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**PRIME CONTRACT REQUIREMENTS**

*This Draft Doc 546 (10-18) was written by ULA to anticipate what will be included in ULA's contract with its Customer. ULA is in the process of negotiating certain terms with our Customer and will finalize these terms and conditions upon conclusion of negotiations. Any such revision would be subject to the Changes clause.*

**The following provisions apply to this Contract:**

**1. APPLICABLE LAW**

Notwithstanding any terms to the contrary in this Contract, U.S. Federal law governs the terms and conditions contained in this document for all purposes, including but not limited to, the meaning of its provisions, and the obligations of the parties set forth herein.

**2. PROPRIETARY AND CONTROLLED UNCLASSIFIED INFORMATION**

*Applicable to the extent that CONTRACTOR or its lower tier subcontractors receives Controlled Unclassified Information Under this Contract*

**A. Applicability**

This clause, except for paragraph D, applies to information other than Data, which is addressed in the Data Rights clause herein. Paragraph D applies to all Controlled Unclassified information.

**B. Exchange of Information**

ULA or the Government may from time to time disclose Controlled Unclassified Information to the CONTRACTOR, and the CONTRACTOR may from time to time disclose Proprietary Information to ULA or the Government in connection with the Contract. Neither the Government, ULA, nor CONTRACTOR shall be obligated to transfer Controlled Unclassified Information or Proprietary Information independently developed by either Party to any Party to this Contract unless required as a part of a deliverable, or to otherwise satisfy the terms and conditions of this Contract.

**C. Treatment of Proprietary Information and Authorized Disclosure**

The Government will use any Proprietary Information received consistent with its obligations under federal law or as otherwise specified in the Patent Rights, and Data Rights clauses herein. "Proprietary Information" shall not extend to materials or information that:

1. Are received or become available without restriction to the Government under this Contract or a proper, separate Contract or contract
2. Are not identified with a suitable notice or legend per the definition of Proprietary Information
3. Are lawfully in possession of the Government without restriction at the time of disclosure thereof as demonstrated by prior written records
4. Are or later become part of the public domain through no fault of the Government
5. Are received by the Government from a third party having no obligation of confidentiality to the CONTRACTOR
6. Are developed independently by the Government without use of Proprietary Information as evidenced by written records or
7. Consist solely of Government funding or expenditure information regarding execution of this Contract

**D. Treatment of Controlled Unclassified Information**

The CONTRACTOR is required to treat Controlled Unclassified Information in accordance with DD 254 Contract Security Classification Specification.

**E. Improper Use of Proprietary Markings**

In the event that there is a disagreement regarding the application of a proprietary marking, CONTRACTOR shall inform ULA, which will coordinate with ULA's Customer to challenge its validity in writing.

#### **F. Third-Party Support**

The Government anticipates third-party support from Covered Government Support Contractors on this Contract. Interactions with Covered Government Support Contractors and their access to Proprietary Information are subject to the Enabling Aerospace Support, and Enabling Support Contractors clauses herein.

#### **G. Survival Rights**

The obligations of the Government and the CONTRACTOR under this clause shall survive after the expiration or termination of this Contract.

#### **H. Flow-down**

The CONTRACTOR shall flow down the requirements of this clause to its respective personnel, subcontractors, and agents receiving such Controlled Unclassified Information under this Contract.

### **3. PATENT RIGHTS**

*Applicable to the extent that this Contract is for experimental, developmental or research work.*

#### **A. Allocation of Principal Rights**

1. This Clause is applicable to Subject Inventions that are otherwise owned by CONTRACTOR, and governs the allocation of Patent Rights between CONTRACTOR and the Government to such inventions. To the extent that CONTRACTOR and ULA have agreed, pursuant to the Intellectual Property clause of this Contract, that any Subject Invention developed under this Contract shall be the exclusive property of ULA, then CONTRACTOR shall disclose each Subject Invention directly to ULA according to the terms of the Intellectual Property clause, and ULA shall be responsible for complying with the requirements of paragraphs B-E of this clause.
2. Except as otherwise provided within this clause, or within the Intellectual Property clause of this Contract, CONTRACTOR shall retain ownership throughout the world to each Subject Invention consistent with the provisions of this clause and 35 U.S.C. § 202, provided the CONTRACTOR has either timely pursued a patent application and maintained any awarded patent, or established trade secret protection, and has not notified the Government (in accordance with the paragraph .B below) that the CONTRACTOR does not intend to retain title.
3. This Contract does not provide to the Government any rights to any invention that is not a Subject Invention.
4. The Government is granted a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

#### **B. Invention Disclosure, Election of Title, and Filing of Patent Application**

1. The CONTRACTOR shall disclose each Subject Invention to the Government Agreements Officer with a copy to ULA on a DD Form 882 within eight (8) months after the inventor discloses it in writing to the CONTRACTOR's personnel responsible for patent matters. Upon submitting the disclosure, the CONTRACTOR shall notify ULA and the Government Agreements Officer whether the CONTRACTOR intends to retain title to such Subject Invention, and whether it will either maintain such Subject Invention as a trade secret or file for patent protection.
2. If the CONTRACTOR initially chooses to maintain such Subject Invention as a trade secret, the CONTRACTOR may subsequently choose to file for patent protection after notice to the Government Agreements Officer. If the CONTRACTOR initially chooses to file for patent protection, but prior to the publication of such application chooses to abandon the application and instead rely on trade secret protection, CONTRACTOR shall notify the Government Agreements Officer.
3. If at any time the CONTRACTOR does not elect to both retain title and maintain a Subject Invention as a trade secret or fails to keep the Subject Invention a trade secret, paragraphs B.4 through E of this Clause shall apply to the Subject Invention.
4. If the CONTRACTOR determines that it does not intend to retain title to any such Subject Invention, the CONTRACTOR shall notify the Government Agreements Officer, in writing, within eight (8) months of disclosure to the Government and provide a copy to ULA. However, in any such case where publication, sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government to a date that is no more than 60 calendar days prior to the end of the statutory period.

#### **C. Conditions When the Government May Obtain Title**

Upon the Government Agreements Officer's written request, the CONTRACTOR shall convey title to any Subject Invention to the

Government under any of the following conditions:

1. If the CONTRACTOR fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph B of this Clause, provided that the Government may only request title within sixty (60) calendar days after learning of the failure of the CONTRACTOR to disclose or elect within the specified times.
2. If patent protection is pursued, in those countries in which the CONTRACTOR fails to file patent applications within the times specified in paragraph B of this Clause, provided that, if the CONTRACTOR has filed a patent application in a country after the times specified in paragraph B of this Clause, but prior to its receipt of the written request by the Government, the CONTRACTOR shall continue to retain title in that country.
3. In any country in which the CONTRACTOR decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a Subject Invention, provided that CONTRACTOR does not notify the Government Agreements Officer that trade secret protection is being sought instead.

**D. Minimum Rights to the CONTRACTOR and Protection of the CONTRACTOR's Right to File**

1. The CONTRACTOR shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the CONTRACTOR fails to disclose the Invention within the times specified in paragraph B of this Clause. The CONTRACTOR's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the CONTRACTOR is a party and includes the right to grant licenses of the same scope to the extent that the CONTRACTOR was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the Invention pertains. The Government's approval for license transfer shall not be unreasonably withheld.
2. The CONTRACTOR's domestic license, as described above, may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 Code of Federal Regulations (CFR) Part 404. This license shall not be revoked in that field of use or the geographical areas in which the CONTRACTOR has achieved practical application and continues to make the benefits of the Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the CONTRACTOR, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, the Government Agreements Officer shall furnish the CONTRACTOR a written notice of its intention to revoke or modify the license, and the CONTRACTOR shall be allowed 30 calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

**E. Action to Protect the Government's Interest**

1. The CONTRACTOR agrees to execute or to have executed and promptly deliver to the Government Agreements Officer, with a copy to ULA, all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the CONTRACTOR elects to retain title, and (ii) convey title to the Government when requested under paragraph C of this Clause and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The CONTRACTOR agrees to require, by written Contract, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the CONTRACTOR each Subject Invention in order that the CONTRACTOR can comply with the disclosure provisions of paragraph B of this Clause. The CONTRACTOR shall instruct employees, through employee Contracts or other suitable educational programs, on the importance of reporting Inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
3. The CONTRACTOR shall notify the Government Agreements Officer of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.
4. The CONTRACTOR shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This Invention was made with Government support under Contract No. FA8811-19-9-0003, awarded by SMC/LE. The Government has certain rights in the Invention."

## **F. Lower-Tier Contracts**

The CONTRACTOR shall include this Clause, suitably modified, to identify the Parties, in all subcontracts or lower-tier Contracts, regardless of tier, for experimental, developmental, or research work.

## **G. March-in Rights**

The CONTRACTOR agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require the CONTRACTOR, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the CONTRACTOR, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Government Agreements Officer determines that:

1. Such action is necessary because the CONTRACTOR or assignee has not taken effective steps, consistent with the intent of this Contract, to achieve practical application of the Subject Invention
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the CONTRACTOR, assignee, or their licensees
3. Such action is necessary to meet requirements for public use, and such requirements are not reasonably satisfied by the CONTRACTOR, assignee, or licensees

## **H. Authorization and Consent**

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this Contract.

## **I. Notice and Assistance**

1. CONTRACTOR shall report to the Procurement Representative, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the CONTRACTOR has knowledge.
2. In the event of any claim or suit against the Government or ULA on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed Under this Contract, the CONTRACTOR shall furnish to the Government and ULA, when requested, all evidence and information in the CONTRACTOR's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government and ULA except where the CONTRACTOR has agreed to indemnify the Government or ULA.

## **J. Patent Infringement Indemnification**

In the case where the CONTRACTOR elects to use trade secret protection for a subject invention, the following applies:

1. The CONTRACTOR shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
2. This indemnity shall not apply unless the CONTRACTOR shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense.

## **K. Survival Rights**

The obligations under this Clause shall survive after the expiration or termination of this Contract.

## **4. DATA RIGHTS**

*Applicable to the extent that this Contract is for developmental prototype work.*

### **A. Allocation of Principal Rights**

1. The Government shall have Limited Rights in Data generated Under this Contract, except as provided in paragraph A.2, A.3, and A.4 of this clause.
2. The Government shall have Unlimited Rights in Data for the following:
  - a. Form, fit, and function Data that are generated Under this Contract

- b. Corrections or changes to Data furnished to the CONTRACTOR by or from the Government
  - c. Data otherwise publicly available or that have been released or disclosed by the CONTRACTOR or subcontractor without restrictions on further use, release, or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data to another party or the sale or transfer of some or all of a business entity or its assets to another party
  - d. Data necessary for operation, maintenance, installation, or training, if applicable, and
  - e. Computer software documentation that are required to be delivered Under this Contract
3. Data that will be delivered, furnished, or otherwise provided to the Government under this Contract, in which the Government has previously obtained rights, shall be delivered, furnished, or provided with either the pre-existing rights or the rights specified in this Contract, whichever is greater, or unlimited rights in the case where any restrictions on the Governments rights to use, modify, reproduce, display, or disclose the data have expired or no longer apply.
4. The Government shall have Background Data Rights to Background Data.

#### **B. Disclosure of Data to Covered Government Support Contractors**

The CONTRACTOR acknowledges that data, including but not limited to Background Data, with other than Unlimited Data Rights are authorized to be released or disclosed to Covered Government Support Contractors in accordance with the Enabling Aerospace Support, and Enabling Support Contractors clauses herein.

#### **C. Purchase of Additional Rights**

Except as otherwise provided in this Contract, the CONTRACTOR, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose Data furnished to the Government with other than Unlimited Rights. However, if the Government desires to obtain additional rights in Data furnished under this Contract, the CONTRACTOR agrees to promptly enter into negotiations with the Government Agreements Officer to determine whether there are acceptable terms for transferring such rights. All Data in which the CONTRACTOR has granted the Government additional rights shall be listed or described in a license Contract made part of the Contract. The license shall enumerate the additional rights granted the Government in such Data.

#### **D. Marking of Data**

1. Except for Data covered under paragraph D.2 of this clause, and Data delivered with unlimited rights, Data to be delivered under this Contract subject to restrictions on use, duplication, or disclosure shall be marked with the following legend, as applicable:
- “Limited Rights Data: Use, duplication, or disclosure is subject to the restriction as stated in the Contract between the U.S. Government and ULA, Contract No. FA8811-19-9-0003.” or
  - “Background Data: Use, duplication, or disclosure is subject to the restriction stated in the Contract between the U.S. Government and ULA, Contract No. FA8811-19-9-0003.”
2. Pre-existing Data markings: If the terms of a prior contract or license permitted the CONTRACTOR to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose Data deliverable under this Contract, and those restrictions are still applicable, the CONTRACTOR may mark such Data with the appropriate restrictive legend for which the Data qualified under the prior contract or license unless such Data is granted a higher level of rights by this Contract.
3. The Government shall have unlimited rights in all unmarked Data. In the event that the CONTRACTOR learns of a release to the Government or ULA of its unmarked Data that should have contained a restricted legend, the CONTRACTOR will have the opportunity to cure such omission by providing written notice to ULA within one (1) year of the erroneous release, and the Government and/or ULA will be held harmless for any sharing of unmarked data prior to the CONTRACTOR's cure action.
4. Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:
- a. Data not identified with a suitable notice or legend as set forth in this clause
  - b. Information contained in any Data for which disclosure and use is restricted under the Proprietary and Controlled Unclassified Information clause herein, if such information is or becomes generally known without breach of the above, is properly known to the Government or is generated by the Government independent of carrying out responsibilities under this Contract, is rightfully received from a third party without restriction, or is included in Data which the CONTRACTOR is required to furnish to the Government without restriction on disclosure and use.

#### **E. Validation of Restrictive Markings**

1. The process outlined in DFARS clause 252.227-7037 (Sep 2016), Validation of Restrictive Markings on Technical Data, will govern the validation of restrictive markings on all data, including but not limited to all Data and Proprietary Information with all mention of Contracting Officer understood to mean the Government Agreements Officer.
2. Unjustified Data markings: The rights and obligations of the parties regarding the validation of restrictive markings on Data furnished or to be furnished under this Contract are contained in the Validation of Restrictive Markings on Technical Data provision described in paragraph 1, above. Notwithstanding any provision of this Contract concerning inspection and acceptance, the Government may ignore or, at the CONTRACTOR's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings provision of this Contract, a restrictive marking is determined to be unjustified.
3. Nonconforming Data markings: A nonconforming marking is a marking placed on Data or Proprietary Information delivered or otherwise furnished to the Government under this Contract that is not in the format authorized by this Contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings provision of this Contract. If the Government Agreements Officer notifies the CONTRACTOR of a nonconforming marking and the CONTRACTOR fails to remove or correct such marking within 60 days, the Government may ignore or, at the CONTRACTOR's expense, remove or correct any nonconforming marking.

#### **F. Marking Procedures and Records**

Throughout performance of this Contract, the CONTRACTOR and its subcontractors or suppliers that will deliver Data with other than unlimited rights, shall:

1. Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this Contract
2. Maintain records sufficient to justify the validity of any restrictive markings on Data or Proprietary Information delivered or otherwise furnished to the Government under this Contract.

#### **G. Copyright**

1. The CONTRACTOR reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of the CONTRACTOR. The CONTRACTOR hereby grants to the U.S. Government a non-exclusive, nontransferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Contract, and to authorize others to do so. The Government's license is co-extensive with the other rights and licenses under the Proprietary and Controlled Unclassified Information, and Data Rights clauses herein.
2. In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Contract, the Party receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out that Party's responsibilities under this Contract with the written permission of the Copyright holder.
3. Third-party copyrighted Data: The CONTRACTOR shall not, without the written approval of the Procurement Representative, incorporate any copyrighted data in the Data to be delivered under this Contract unless the CONTRACTOR is the copyright owner or has obtained for the Government and ULA the license rights necessary to perfect a license or licenses in the deliverable Data of the appropriate scope set forth in this Clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.
4. Except that copyrighted Data that existed or was produced outside of this Contract and is unpublished—having only been provided under licensing Contract with restrictions on its use and disclosure—and is provided under this Contract shall be marked as unpublished copyright in addition to the appropriate license rights legend restricting its use, and treated in accordance with such license rights legend markings restricting its use.
5. The CONTRACTOR is responsible for affixing appropriate markings indicating the licenses of the Government on all Data delivered under this Contract. ULA agrees not to remove any copyright notices placed on Data and to include such notices on all reproductions of the Data

#### **H. Deferred Ordering of Data**

In addition to Data specified in this Contract to be delivered hereunder, the Government may, at any time during the performance of this Contract or within a period of three (3) years after acceptance of all items (other than Data) to be delivered under this Contract or the termination of this Contract, order any Data generated in the performance of this Contract or any subcontract hereunder. When the Data is ordered, the CONTRACTOR shall only be compensated for the costs of converting the Data into the prescribed form, for reproduction and delivery. The obligation to deliver the data of a subcontractor and pertaining to an item obtained from the subcontractor shall expire three (3) years after the date the CONTRACTOR accepts the last delivery of that item from that

subcontractor under this Contract. The Government's rights to use said Data shall be pursuant to the Data Rights clause of this Contract.

#### **I. Rights in derivative computer software or computer software documentation**

The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this Contract that the CONTRACTOR uses to prepare, or includes in, derivative computer software or computer software documentation.

#### **J. Lower-Tier Contracts**

The CONTRACTOR shall include this Clause, suitably modified to identify the parties, in all subcontracts or lower-tier Contracts, regardless of tier, for developmental prototype work.

#### **K. Survival Rights**

The obligations of the Government and the CONTRACTOR under this Clause shall survive after the expiration or termination of this Contract.

### **5. FOREIGN ACCESS TO TECHNOLOGY**

*Applicable to the extent that this Contract is for developmental prototype work.*

#### **A. General**

1. The Parties agree that research findings and technology developments arising under this Contract may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Contract by Foreign Firms or Institutions must be carefully controlled.
2. The CONTRACTOR shall comply with the International Traffic in Arms Regulation (22 CFR part 121 et seq.), the Department of Defense (DoD) Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Administration Regulation (15 CFR part 770 et seq.).

#### **B. Lower-Tier Agreements**

The CONTRACTOR shall include this Clause, suitably modified to identify the parties, in all subcontracts or lower-tier agreements, regardless of tier, for developmental prototype work.

#### **C. Survival Rights**

The obligations of the Government and the CONTRACTOR under this Clause shall survive after the expiration or termination of this Contract.

### **6. OTHER APPLICABLE LAWS AND REGULATIONS**

*Applicable to the extent that this Contract is for developmental prototype work.*

#### **A. Civil Rights Act**

This Contract is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000-d) relating to nondiscrimination in Federally assisted programs. CONTRACTOR agrees to comply with the provisions of the Act.

#### **B. Whistleblower Protection Act**

This Contract is subject to the compliance with Title V of the Whistleblower Protection Act of 1989 relating to the protections available to Federal employees against prohibited personnel practices, and for other purposes. CONTRACTOR agrees to comply with the provisions of the Act.

#### **C. Environmental, Safety, and Health Responsibility**

CONTRACTOR shall comply with all applicable Federal, State, and local environmental, safety, and health laws and regulations. The CONTRACTOR is responsible for assuring all Government Facilities procedures are followed and necessary permits for performing projects under this Contract are in place before performing activities requiring such permits. Any cost resulting from the failure of the CONTRACTOR to perform this duty shall be borne by the CONTRACTOR.

#### **D. U.S. Flag Air Carriers**

Travel supported by U.S. Government funds under this Contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance

with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register [63 Federal Register 63417-63421.]

#### **E. Combating Trafficking in Persons**

1. In accordance with 22 U.S.C. Chapter 78, the United States Government has adopted a policy prohibiting trafficking in persons.
2. In accordance with this statute, this Contract, or any prototype award under this Contract, may be terminated by the Government, without penalty, if the CONTRACTOR engages in, or uses labor recruiters, brokers, or other agents who engage in:
  - a. severe forms of trafficking in persons
  - b. the procurement of a commercial sex act during the period of time that the grant, contract, or cooperative Contract is in effect
  - c. the use of forced labor in the performance of the grant, contract, or cooperative Contract or
  - d. acts that directly support or advance trafficking in persons, including the following acts:
    - i. Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.
    - ii. Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless:
      - aa. exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, contract, or cooperative Contract; or
      - bb. the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action.
    - iii. Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.
    - iv. Charging recruited employees unreasonable placement or recruitment fees, such as fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited.
    - v. Providing or arranging housing that fails to meet the host country housing and safety standards.

#### **F. Federal Funding Accountability and Transparency Act of 2006**

1. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110- 252), requires certain information regarding the CONTRACTOR and the Contract be made public.
2. Nothing in this clause requires the disclosure of classified information.

#### **G. Procurement Ethics Requirements**

For the purposes of 41 U.S.C. Chapter 21 only, this Contract shall be treated as a Federal agency procurement.

#### **H. Lower-Tier Contracts**

The CONTRACTOR shall include this Clause, suitably modified to identify the parties, in all subcontracts or lower-tier Contracts, regardless of tier, for developmental prototype work.

### **7. ENABLING AEROSPACE SUPPORT**

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

1. General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the

system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review, and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of technical performance through meetings with contractors and subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk; providing comments and recommendations in writing to the applicable DoD System Program Manager or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.

2. Technical Review (TR) includes the process of appraising the technical performance of the CONTRACTOR through meetings, exchanging information on progress and problems, reviewing reports, evaluating presentations, reviewing hardware and software, witnessing and evaluating tests, analyzing plans for future work, evaluating efforts relative to Contract technical objectives, and providing comments and recommendations in writing to the applicable Air Force Program Manager as an independent technical assessment for consideration for modifying the program or redirecting efforts to assure timely and economical accomplishment of program objectives.
  3. Technical Support (TS) deals with broad areas of specialized needs of customers for planning, system architecting, research and development, horizontal engineering, or analytical activities for which The Aerospace Corporation is uniquely qualified by virtue of its specially qualified personnel, facilities, or corporate memory. The categories of TS tasks are Selected Research, Development, Test and Evaluation; Plans and System Architecture; Multi-Program Systems Enhancement; International Technology Assessment; and Acquisition Support.
- B.** In the performance of this Contract, the CONTRACTOR agrees to cooperate with The Aerospace Corporation by (1) responding to invitations to attend meetings; (2) providing access to technical information and research, development planning data such as, but not limited to, design and development analyses, test data and results, equipment and process specifications, test and test equipment specifications and procedures, parts and quality control procedures, records and data, manufacturing and assembly procedures, and schedule and milestone data, all in their original form or reproduced form and including top-level life cycle cost\* data, where available; (3) delivering Data as specified in the Contract; (4) discussing technical matters relating to this program; (5) providing access to CONTRACTOR facilities utilized in the performance of this Contract; (6) and allowing observation of technical activities by appropriate technical personnel of The Aerospace Corporation. The Aerospace Corporation personnel engaged in GSE&I, TR, or TS efforts: (i) are authorized access to all such technical information (including Proprietary Information) pertaining to this Contract and may discuss and disclose it to the applicable DoD personnel in a program office; (ii) are authorized to discuss and disclose such technical information (including Proprietary Information) to the commander or director of the various DoD organizations it supports and any U.S. Government personnel in a program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program; and (iii) The Aerospace Corporation shall make the technical information (including Proprietary Information) available only to its Trustees, officers, employees, contract labor, consultants, and attorneys who have a need to know.
- C.** The CONTRACTOR further agrees to include in all subcontracts a clause requiring compliance by its subcontractors and suppliers and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of this Enabling Clause, subject to coordination with the CONTRACTOR, except for subcontracts for commercially available off-the-shelf items. This Contract does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and such subcontractors or suppliers, except as indicated in paragraph (D) below.
- D.** The Aerospace Corporation shall protect the Proprietary Information of the CONTRACTOR and its subcontractors and suppliers in accordance with the Nondisclosure Contract The Aerospace Corporation entered into with the Air Force, a copy of which is available upon request. This Nondisclosure Contract satisfies the Nondisclosure Contract requirements set forth in 10 U.S.C. §2320 (f)(2)(B), and provides that the CONTRACTOR and its subcontractors and suppliers are intended third-party beneficiaries under the Nondisclosure Contract and shall have the full rights to enforce the terms and conditions of the Nondisclosure Contract directly against The Aerospace Corporation, as if they had been signatory party hereto. The CONTRACTOR, and each of its subcontractors and suppliers, hereby waives any requirement for The Aerospace Corporation to enter into any separate company-to-company confidentiality or other nondisclosure agreements.
- E.** The Aerospace Corporation shall make the technical information (including Proprietary Information) available only to its Trustees, officers, employees, contractor labor, consultants, and attorneys who have a need to know, and Aerospace shall maintain between itself and the foregoing binding Contracts of general application as may be necessary to fulfill their obligations under the Nondisclosure Contract referred to herein, and Aerospace agrees that it will inform contractors, subcontractors, and suppliers if it plans to use consultants, or contract labor personnel and, upon the request of such contractor, subcontractor, or supplier, to have its consultants and contract labor personnel execute nondisclosure agreements directly therewith.

**F.** The Aerospace Corporation personnel are not authorized to direct the CONTRACTOR in any manner. CONTRACTOR personnel are not authorized to direct The Aerospace Corporation.

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

## **8. ENABLING SUPPORT CONTRACTORS**

**A.** This Contract is under the general program management of the Air Force SMC. The Air Force has or may enter into contracts with one or more of the following companies, or successor(s), to provide Advisory and Assistance Services (A&AS) or Systems Engineering and Technical Assistance (SETA), Launch Service Integrating Contractor (LSIC) or Systems Engineering and Integration (SE&I). Non-Disclosure Contracts shall be executed within 30 days (unless already existing with the CONTRACTOR) after signature of the Contract or the award of a contract to a successor of the contractors listed below:

1. ManTech International Corp
2. Booz Allen Hamilton (BAH)
3. TASC
4. Millennium Engineering and Integration Company (MEI)
5. Integrity Application, Inc.
6. ASRC Aerospace Corporation
7. Stellar Solutions, Inc.
8. Tecolote Research, Inc.
9. Aleut Management Services
10. Integrated Data Services
11. Wallender and Associates
12. Kinsey Technical Services
13. Element Consulting Group (ECG)
14. Science Applications International Corporation (SAIC)
15. Sigmatech

**B.** In the performance of this Contract, the CONTRACTOR agrees to cooperate with the companies listed above (hereafter referred to as A&AS/SETA/SE&I/LSIC). Cooperation includes allowing observation of technical activities by appropriate A&AS/SETA/SE&I/LSIC technical personnel, discussing technical matters related to this Contract; delivering Data as specified in the Contract, providing access to CONTRACTOR facilities utilized in the performance of this Contract, responding to invitations from authorized A&AS/SETA/SE&I/LSIC personnel to attend meetings, and providing access to technical and development planning data. The CONTRACTOR shall provide A&AS/SETA/SE&I/LSIC personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data, needed by such personnel in order to perform their required Contract related support activities.

**C.** The CONTRACTOR further agrees to include in all subcontracts a clause requiring compliance by the subcontractor and supplier and succeeding levels of subcontractors and suppliers with the response and access and disclosure provisions of paragraph (b) above, subject to coordination with the CONTRACTOR, except for subcontracts for commercial items or commercial services. This Contract does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or A&AS/SETA/SE&I/LSIC and such subcontractors or suppliers.

**D.** A&AS/SETA/SE&I/LSIC personnel are not authorized to direct the CONTRACTOR in any manner. CONTRACTOR personnel are not authorized to direct A&AS/SETA/SE&I/LSIC personnel.

**E.** A&AS/SETA/SE&I/LSIC shall make the technical information (including Proprietary Information) available only to its trustees, officers, employees, contractor labor, consultants, and attorneys who have a need to know. A&AS/SETA/SE&I/LSIC shall maintain between itself and the foregoing binding Contracts of general application as may be necessary to fulfill their

obligations under the Non-Disclosure Contract established under paragraph (a) above, and A&AS/SETA/SE&I/LSIC agree that it will inform the CONTRACTOR and its contractors, subcontractors, and suppliers if it plans to use consultants or contract labor personnel and, upon the request of the CONTRACTOR or such contractor, subcontractor, or supplier, to have its consultants and contract labor personnel execute nondisclosure Contracts directly therewith

## **9. COMMUNICATION WITH ULA CUSTOMER**

ULA shall be solely responsible for all liaison and coordination with ULA's customer unless explicitly required 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's customer, CONTRACTOR shall notify ULA immediately and provide ULA a copy of the communication.

## **10. COMPLIANCE WITH APPLICABLE RISK ALLOCATION REGIME FOR FLIGHT HARDWARE**

- A.** Spares purchased under this Contract may be converted to ULA inventory and used in support of contracts for government or commercial customers.
- B.** When Work procured under this Contract is used to provide launch services subject to a license issued by the Federal Aviation Administration (or other agency or administration having jurisdiction), pursuant to the Commercial Space Launch Act ("CSLA," 51 U.S.C. §§ 50901-23) and its implementing regulations (14 C.F.R. Parts 400-60), as may be amended from time to time, the Parties agree to comply with and abide by all terms and conditions of the CSLA's risk allocation regime as in effect at the time the regime attaches to the launch service. As the CSLA license holder, ULA shall ensure that any rights or benefits available under the CSLA's risk management regime are extended to CONTRACTOR. ULA and CONTRACTOR each agree to extend all applicable cross-waivers of liability, assumptions of responsibility, and indemnifications as required by the CSLA and its implementing regulations (including as set forth at 14 C.F.R. 440.17), to their respective contractors, subcontractors, customers, as those terms are defined in the CSLA or its implementing regulations and to any other related third parties.
- C.** When Work procured under this Contract is used in support of launch services to be provided to NASA or otherwise is used in support of missions under a NASA prime contract, where neither the CSLA, nor Public Law No. 85-804 apply, then the risk allocation regime of the National Aeronautics and Space Administration Act, (the "Space Act," 51 U.S.C. § 20148), and its implementing regulations, shall apply. The Parties agree to comply with and abide by all terms and conditions of the Space Act's risk allocation regime as in effect at the time the regime attaches to the launch service. As the NASA prime contractor, ULA shall ensure that any rights or benefits available under the Space Act's risk management regime are extended to CONTRACTOR. ULA and CONTRACTOR each agree to extend any applicable cross-waivers of liability required by the Space Act or applicable NASA Federal Acquisition clauses (including, to the extent applicable, 48 C.F.R. §§1852.228-76 and -78), and to extend such cross-waivers of liability and assumptions of responsibility to their respective related entities as required.

## **11. DEFINITIONS**

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

"Background Data" for the purposes of this document means Data that is provided or licensed to ULA but not generated to support ULA's FA8811-19-9-0003 Other Transaction Authority Agreement with the Government.

"Background Data Rights" means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government for the purposes of the EELV program or successor program(s). The Government may not, without the written permission of the party asserting Background Data Rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if:

1. The reproduction, release, disclosure, or use is necessary for a release or disclosure to a Covered Government Support Contractor in performance of its covered Government support contract in support of the EELV program or successor program(s) for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Background Data Rights Data; and
2. The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data.

“Computer database” means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

“Computer software” as used in this document means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include Computer databases or computer software documentation.

“Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Controlled Unclassified Information” means any unclassified information that law, regulation, or government-wide policy requires to have safeguarding or disseminating controls. (See DD254 Contract Security Classification Specification)

“Covered Government Support Contractors” means contractors covered under the Enabling Aerospace Support, and Enabling Support Contractors clauses herein.

“Data,” means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, Computer software, Computer databases, Computer software documentation, and mask works. The term does not include financial, administrative, cost, pricing, or management information, and does not include subject inventions included in the Patent Rights clause herein.

“Form, fit and function Data” means Data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

“Government Purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose Data for commercial purposes or to authorize others to do so.

“Government Purpose Rights,” means the rights to:

1. Use, modify, reproduce, release, perform, display, or disclose Data within the Government without restriction; and
2. Release or disclose Data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that Data for United States Government Purposes.

“Invention,” as used in this document, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code (U.S.C.).

“Launch System Prototype” means the Vulcan Centaur Launch System.

“Limited Rights” means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Data outside the Government, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release, or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if:

1. The reproduction, release, disclosure, or use is:
  - a. Necessary for emergency repair and overhaul; or
  - b. A release or disclosure to:
    - i. A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Data; or
    - ii. A foreign government, of Data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluation or informational purposes;
2. The recipient of the Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and
3. The CONTRACTOR or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

“Practical application,” as used in this document, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the Invention, computer software, or related Data is being utilized and that its benefits are, to the extent permitted by law or

Government regulations, available to the public or to the Federal Government on reasonable terms.

“Proprietary Information,” as used in this Contract only, means information that has to be protected from unauthorized use and disclosure to prevent the compromise of property rights or economic interest or avoid jeopardizing CONTRACTORs commercial position. Such information must be designated as proprietary in writing by the CONTRACTOR, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed to the Government. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Proprietary Information if the CONTRACTOR, within 30 calendar days after such disclosure, delivers to the Government a written document or documents describing the material or information and indicating that it is proprietary, provided that any disclosure of information by the Government prior to receipt of such notice shall not constitute a breach by the Government of its obligations to protect Proprietary Information except when indication of the proprietary nature was provided at the time of oral or visual disclosure and such indication is later accompanied by written notice as soon as practicable, but in any event, no later than 14 days after the disclosure.

“Subject Invention” means those inventions conceived or first actually reduced to practice Under this Contract.

“Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to Contract administration, such as financial and/or management information.

“Under this Contract” means within the scope of work to be performed as described in the Statement of Work and any Milestone Payment Plan. In the event that this Contract contains line items supporting multiple ULA Customer requirements, “Under this Contract” refers to Work supporting ULA’s FA8811-19-9-0003 Other Transaction Authority Agreement with the Government.

“Unlimited Rights,” means rights to use, modify, reproduce, perform, display, release, or disclose Data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

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