENT

CONTRACTOR shall not assign any of its rights or interest in this Contract or subcontract all or substantially all of its performance of this Contract, without ULA's prior written consent. CONTRACTOR may assign rights to be paid amounts due, or to become due, to a financing institution if ULA is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any resent or future claims of ULA against CONTRACTOR. ULA shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

4. 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 Procurement Representative has authority to make changes to this Contract. All changes must be in writing and executed by the parties.

(b) Within the general scope of this Contract, the Procurement Representative may at any time, by written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipping or packing; (iii) place of inspection, acceptance, or point of delivery; (iv) delivery schedule, and (v) terms and conditions of this Contract required to meet ULA's obligations under Government prime contracts. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, ULA shall make an equitable adjustment in this Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the time of performance will be subject to a price adjustment only. Except for changes identified as such in writing and signed by the Procurement Representative, the Contractor shall notify the Procurement Representative in writing promptly, within sixty (60) calendar days from the date that the Contractor identifies any ULA conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the Contract. CONTRACTOR must request any equitable adjustment under this clause within three (3) days from the date of receipt of the written change order from ULA. If the CONTRACTOR's proposed equitable adjustment includes the cost of property made obsolete or excess by the change, ULA shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Contract. However, nothing contained in this "Changes" clause shall excuse CONTRACTOR from proceeding without delay in the performance of this Contract as changed.

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

(d) For any other changes, the parties shall mutually agree to make changes..

6. COMMUNICATION WITH ULA CUSTOMER

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

7. COMPLIANCE WITH EXPORT AND IMPORT LAWS

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

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

8. COMPLIANCE WITH LAWS

(a) In performing this Contract, CONTRACTOR agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, codes and ordinances ("Laws") that may affect performance of this Contract. CONTRACTOR shall indemnify ULA against any liability, fine or penalty that may be imposed upon ULA as a result of CONTRACTOR's failure to comply with such Laws.

(b) CONTRACTOR represents that each chemical substance constituting or contained in Work sold or otherwise transferred to ULA hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

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

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

9. DEFAULT

(a) ULA, by written notice, may terminate this Contract for default, in whole or in part, if CONTRACTOR (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition in bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. CONTRACTOR shall have ten (10) days (or such longer period as ULA may authorize in writing) to cure any such failure after receipt of notice from ULA. Default involving delivery schedule delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

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

(c) Following a termination for default of this Contract, CONTRACTOR shall be compensated only for Work actually delivered and accepted. Payment for Manufacturing Materials accepted by ULA and for the protection and preservation of property shall be at a price determined by both parties, except that CONTRACTOR shall not be entitled to profit. ULA may withhold from any amount due under this Contract any sum ULA determines to be necessary to protect ULA or ULA's customer against loss because of outstanding liens or claims of former lien holders. CONTRACTOR shall be liable for ULA's excess re-procurement costs. ULA shall pay the Contract price for Work accepted.

(d) Upon the occurrence and during the continuation of a default, ULA may exercise any and all rights and remedies available to it under applicable law and equity including without limitation cancellation of this Contract. If after termination for default under this Contract, it is determined that CONTRACTOR was not in default, such termination shall be deemed a termination for convenience.

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

10. DISPUTES AND ARBITRATION

(a) **Continuation of Performance.** CONTRACTOR will perform the Work as set forth in this Contract. If ULA requires CONTRACTOR to perform work that CONTRACTOR does not believe this Contract requires it to perform (hereafter referred to as "Disputed Work"), then CONTRACTOR will perform the Disputed Work and will start the dispute resolution procedure in accordance with this clause, to determine whether CONTRACTOR should be paid additional money for this work.

(b) **Management Consultation.** Any dispute between the parties will first be referred to each party's senior management for resolution. The senior managers will meet and confer with respect to the subject under dispute.

(c) **Arbitration.** Any dispute arising out of or relating to this Contract, or any breach of this Contract, that the parties have been unable to resolve by management consultation as provided in paragraph (b), will be resolved exclusively by arbitration. The arbitration will be in accordance with the rules prepared by the American Arbitration Association except as specifically modified in this Contract.

(i) **Agreement to Arbitrate.** The award of the arbitrator shall be final and binding upon the parties.

(ii) **Governing Rules.** The arbitration shall be in accordance with the rules of commercial arbitration of the American Arbitration Association, except that in the event of any conflict between those rules and the arbitration provisions of this Contract, the provisions of this Contract shall govern.

(iii) **Appointment of Arbitrator.** The number of the arbitrators shall be one. Upon application of one of the parties to this Contract, the American Arbitration Association in Denver, Colorado shall appoint the arbitrator. The arbitration, including the making of the award, shall take place in Denver, Colorado.

(iv) **Commencement of Arbitration.** Either party may commence an arbitration by applying to the American Arbitration Association office in Denver for appointment of an arbitrator. The application for appointment will identify the other party to this Contract by name and address. A copy of the application for appointment of an arbitrator will be sent to the other party.

(v) **Issues in Dispute.** The application for appointment will specify the issues that are in dispute, the position of the initiating party as to those issues, the identity of the parties with whom the initiating party is in dispute, and will state the remedy that the initiating party seeks.

(vi) **Award.** The arbitrator is authorized to award damages to the prevailing party and to order specific performance of any contractual obligation that he finds a party is failing to perform. The arbitrator will make the award within thirty (30) business days from the date established for final submittal of oral or written statements and documents to the arbitrators. An award will be in writing, will state the precise reasons for the award and will specify the remedy or relief granted, if any.

(vii) **Enforcement.** An award by the arbitrator will be final and conclusive as to the issue or issues that were the subject of the arbitration. The parties to this Contract exclude any right of application or appeal to any court and, in particular, in connection with any questions of jurisdiction or question of law arising in the arbitration or out of the award. The award will be enforceable in any court having jurisdiction over the party against whom enforcement is sought.

(viii) **Language.** The parties will use English as the single language for the arbitration proceeding. Simultaneous interpretation shall be allowed.

(ix) **Interim or Provisional Remedies.** Any party commencing an arbitration under this Contract may seek from any court of competent jurisdiction a temporary remedy (such as an injunction or order to refrain from taking certain action) that is needed to preserve assets or the rights of that party while the arbitration is being conducted. Once an arbitrator is appointed, the arbitrator may impose a temporary remedy, in addition to or to supplement any temporary remedy imposed by the court.

(x) **Attorneys' Fees and Expenses.** Each party shall bear its own costs, including attorneys' fees, related to any arbitration proceeding brought pursuant to this Contract.

11. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. CONTRACTOR shall be liable for handling charges and return shipment costs for any excess quantities. If Work is manufacture with reference to ULA's proprietary information or

materials, CONTRACTOR agrees that, pursuant to the "Intellectual Property" clause of this Contract, it will not sell or offer such Work for sale to anyone other than ULA without ULA's prior written consent.

12. FORCE MAJEURE

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

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

(c) Failure of the United States Government to issues any required export license, or withdrawal/termination of a required export license by the United States Government, shall relieve ULA of its obligations under this Contract.

13. FURNISHED PROPERTY

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

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

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

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

(e) The Government Property Clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government furnished property, or property to which the Government may take title under this Contract.

14. GOVERNING LAW AND VENUE

(a) Other provisions of the contract shall be construed and interpreted in accordance with the substantive law, excluding choice of law rules, of the State of 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 contracts appeals, and quasijudicial agencies of the Federal Government.

15. GRATUITIES/KICKBACKS

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

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

(c) By accepting this Contract, CONTRACTOR certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

16. INDEPENDENT CONTRACTOR RELATIONSHIP

CONTRACTOR is an independent contractor in all its operations and activities hereunder. The employees used by CONTRACTOR to perform Work under this Contract shall be CONTRACTOR's employees exclusively without any relation whatsoever to ULA.

17. INFORMATION OF ULA

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

18. INFORMATION OF CONTRACTOR

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

19. INSPECTION AND ACCEPTANCE

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

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

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

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

20. INSURANCE AND ENTRY ON ULA PROPERTY

(a) The provisions of this subparagraph (a) shall apply only in the event that CONTRACTOR, its employees, agents, or Subcontractors enter the site(s) of ULA or its customers for any reason in connection with this Contract

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

(a) Worker's Compensation in amounts as required by law, including U.S. Longshoreman and Harbor Worker's Act, if applicable, and Employer's Liability at a limit no less than \$1 Million.

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

(c) Commercial Automobile Liability covering all owned, non-owned and hired vehicles, including loading and unloading thereof at a limit of no less than \$1 Million.

(ii) CONTRACTOR and its Subcontractors shall comply with all site requirements.

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

(c) CONTRACTOR shall provide ULA thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of CONTRACTOR's required insurance, provided however such notice shall not relieve CONTRACTOR of its obligations to carry the required insurance. At Contract inception and annually thereafter, CONTRACTOR shall send a "Certificate of Insurance" showing CONTRACTOR's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects to the interest of ULA and is not contributory with any insurance which ULA may carry. CONTRACTOR's obligations to carry insurance coverages are freestanding and are not affected by any other language in this Contract.

21. INTELLECTUAL PROPERTY AND INDEMNITY

(a) All Foreground Intellectual Property and Background Intellectual Property Made by a party shall be the exclusive property of that party. Foreground Intellectual Property Made jointly by CONTRACTOR and ULA shall be jointly owned by CONTRACTOR and ULA.

(b) CONTRACTOR agrees to grant and hereby grants to ULA an irrevocable, nonexclusive, royalty-free, paid-up, transferable, worldwide license to: (i) reproduce, (ii) make derivatives of, (iii) perform, (iv) display, (v) distribute, and (vi) disclose all CONTRACTOR Foreground Intellectual Property and have others do so on behalf of ULA. ULA may only exercise the license granted herein in connection with this Contract and the performance of any related contract ULA may have with the U.S. Government.

(c) CONTRACTOR grants to ULA an irrevocable, nonexclusive, paid-up, transferable, worldwide license under any Background Intellectual Property owned or controlled by CONTRACTOR, but only to the extent that the Background Intellectual Property of CONTRACTOR would otherwise interfere with the license granted ULA above in paragraph (b) hereof.

(d) In the event that this Contract is issued under a higher-tier contract, the rights granted to ULA additionally include the right to grant sublicenses of the scope set forth hereinabove to the extent required in said higher-tier contract.

(e) The licenses granted to ULA hereunder shall survive expiration or termination of this Contract and/or the U.S. Government contracts of ULA, whichever occurs last.

(f) CONTRACTOR warrants that the Work performed or delivered or licenses granted under this Contract will not infringe or otherwise violate the Intellectual Property rights of any third party.

(g) CONTRACTOR shall defend and hold harmless and shall indemnify ULA, its agents, employees, contractors and customers and the consultants of such customers 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 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 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, or (ii) modify the same to make it non-infringing, or (iii) replace the same with Work that is non-infringing and acceptable to ULA. CONTRACTOR shall not have any liability for infringement or misappropriation if the alleged infringement or misappropriation would not have occurred except for ULA's unauthorized modification of the Work and/or Assigned Intellectual Property or unauthorized combination with other articles, materials, supplies, goods or Intellectual Property.

(h) The obligation of CONTRACTOR to defend, indemnify, and hold harmless ULA and its agents, employees, contractors and customers and the consultants of such customer under paragraph (g) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to the relevant ULA U.S. Government contract or a subcontract with another customer, provided however, ULA and/or its customer are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.

22. LANGUAGE AND STANDARDS

All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and Work shall employ the units of United States standard weights and measures.

23. PACKING AND SHIPMENT

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

(b) A complete packing list shall be enclosed with all shipments. CONTRACTOR shall mark containers or packages with necessary lifting, loading, and shipping information, including the ULA Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery is FCA Free Carrier, in accordance with INCOTERMS 2000. Carrier and site of delivery for the Work shall be specified in the Contract.

24. PAYMENTS, TAXES, AND DUTIES

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) ULA's receipt of the CONTRACTOR's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by ULA or CONTRACTOR not to have been properly payable, and shall also be subject to reduction for overpayments. CONTRACTOR shall promptly notify ULA of any such overpayments found by CONTRACTOR.

(c) ULA shall have a right of setoff or recoupment against payments due or at issue under this Contract or any other contract between the parties.

(d) Payment shall be deemed to have been made as of the date of mailing ULA's payment or electronic funds transfer.

(e) Unless otherwise specified, prices include all applicable federal, state, local and foreign taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. When taxable and non-taxable items are invoiced under this Contract, taxable versus non-taxable items shall be separately stated. If Work purchased qualifies for tax exemption, then an exemption certificate will be presented from ULA to CONTRACTOR.

(f) The prices stated in the Contract are firm, fixed prices in United States dollars.

25. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Face of the Purchase Order and/or Task Order, release document, the schedule of this Contract, (including any continuation sheets), and/or any special terms and conditions; (ii) Terms and Conditions, including this Document; (iii) Statement of Work; (iv) Specifications; (v) Drawings; and (vi) any other exhibits of this Contract.

26. PRIORITY RATING

If so identified, this Contract is a "rated order" certified for national defense use, and the CONTRACTOR shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700), when placing order with United States suppliers.

27. PROHIBITED SOFTWARE

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

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

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

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

28. QUALITY CONTROL SYSTEM

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

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

(c) CONTRACTOR shall promptly notify ULA of any violation of or deviation from CONTRACTOR's approved quality control system. CONTRACTOR shall notify ULA of any Work delivered to ULA during the period of any such violation or deviation.

(d) If CONTRACTOR becomes aware of any nonconformance in the Work purchased under this Contract, CONTRACTOR shall notify the Procurement Representative immediately.

29. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by CONTRACTOR without the prior written approval of ULA. All requests for release of information must be received by ULA no later than fifty-five (55) days before release.

30. RIGHTS AND REMEDIES

Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity.

31. SEVERABILITY

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

32. STOP WORK

(a) CONTRACTOR shall stop Work for up to one hundred (100) days in accordance with any written notice received from ULA, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, ULA shall either terminate in accordance with provisions of this Contract or continue the Work by written notice to CONTRACTOR. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

33. SURVIVABILITY

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

- Compliance with Export and Import Laws
- Compliance with Laws
- Disputes and Arbitration
- Governing Law and Venue
- Independent Contractor Relationship
- Information of ULA
- Insurance and Entry on ULA Property
- Intellectual Property and Indemnity
- Language and Standards
- Prohibited Software
- Quality Control System
- Release of Information
- Warranty

(b) Those U. S. Government flowdown provisions that by their nature should survive.

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

34. TERMINATION FOR CONVENIENCE

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

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

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

(d) CONTRACTOR shall continue all Work not terminated. In no event shall ULA be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Settlements and payments under this clause may be subject to approval by the USC Contracting Officer and the Settlement Review Board.

35. TIMELY PERFORMANCE

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

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

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

(d) If CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, CONTRACTOR shall immediately give notice, including all relevant information, to the Procurement Representative.

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

36. TRAVEL COSTS

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

37. WAIVERS

Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

38. WARRANTY

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

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) 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 clause may be accessed electronically at the following address:
<http://www.arnet.gov/far>

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the parties in support of a U.S. Government contract. As used in the FAR clauses referenced below and otherwise in this Contract:

1. "Commercial Item" means a commercial item as defined in FAR 2.101.

2. "Contract" means this Contract.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for ULA's government prime contract under which this Contract is entered.
4. "Contractor" and "Offeror" means the CONTRACTOR, as defined in these Terms and Conditions, acting as the immediate (first tier) subcontractor to ULA.
5. "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.
6. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. 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.
5. Insert "and the Procurement Representative" after "Contracting Officer", throughout the clause.
6. Insert "or the Procurement Representative" after "Contracting Officer", throughout the clause.

D. PRESERVATION OF THE GOVERNMENT'S RIGHTS

If ULA furnishes designs, drawings, special tooling, equipment, engineering data, or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be construed to mean that ULA, acting on its own behalf, may modify or limit any rights the Government may have to authorize the CONTRACTOR's use of such Furnished Items in support of other U. S. Government prime contracts.

E. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

(a) 52.203-08 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (This clause applies to this Contract if the CONTRACTOR, its employees, officers, director or agents participated personally and substantially in any part of the preparation of a proposal for this Contract. The CONTRACTOR shall indemnify ULA for any and all losses suffered by ULA due to violations of the Act (as set forth in this clause) by CONTRACTOR or its subcontractors at any tier.)

(b) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Applicable because "information other than cost or pricing data" is required. Note 2 applies.)

(c) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) ALT II (OCT 1997) and ALT III (OCT 1997) (Applicable because "information other than cost or pricing data" is required. Note 2 applies. Insert "CD/DVD" in (c) of Alt III.)

(d) 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Note 2 applies. In paragraph (e) Note 3 applies.)

(e) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (June 2008) (Note 5 applies.)

(f) 52.234-01 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (Notes 1 and 2 apply.)

(g) 52.244-06 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2009)

2. The following FAR clauses apply as indicated:

(a) 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (Applies if this Contract exceeds \$100,000. If the Government reduces ULA's price or fee for violation of the Act by CONTRACTOR or its subcontractors at any tier, ULA may with hold from sums owed CONTRACTOR the amount of the reduction. Note 1 applies to paragraph (d).)

(b) 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007) (Applies if value of this Contract equals or exceeds \$100,000. CONTRACTOR's disclosure forms and those of CONTRACTOR's lower tier subcontractors will be provided to ULA.)

(c) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008) (Applies if value of this Contract equals or exceeds \$5 Million and 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 and notification to ULA is not required.)

(d) 52.204-02 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work under this Contract requires access to classified information. The reference in paragraph (c) to the Changes clause shall be deemed to refer to the Changes clause of this Contract.)

(e) 52.245-01 GOVERNMENT PROPERTY (JUNE 2007) Alt I (JUN 2007) (“Contracting Officer” means “ULA” except in the definition of Property Administrator and in paragraph (h)(1)(iii) and where it is unchanged, and in paragraph (c) and (h)(4) where it includes ULA. “Government” is unchanged in the phrases “Government property” and “Government furnished property” and where elsewhere used except in paragraph (d)(1) where it means “ULA” and except in paragraph (d)(2) and (g) where the term includes ULA. The following is added as paragraph (n) “CONTRACTOR shall provide to ULA immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of property control system.”)

3. The following FAR clauses apply to this Contract if Work under the Contract will be performed in the United States or CONTRACTOR is recruiting employees in the United States to work on the Contract.

(i) The following FAR clauses apply to this Contract:

(a) 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

(b) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(c) 52.222-26 EQUAL OPPORTUNITY (MAR 2007) (Only paragraphs (b) (1)-(11) applies.)

(ii) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:

(a) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(iii) The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

(a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

(b) 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

F. CERTIFICATIONS AND REPRESENTATIONS

(1) **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 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other 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 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

(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.

(2) The following FAR clauses apply to this Contract if Work under this Contract will be performed in the United States or CONTRACTOR is recruiting employees in the United States to work on this Contract.

(a) 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.

(b) 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.