



**DOC 1 EDU**  
**COMMERCIAL PURCHASE ORDERS PLACED WITH A**  
**COLLEGE, UNIVERSITY OR OTHER EDUCATIONAL INSTITUTION**

Definitions

1. Acceptance, Merger and Severability
2. Changes
3. Disputes, Governing Law and Legal Notification
4. Rights and Remedies
5. Compliance with Laws
6. Ethical Business Practices
7. Conflicts of Interest
8. Export Control
9. Force Majeure
10. Default

11. Termination for Convenience
12. Stop Work
13. Assignment
14. Timely Performance
15. Packing and Shipment
16. Inspection and Acceptance
17. Maintenance of Records
18. Protection of Confidential Information
19. Public Release of Information
20. Communication with ULA's Customer
21. Intellectual property
22. Furnished Property

23. Use of Free, Libre, and Open Source Software (FLOSS)
24. Gratuities/Kickbacks
25. Independent Contractor Relationship
26. Insurance
27. Information Security
28. Payments, Taxes, and Duties
29. Precedence
30. Survivability
31. Warranty

**DEFINITIONS**

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

- (a) "Background Intellectual Property" means all Intellectual Property Made by or for a party apart from the performance of Work under this Contract.
- (b) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, that includes these General Provisions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (c) "CONTRACTOR" means the party identified on the face of this Contract with whom ULA is contracting. CONTRACTOR shall mean the same as supplier, seller, vendor or other such type designation.
- (d) "Foreground Intellectual Property" means all Intellectual Property Made by or for a party in the performance of Work under this Contract.
- (e) "Intellectual Property" means all (i) inventions, discoveries and improvements, (ii) all documented information in whatever form such as information embodied in drawings, test data, specifications, process documents, technical reports, and computer software (e.g., object code and source code) and related computer software documentation, and (iii) all domestic and foreign legal and statutory rights to the foregoing, including but not limited to, patents, trade secrets, copyrights, mask work registrations, and the like.
- (f) "Made" means conceived, developed, first produced, or created.
- (g) "Procurement Representative" means the person authorized by ULA's cognizant procurement organization to administer and/or execute this Contract.
- (h) "ULA" means United Launch Alliance, LLC, as identified on the face of this Contract.
- (i) "ULA's Customer" means any Government or commercial agency/entity ULA is under or will be under contract to support.
- (j) "Work" means all required labor, articles, materials, supplies, goods, services and deliverable information and records embodying such information constituting the subject matter of this Contract.

**1. ACCEPTANCE, MERGER AND SEVERABILITY**

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

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

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

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

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

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

## **2. CHANGES**

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

(b) 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.

## **3. DISPUTES, GOVERNING LAW AND LEGAL NOTIFICATION**

(a) All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. CONTRACTOR agrees to provide ULA with prompt written notification of any legal action, subpoena, claim, notice, demand or other legal proceeding brought against CONTRACTOR relating to or arising out of the Work performed under this Contract.

(b) This Contract, and all claims relating to or arising out of this Contract, or the breach thereof, whether sounding in contract or otherwise, shall be governed in accordance with the laws of the State of Colorado, excluding that State's conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

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

## **4. RIGHTS AND REMEDIES**

(a) Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity. Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

(b) ULA's approval of CONTRACTOR's technical and quality specifications, drawings, plans, procedures, reports, and other documents shall not relieve CONTRACTOR of its obligations to comply with the requirements of this Contract.

## **5. COMPLIANCE WITH LAWS**

(a) In performing this Contract, CONTRACTOR agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, codes and ordinances ("Laws") that may affect performance of this Contract. CONTRACTOR shall cooperate with, and provide access to, regulatory agencies and authorities acting in an enforcement or compliance role. Subject to applicable law, CONTRACTOR shall indemnify, defend and hold harmless ULA against any liability, fine or penalty that may be imposed upon ULA as a result of CONTRACTOR's failure to comply with such Laws.

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

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

(d) CONTRACTOR represents and warrants that it is not disqualified from receiving federal government contracts, meaning that it is not an excluded party as recorded in the System for Award Management (SAM) exclusion file available at SAM.gov. CONTRACTOR agrees to notify ULA immediately upon learning that it or any of its affiliates have been included or proposed for inclusion in the exclusion file published at SAM.gov.

## **6. ETHICAL BUSINESS PRACTICES**

CONTRACTOR is responsible for maintaining an ethics and compliance program that is consistent with ULA's Supplier Code of Conduct (available on ULA's Supplier website, <https://www.ulalaunch.com/resources/doing-business-with-ula>), as appropriate for its business, throughout the performance of this Contract. CONTRACTOR shall ensure that persons performing work under this Contract are aware of the importance of ethical behavior and comply with ULA's Supplier Code of Conduct. If, at any time, Contractor becomes aware of a violation of the Supplier Code of Conduct in connection with this Contract, CONTRACTOR agrees to notify ULA, either through communication with ULA's Procurement Representative, or through ULA's Confidential Ethics Helpline, at 1-800-511-4173.

## **7. CONFLICTS OF INTEREST**

CONTRACTOR represents that it is and shall remain free of any obligation or restriction that would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by CONTRACTOR under this Contract. CONTRACTOR is responsible for determining, in good faith, whether its activities or relationships, or those of its employees, present or could present a conflict of interest. CONTRACTOR shall immediately notify ULA of any change in circumstances that creates an actual, apparent, or potential conflict of interest.

## **8. EXPORT CONTROL**

(a) Technical data, defense services, software and/or hardware furnished under or in connection with this Contract may be subject to U.S. export or import control laws and regulations and may be subject to export or import laws and regulations of other countries. All parties agree to comply with all such laws and regulations, including obtaining the appropriate USG authorization prior to exporting to a Foreign Person within the U.S. or abroad, as applicable.

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

(c) CONTRACTOR is required to be registered with the State Department, Directorate of Defense Trade Controls, if it engages in the business of either exporting or manufacturing (whether exporting or not) defense articles (i.e. ITAR-controlled parts, technical data) or furnishing of defense services, and represents that it maintains an effective export and import compliance program.

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

(e) The CONTRACTOR agrees to reasonably cooperate with ULA for assessments, audits and other fact-finding required to ensure compliance to U.S. export/import laws and regulations or as part of an investigation or corrective action related to a potential or actual violation of U.S. export/import laws and regulations. The CONTRACTOR will provide input for such activities in a timely and accurate manner.

(f) The CONTRACTOR agrees to provide timely and accurate reporting of fees and commissions paid related to Part 130 of the ITAR, when applicable. CONTRACTOR certifies that, except as otherwise reported to ULA, it has not paid, or offered, nor agreed to pay, and will not pay, offer, or agree to pay, in respect of any sale for which an export license or approval is required, political contributions, fees or commissions in amounts as specified in 22 CFR 130.9.

(g) For any shipment exported from the United States in which ULA is the U.S. Principal Party in Interest (USPPI), ULA prohibits the filing of Electronic Exporter Information (EEI) via the Automated Export System (AES) by any party except ULA or a ULA-approved forwarder.

(h) When CONTRACTOR is responsible for clearing the Work through United States Customs, CONTRACTOR will neither cause nor permit ULA's name to be shown as "Importer of Record" on any customs declaration form or other documentation.

(i) ULA has joined with the U.S. Customs Service in the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Suppliers are advised that shipments through U.S. Importers, from manufacturers in foreign countries, and brokers/freight forwarders/carriers must be with transportation companies that are C-TPAT validated by the U.S. Customs Service. Contact the ULA Procurement Representative identified in the solicitation for assistance in identifying transportation companies that are validated under the C-TPAT program.

(j) CONTRACTOR shall indemnify and hold harmless ULA, its officers, employees, and agents from any losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorney fees, all expenses of litigation and/or settlement, and court costs caused in whole or in part by the actions or omissions of CONTRACTOR, its officers, employees, agents, or suppliers in relation to its export/import activities. Any limitation of liability in this Contract shall not apply to this clause.

## **9. FORCE MAJEURE**

(a) Neither ULA nor CONTRACTOR shall be liable for any failure of performance due to events beyond their reasonable control and without their fault or negligence. Such events include: war; warlike operation; insurrection; riot; fire; flood; explosion; accident; act of God; act of a public enemy; terrorism; acts of the government in its sovereign or contractual capacity; epidemic; and quarantine restriction. In all cases, the affected party shall use reasonable efforts to avoid or minimize all such failures.

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

## **10. DEFAULT**

(a) ULA, by written notice, may terminate this Contract for default, in whole or in part, if CONTRACTOR (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; or (iii) fails to provide adequate assurance of future performance; 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) Following a termination for default of this Contract, CONTRACTOR shall be compensated at the Contract price only for Work actually delivered and accepted. In addition, ULA may require CONTRACTOR to deliver 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 tangible property in its possession in which ULA or ULA's Customer has an interest. Payment for such deliverables and for the protection and preservation of property shall be at a price determined by both parties, except that CONTRACTOR shall not be entitled to profit on such materials or property protection activities. ULA may withhold from any amount due under this Contract any sum ULA determines to be necessary to protect ULA or ULA's Customer against loss because of outstanding liens or claims of former lien holders.

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

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

## **11. TERMINATION FOR CONVENIENCE**

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

(b) Upon termination, in accordance with ULA's written direction, CONTRACTOR will immediately: (i) Cease work; (ii) Prepare and submit to ULA an itemization of all completed and partially completed 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, except where such other provision governing termination liability has been agreed to between the parties and incorporated into this Contract.

(c) Any termination settlement proposal shall be submitted to ULA promptly, but in no event later than sixty (60) days from the effective date of the termination, unless otherwise authorized in writing by the Procurement Representative. In no event shall the amount of any settlement be in excess of the Contract value.

(d) CONTRACTOR shall continue all Work not terminated. In no event shall ULA be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price.

## **12. STOP WORK**

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

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

## **13. ASSIGNMENT**

CONTRACTOR shall not assign any of its rights or interest in this Contract or subcontract all or substantially all of its performance of this Contract, without ULA's prior written consent, unless required by applicable law.

## **14. 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.

## **15. PACKING AND SHIPMENT**

(a) CONTRACTOR shall be responsible for ensuring the proper packaging of goods hereunder in accordance with best commercial practice in accordance with ASTM D3951 "Commercial Packaging", unless specific packing instructions are provided. Except as included in this Contract, CONTRACTOR shall not charge ULA for packing, crating, freight, local cartage, and/or any other related packaging and shipment services. CONTRACTOR shall comply with ULA's written shipping instructions at all times.

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

(c) Unless otherwise specified, delivery shall be FOB Place of Origin (place of shipment, as described in the Uniform Commercial Code Section 2-319).

## **16. INSPECTION AND ACCEPTANCE**

(a) ULA's final inspection and acceptance shall be at destination.

(b) If CONTRACTOR delivers non-conforming Work, ULA may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject and return such Work for credit or refund; or (iii) require

CONTRACTOR, at CONTRACTOR's expense, to make all repairs, modifications, or replacements necessary to conform the Work with Contract requirements.

(c) Work shall not be supplied in excess of quantities specified in this Contract. CONTRACTOR shall be liable for handling charges and return shipment costs for any excess quantities. If excess Work is manufactured with reference to ULA's proprietary information or materials, CONTRACTOR agrees that, pursuant to the "Protection of Confidential Information" and, as appropriate the "Intellectual Property" clause of this Contract, it will not sell or offer such Work for sale to anyone other than ULA without ULA's prior written consent.

## **17. MAINTENANCE OF RECORDS**

CONTRACTOR shall maintain complete and accurate records relating to its performance of the Work to substantiate that CONTRACTOR performed all tasks required by the Contract. CONTRACTOR shall retain such records for six (6) years from final payment of this Contract.

## **18. PROTECTION OF CONFIDENTIAL INFORMATION**

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

(b) Unless there is a Confidentiality Agreement in effect between the parties, ULA personnel are not authorized to receive any information in confidence from CONTRACTOR. All communications of any kind from CONTRACTOR to ULA, accordingly, shall be deemed to be on a non-confidential basis unless CONTRACTOR and ULA have executed a Confidentiality Agreement protecting CONTRACTOR information, which is incorporated into this Contract.

## **19. PUBLIC RELEASE OF INFORMATION**

(a) CONTRACTOR shall not, without the prior written consent of ULA, disclose any information of any nature whatsoever relative to this Contract except as may be required to ensure performance or is required by law. CONTRACTOR shall not use "United Launch Alliance," "ULA" or any other name, trademark or logo owned by ULA, in whatever shape or form, without the prior written consent of ULA.

(b) ULA recognizes that CONTRACTOR may wish to publish, for example in a lecture or in a scientific journal, certain of the Contract results and ULA agrees that it will not, after being given the opportunity to examine the relevant draft, prevent such publication in accordance with normal academic custom, provided that: (a) it may be necessary for such publication to be delayed in order not to prejudice the obtaining or validity of Intellectual Property rights in any country of the world, and (b) such results or information shall not include any Proprietary Information of ULA. Any delay in publication shall not exceed ninety (90) days from the date ULA receives a copy of the proposed publication.

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

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

## **21. INTELLECTUAL PROPERTY**

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

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

(b) CONTRACTOR will (i) promptly disclose in writing all inventions conceived, developed or first reduced to practice in the performance of this Contract to ULA and (ii) execute all papers, cooperate with ULA and perform all acts necessary in connection with the filing, prosecution or assignment of related patents or patent applications on behalf of ULA.

(c) To the extent permitted under United States or foreign copyright law, all works of authorship, including documents, drawings, test data, software, software documentation, photographs, videotapes, sound recordings and images, created by or for CONTRACTOR,

either alone or with others in the performance of this Contract, will be works made for hire, with the copyrights therein vesting in ULA. The copyrights in all other such works that fall under this paragraph, including the exclusive rights therein, will be promptly transferred and formally assigned free of charge to ULA.

(d) CONTRACTOR grants to ULA, and to ULA's Customers and subcontractors, an irrevocable, nonexclusive, royalty-free, fully paid-up, transferable, worldwide license under any Background Intellectual Property owned or controlled by CONTRACTOR, but only to the extent that such Background Intellectual Property of CONTRACTOR is necessary to facilitate ULA's or ULA's Customers', subcontractors', or suppliers' use or enjoyment of the Work being delivered under this Contract or the Foreground Intellectual Property including but not limited to analysis and/or testing in support of ULA's requirements..

(e) All authorizations with respect to the provision and sharing of Foreground Intellectual Property, Background Intellectual Property and/or the Work performed under this Contract shall be governed by (i) this section, (ii) the terms of the Confidentiality Agreement executed by and between CONTRACTOR and ULA which Confidentiality Agreement is incorporated by reference and made a part of this Contract, and (iii) the regulatory data rights clauses incorporated into and made a part of this Contract.

(f) CONTRACTOR warrants that the Intellectual Property and/or Work performed or delivered under this Contract will not infringe or otherwise violate the Intellectual Property rights of any third party. CONTRACTOR shall indemnify, defend and hold harmless ULA, its customers, agents, employees, and subcontractors from and against any loss, damage or liability including attorney's fees and costs, based on a claim of infringement or misappropriation of any third party's Intellectual Property rights by the Work or Intellectual Property performed or delivered hereunder. ULA shall notify CONTRACTOR promptly of any such claim and, at CONTRACTOR's option and expense, shall provide to CONTRACTOR reasonable and necessary information, assistance (at CONTRACTOR's expense) and authority to defend or settle said claim. If required by ULA, CONTRACTOR shall provide proof of having sufficient resources or insurance to support this indemnification obligation. In case any Work or Intellectual Property provided hereunder in any suit is held to constitute a violation of such third party's Intellectual Property rights and its use is enjoined, CONTRACTOR shall at its option and expense (i) procure for ULA the right to continue using the Work and/or Intellectual Property, or (ii) modify the same to make it non-infringing, or (iii) replace the same with Work and/or Intellectual Property that is non-infringing and acceptable to ULA. CONTRACTOR shall not have any liability for infringement or misappropriation if the alleged infringement or misappropriation would not have occurred except for ULA's unauthorized modification of the Work and/or Intellectual Property or unauthorized combination with other articles, materials, supplies, goods or Intellectual Property. Any limitation of liability in this Contract shall not apply to this paragraph.

## **22. FURNISHED PROPERTY**

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

(b) Title to Furnished Property shall remain with ULA or ULA's Customer. CONTRACTOR shall clearly mark (if not so marked) all Furnished Property to show its ownership.

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

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

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

## **23. USE OF FREE, LIBRE AND OPEN SOURCE SOFTWARE (FLOSS)**

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

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

(c) As used herein, "FLOSS License" includes the General Public License ("GPL") or Lesser/Library GPL, Affero GPL, Reciprocal Public License (RPL), the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, Eclipse Public License, Creative Commons CC-BY-SA, IBM Public License, or variations thereof, including without limitation licenses referred to as "GPL-Compatible, Free Software License."

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

#### **24. GRATUITIES/KICKBACKS**

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

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

#### **25. INDEPENDENT CONTRACTOR RELATIONSHIP**

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

#### **26. INSURANCE**

(a) The provisions of this subparagraph (a) shall apply only in the event that CONTRACTOR, its employees, students, or agents enter the site(s) of ULA or ULA's Customers to perform Work under this Contract.

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

(1) Worker's Compensation in amounts as required by law, including U.S. Longshoreman and Harbor Worker's Act, if applicable, and Employer's Liability at a limit no less than \$1 Million. This policy shall include a Waiver of Subrogation in favor of ULA.

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

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

(b) For Work performed under this Contract despite location of performance, CONTRACTOR shall maintain for the performance of this Contract, Commercial General Liability covering (as applicable) Premises Liability, Contractual Liability, Products and Completed Operations and Personal Injury Liability at a limit no less than \$3 Million each occurrence and annual aggregate. This policy shall name ULA as an additional insured and include a Waiver of Subrogation in favor of ULA. CONTRACTOR also agrees to provide any other insurance ULA may reasonably require or provide proof that CONTRACTOR already maintains such insurance.

(c) For any insurance required by this clause, insurance must be maintained through an insurer with a minimum AM Best rating of A-VII. Additionally, CONTRACTOR shall provide ULA thirty (30) days advance written notice prior to the effective date of any cancellation or material change in the term or coverage of any of CONTRACTOR's required insurance, provided however such notice shall not relieve CONTRACTOR of its obligations to carry the required insurance. CONTRACTOR shall send a "Certificate of Insurance" showing CONTRACTOR's compliance with these requirements to the Procurement Representative upon request. Insurance maintained pursuant to this clause shall be considered primary as respects to the interest of ULA and is not contributory with any insurance which ULA may carry. CONTRACTOR's obligations to carry insurance coverages are freestanding and are not affected by any other language in this Contract.

#### **27. INFORMATION SECURITY**

(a) This clause is applicable if any CONTRACTOR information systems will process or store any information, not intended for public release (including any proprietary, confidential, or trade secret information, as well as any information subject to other limitations on dissemination), that is generated for, or provided by or on behalf of ULA or ULA's Customer under this Contract (hereinafter Covered Information Systems).

(b) CONTRACTOR shall apply safeguarding requirements and procedures to protect any Covered Information Systems. Unless CONTRACTOR otherwise notifies ULA Information Technology Security to establish an appropriate security plan, requirements and procedures for basic safeguarding of Covered Information Systems shall include, at a minimum, the following security controls:

- (1) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
- (2) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- (3) Verify and control/limit connections to and use of external information systems.
- (4) Control information posted or processed on publicly accessible information systems.
- (5) Identify information system users, processes acting on behalf of users, or devices.
- (6) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (7) Securely sanitize or destroy information system media containing Proprietary Information before disposal or release for reuse.
- (8) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (9) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (10) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
- (11) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (12) Identify, report, and correct information and information system flaws in a timely manner.
- (13) Provide protection from malicious code at appropriate locations within organizational information systems.
- (14) Update malicious code protection mechanisms when new releases are available.
- (15) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

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

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

(a) Unless otherwise provided, terms of payment shall be net sixty (60) days from the latest of the following: (i) ULA's receipt of the CONTRACTOR's proper invoice; (ii) scheduled 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 identified by CONTRACTOR through any means.

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

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

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

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

## **29. 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.

## **30. SURVIVABILITY**

If this Contract expires, is completed or is terminated, CONTRACTOR shall not be relieved of those obligations contained in:

(a) the following clauses:

Acceptance, Merger and Severability  
Compliance with Laws  
Disputes, Governing Law and Legal Notification  
Export Control  
Independent Contractor Relationship  
Information of ULA  
Information Security  
Insurance  
Intellectual Property  
Maintenance of Records  
Public Release of Information  
Use of Free, Libre, and Open Source Software (FLOSS)  
Warranty

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

### **31. WARRANTY**

(a) CONTRACTOR warrants that it will perform any services under this Contract in a non-negligent manner and with the highest degree of professional skill and sound practices and judgment recognized in the industry with respect to services of a similar nature. All services will conform to any applicable statement of work or task statement, and comply with all applicable legislative and regulatory requirements in effect during the term of this Contract.

(b) CONTRACTOR warrants that any goods furnished pursuant to this Contract must (i) strictly conform to the applicable statement of work, specifications, drawings, samples, descriptions, and other requirements of this Contract, (ii) be free from defects in design, material, and workmanship, (iii) not be or contain Counterfeit Parts, as defined in this Contract, and (iv) comply with all applicable legislative and regulatory requirements in effect during the term of this Contract. This warranty shall begin upon final acceptance of the Work by ULA and extend for a period of two (2) years thereafter or longer as agreed between ULA and CONTRACTOR or as required by any specified shelf-life requirements. If any non-conforming Work is identified within the warranty period, CONTRACTOR, at ULA's option, shall promptly repair or replace the non-conforming Work at CONTRACTOR's expense. Transportation of replacement Work shall be at CONTRACTOR's expense. If repair or replacement of Work is not timely, ULA may elect to return, repair, replace, or reprocur the nonconforming Work at CONTRACTOR's expense.

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

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