



DOC 17A

SUPPLEMENTAL TERMS AND CONDITIONS FOR FIXED-PRICE GOVERNMENT CONSTRUCTION CONTRACTS

In Supplemental Terms and Conditions for Fixed-Price Government Construction Contracts, Doc 80: ULA General Provisions – Construction Contracts shall apply, with the following additions, modifications, and substitutions as identified by clause below. This document 17A: Supplemental Terms and Conditions for Fixed-Price Government Construction Contracts shall have precedence over ULA Doc 80: ULA General Provisions – Construction Contracts with regard to the clauses, or portions thereof, cited herein.

SECTION I: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF CLAUSES

1. The Federal Acquisition Regulation (FAR) clauses, referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. The Contracts Disputes Act shall have no application to this Contract. Any reference to a Disputes clause shall mean the Disputes clause of this Contract. The full text for a clause may be accessed electronically at the following address: <https://www.acquisition.gov/far/>
2. Any provision in this Contract that is (i) incorporated in full text or by reference from the FAR; or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies or courts, boards of contract appeals, and quasi-judicial agencies of the Federal Government.
3. Survivability: Those U. S. Government flowdown provisions that by their nature survive the completion or termination of the Contract.

B. GOVERNMENT CONTRACT

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

1. "Commercial Product" or "Commercial Service" means a commercial product or commercial service as defined in FAR 2.101.
2. "Contract" means this Contract as defined in these Terms and Conditions.
3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for ULA's government prime contract under which this Contract is entered.
4. "Contractor" or "Offeror" means the CONTRACTOR, as defined in DOC 80 General Provisions, acting as the immediate (first tier) subcontractor to ULA.
5. "Prime Contract" means the contract between ULA and the U.S. Government or between ULA and its higher-tier contractor who has a contract with the U.S. Government.
6. "Subcontract" means any contract placed by CONTRACTOR or its lower-tier subcontractors under this Contract.

C. NOTES

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

D. PRESERVATION OF THE GOVERNMENT'S RIGHTS

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

E. FLOWDOWN CLAUSES

- (a) FAR 52.203-7 ANTI-KICKBACK PROCEDURES (June 2020) (CONTRACTOR certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.)
- (b) 52.203-08 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014) (This clause applies to this Contract if the CONTRACTOR, its employees, officers, director or agents participated personally and substantially in any part of the preparation of a proposal for this Contract. The CONTRACTOR shall indemnify ULA for any and all losses suffered by ULA due to violations of the Act (as set forth in this clause) by CONTRACTOR or its subcontractors at any tier.)(Note 1 applies.)
- (c) FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020) (CONTRACTOR's disclosure forms and those of CONTRACTOR's lower-tier subcontractors will be provided to ULA.) (Applicable only if the value of this Contract equals or exceeds the threshold specified in FAR 3.808 on the date of the Contract award.)
- (d) FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (NOV 2021) (Applies only if the value of this Contract exceeds the threshold specified in FAR 3.1004(a) on the date of Contract award and the period of performance is more than 120 days; Paragraph (c) does not apply if this Contract is for the acquisition of a commercial product or commercial service or if the CONTRACTOR has represented itself as a small business concern pursuant to the award of this Contract. Disclosures made under this clause shall be made directly to the Government entities identified in the clause, with a copy to ULA.) (Nothing contained herein shall be construed to alter CONTRACTOR's requirements to comply with FAR 52.203-13 Contractor Code of Business Ethics and Conduct.)
- (e) FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (NOV 2023)
- (f) FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
- (g) FAR 52.204-02 SECURITY REQUIREMENTS (MAR 2021) (Applicable if Work under this Contract requires access to classified information ("Confidential", "Secret" or "Top Secret"). The reference in paragraph (c) to the Changes clause shall be deemed to refer to the Changes clause of this Contract.)
- (h) FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021) (Applicable to Contracts, including subcontracts for the acquisition of commercial products or commercial services other than commercially available off-the-shelf items, for which Contract performance will involve storage, processing, or transmitting non-public contract information on CONTRACTOR Information systems. Any reference to Federal contract information shall be interpreted to include ULA Proprietary Information.) (Any references to the Government shall mean the Government or ULA.)
- (i) FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (DEC 2023) (In the event the CONTRACTOR, identifies, or is notified by a lower-tier subcontractor of a Kaspersky Lab covered article provided to ULA or the Government during the Contract performance, CONTRACTOR shall report the information in paragraph (c)(2) of the clause in writing to the ULA Procurement Representative.)(Note 2 applies.)
- (j) FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021) (In the event the CONTRACTOR identifies, or is

notified by a lower-tier subcontractor of covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during the Contract performance, CONTRACTOR shall report the information in paragraph (d)(2) of the clause in writing to the ULA Procurement Representative.)

- (k) FAR 52.204-27 PROHIBITION ON A BYTEDANCE COVERED APPLICATION (JUN 2023) (Applies to all Contracts, including Contracts for the acquisition of commercial products or commercial services.)
- (l) FAR 52.209-06 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2025) (Note 2 applies) (Applies if this Contract exceeds the threshold specified in FAR 9.405-2(b) on the date of Contract award except for the procurement of commercially available off-the-shelf items.)
- (m) FAR 52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (NOV 2021) (Note 2 applies.)
- (n) FAR 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2025)
- (o) FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020) (Applies only if the value of this Contract equals or exceeds the threshold specified in FAR 22.1303(a) on the date of Contract award.) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor.)
- (p) FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020) (Applies only if the value of this Contract equals or exceeds the threshold specified in FAR 22.1408(a) on the date of Contract award.) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor.)
- (q) FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020) (Applies only if the value of this Contract equals or exceeds the threshold specified in FAR 22.1303(a) on the date of Contract award) (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor.)
- (r) FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010) (Applies only if the value of this Contract equals or exceeds \$10,000). (Applies to Contracts not exempt by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 3 of Executive Order 13496.)
- (s) FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (NOV 2021) (The requirements in paragraph (h) of this clause apply only to any portion of the Contract that is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and exceeds \$550,000.) (In paragraph (e) insert "and ULA" after "Government") (Note 5 applies)
- (t) FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2025) (Applicable if the Contract is performed in the United States, and is for (i) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item, or an item that would be a COTS item, but for minor modifications, performed by the COTS provider and are normally provided for that COTS item); or (ii) construction.)
- (u) FAR 52.226-8 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (MAY 2024) (Applies to Contracts that exceed the micro-purchase threshold as defined in FAR 2.101 on the date of Contract award).
- (v) FAR 52.227-14 RIGHTS IN DATA GENERAL (MAY 2014) (Alt II (DEC 2007) applies to the extent that it becomes necessary for CONTRACTOR to deliver limited rights data. Alt III (DEC 2007) applies to the extent that it becomes necessary for CONTRACTOR to deliver restricted computer software.)

F. ADDITIONAL PROVISIONS

REPORTING REQUIREMENTS (52.204-10)

This requirement may apply if this Contract is valued at \$25,000 or more, as directed by ULA's Procurement Representative.

As required by the Federal Funding Accountability and Transparency Act (Transparency Act), Public Law 109–282, CONTRACTOR shall provide to ULA Form F 213 Executive Compensation Certification, prior to award, and annually thereafter. The law requires that all reported information required in FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards, be made public. ULA will post all required information at <https://www.SAM.gov>.

PRIORITY RATING

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

45. TERMINATION FOR CONVENIENCE

Substitute the following paragraph (d) in the Doc 80: ULA General Provisions – Construction Contracts' clause titled “Termination for Convenience”:

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

SECTION III: CERTIFICATIONS, REPRESENTATIONS, AND REQUIRED CROSS-WAIVERS

A. REPRESENTATIONS AND CERTIFICATIONS

This clause contains certifications and representations that are material representations of fact upon which ULA will rely in making awards to CONTRACTOR. By submitting its written offer, or providing oral offers/quotations at the request of ULA, or accepting any contract, CONTRACTOR certifies to the representations and certifications as set forth below in this clause. These certifications shall apply whenever these terms and conditions are incorporated by reference in any contract, agreement, other contractual document, or any quotation, request for quotation (oral or written), request for proposal or solicitation (oral or written), issued by ULA. CONTRACTOR shall immediately notify ULA of any change of status with regard to these certifications and representations.

(a) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applies to Contracts that equal or exceed \$150,000.)

(i) CONTRACTOR hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Contract.

(ii) If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the CONTRACTOR with respect to this Contract, the CONTRACTOR shall complete and submit OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The CONTRACTOR need not report regularly employed officers or employees of the CONTRACTOR to whom payments of reasonable compensation were made.

(b) FAR 52.209-05 Certification Regarding Responsibility Matters.

(i) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-05):

(1) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) have not, within a three-year period, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(3) are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in subdivision (2).

(4) Have not, within a three-year period, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at [9.104-5\(a\)\(2\)](#) for which the liability remains unsatisfied.

(ii) CONTRACTOR shall provide immediate written notice to ULA if, any time prior to award of any contract, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- (c) **DFARS 252.204-7019 Notice of NIST SP 800-171 DoD Assessment Requirements.** CONTRACTOR has completed, within the last 3 years, at least a basic NIST SP 800-171 DoD Assessment with a summary level score or Basic Assessment posted in the Supplier Performance Risk System (SPRS), as described in <https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171> for all covered contractor information systems relevant to this Contract that are not part of an information technology service or system operated on behalf of the Government.
- (d) **DFARS 252.204-7020 NIST SP 800-171 DoD Assessment Requirements.** CONTRACTOR has completed, within the last 3 years, at least a basic NIST SP 800-171 DoD Assessment, as described in <https://www.acq.osd.mil/asda/dpc/cp/cyber/safeguarding.html#nistSP800171> , for all covered contractor information systems relevant to this Contract that are not part of an information technology service or system operated on behalf of the Government.
- (e) **NASA FARS 1852.246-73 Human Space Flight Item.** CONTRACTOR acknowledges that items purchased under this Contract may be used in Human Space Flight. Materials, manufacturing and workmanship of highest quality standards are essential to astronaut safety. If you are able to supply the desired item with a higher quality than that of the items specified or proposed, you are requested to bring this fact to the immediate attention of ULA.
- (f) **Contractor Responsibility Watch List.** CONTRACTOR certifies that it is not listed on the Responsibility Watch List (CRWL) maintained by the United States Space Force Space and Missile Systems Center (SMC), and has not been notified by any of its subcontractors of their inclusion on the CRWL.

B. FEDERALLY REQUIRED CROSS-WAIVERS

Federal Regulations may require that ULA extend to CONTRACTOR and its Subcontractors the following reciprocal cross-waivers applicable to launch activity. In consideration for CONTRACTOR's agreement to these cross-waivers, Federal Regulations afford CONTRACTOR certain protections from third party claims. **By Submitting its written offer or accepting any Contract, CONTRACTOR agrees to be bound to each of the required waivers below. Contractor agrees to defend, indemnify, and hold harmless ULA and ULA's Customer from and against any claims, damages, losses, costs, or expenses, including reasonable attorneys' fees, arising out of CONTRACTOR's failure to extend any federally required cross-waivers.**

1. WAIVER OF CLAIMS AND ASSUMPTION OF LIABILITY FOR FAA-LICENSED LAUNCH ACTIVITY

(a) As required by 14 C.F.R. part 440 of the regulations of the Federal Aviation Administration (FAA) of the U.S. Department of Transportation, the reciprocal waiver of claims in this clause between ULA and CONTRACTOR applies when ULA conducts a launch under 51 U.S.C. Subtitle V, chapter 509. This reciprocal waiver of claims implements the provisions of §440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This clause applies to ULA's licensed activity, where ULA is the "Licensee" described by the Regulations.

In consideration of the mutual releases and promises contained herein, the Parties hereby agree to the provisions contained in subparagraphs (b)-(g):

(b) The following definitions will apply to this clause only:

"Contractors and Subcontractors" means those entities that are involved at any level, directly or indirectly, in Licensed Activities or Permitted Activities, and includes suppliers of property and services, and the component manufacturers of the launch vehicle.

"Customer" means ULA's Customer, or any other customer defined by §440.3 of the Regulations.

"Launch License" means any license issued by the Associate Administrator for Commercial Space Transportation, FAA, to ULA, including all license orders issued in connection with the License, under 51 U.S.C. Subtitle V, chapter 509.

Except as otherwise defined herein, terms used in this Clause and defined in the Regulations shall have the same meaning as contained in 51 U.S.C. Subtitle V, chapter 509, or the Regulations, respectively.

(c) Waiver and Release of Claims.

(i) ULA hereby waives and releases claims it may have against CONTRACTOR and each of CONTRACTOR's Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activity, regardless of fault.

(ii) CONTRACTOR hereby waives and releases claims it may have against ULA, the United States, any Customer, and each of their respective Contractors and Subcontractors, and against any space flight participant, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activity, regardless of fault.

(d) Assumption of Responsibility.

ULA and CONTRACTOR shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. ULA and CONTRACTOR shall each hold harmless and indemnify each other, the United States, any Customer, and the Contractors and Subcontractors of each, and any space flight participant, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(e) Extension of Assumption of Responsibility and Waiver and Release of Claims.

(i) ULA shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs (c) and (e), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against CONTRACTOR and each of its Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless, and indemnify CONTRACTOR and each of its Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(ii) CONTRACTOR shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless and indemnification, as set forth in paragraphs (c)(i) and (e), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against ULA, the United States, and any Customer, and each of their respective Contractors and Subcontractors, and any space flight participant and to be responsible, hold harmless and indemnify ULA, the United States, and any Customer, and each of their respective Contractors and Subcontractors, and any space flight participant, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(f) Indemnification.

(i) ULA shall hold harmless and indemnify CONTRACTOR and its directors, officers, servants, agents, subsidiaries, employees, and assignees, or any of them, from and against liability, loss, or damage arising out of claims that ULA's Contractors, and Subcontractors, or any Customer, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of ULA's failure to implement properly the waiver requirement of 14 C.F.R. §440.17.

(ii) CONTRACTOR shall hold harmless and indemnify ULA, any Customer, and the United States, and any of their directors, officers, servants, agents, subsidiaries, employees, and assignees, or any of them, from and against

liability, loss, or damage arising out of claims that CONTRACTOR's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of CONTRACTOR'S failure to implement properly the waiver requirement of 14 C.F.R. §-440.17.

(g) Miscellaneous.

(i) Nothing contained herein shall be construed as a waiver or release by ULA or CONTRACTOR of any claim by an employee of ULA or CONTRACTOR, respectively, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(ii) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, the United States, the Contractors and Subcontractors of the United States, any Customer, the Contractors and Subcontractors of any Customer, any space flight participant, and in the case of ULA, CONTRACTOR, any Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents, and employees of any of the foregoing, and in the case of the United States, its agents.

(iii) CONTRACTOR and ULA shall each be responsible for such insurance as they deem necessary to protect their respective property. Any such insurance procured by one Party shall provide that the insurers shall waive all rights of subrogation against the other Party and, in the case of insurance procured by ULA, a waiver of subrogation for the benefit of CONTRACTOR's Contractors Subcontractors and, in the case of CONTRACTOR, a waiver of subrogation for the benefit of ULA's Contractors and Subcontractors, ULA's Customers, the United States, and their respective Contractors and Subcontractors and space flight participants.

(iv) This clause shall be governed by and construed in accordance with United States Federal law.

2. CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (NFS 1852.228-78) (OCT 2009) (DEVIATION)

(a) This clause applies when Work procured under this Contract is used to provide launch services to NASA in support of a mission unrelated to the International Space Station (ISS). The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for Work done in support of Agreements between Parties involving Science or Space Exploration activities, unrelated to ISS, but which involve a launch not licensed by the FAA. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

(i) "Agreement" refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR 1266.104.

(ii) "Damage" means:

- (1) Bodily injury to, or other impairment of health of, or death of, any person;
- (2) Damage to, loss of, or loss of use of any property;
- (3) Loss of revenue or profits; or
- (4) Other direct, indirect, or consequential Damage.

(iii) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.

(iv) "Party" means a party to a NASA Space Act agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. For purposes of this cross-waiver of liability, "Party" also means a contractor or subcontractor of a party to such a NASA agreement.

(v) "Payload" means all property to be flown or used on or in a Launch Vehicle.

(vi) "Protected Space Operations" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. Protected Space Operations begins at the signature of the Agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(1) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and

(2) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. Protected Space Operations excludes activities on Earth which are conducted on return from space to develop further a Payload's product or process other than for the activities within the scope of an Agreement for launch services.

(vii) "Related entity" means:

- (1) A contractor or subcontractor of a Party at any tier;
 - (2) A user or customer of a party at any tier; or
 - (3) A contractor or subcontractor of a user or customer of a Party at any tier.
- The terms "contractors" and "subcontractors" include suppliers of any kind.

(c) Cross-waiver of liability:

(i) ULA and CONTRACTOR each agree to a waiver of liability pursuant to which each waives all claims against any of the entities or persons listed in paragraphs (c)(i)(1) through (c)(i)(4) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

- (1) A Party;
- (2) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;
- (3) A Related Entity of any of the entities identified in (c)(i)(1) or (c)(i)(2) of this clause; or
- (4) The employees of any of the entities identified in (c)(i)(1) through (c)(i)(3) of this clause.

(ii) CONTRACTOR agrees to extend the cross-waiver of liability as set forth in paragraph (c)(i) of this clause to its own subcontractors at all tiers by requiring them, by contract or otherwise, to:

- (1) Waive all claims against the entities or persons identified in paragraphs (c)(i)(1) through (c)(i)(4) of this clause; and
- (2) Require that their Related Entities waive all claims against the entities or persons identified in paragraph (c)(i)(1) through (c)(i)(4) of this clause.

(iii) For avoidance of doubt, this cross-waiver includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(iv) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

- (1) Claims between a Party and its own Related Entities or between its Related Entities;
- (2) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;
- (3) Claims for Damage caused by willful misconduct;
- (4) Intellectual property claims;
- (5) Claims for damages resulting from failure of a Party to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(ii) of this clause; or
- (6) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(d) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(e) This cross-waiver shall not apply when 51 U.S.C. Subtitle V, chapter 509 applies.

3. CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (NFS 1852.228-76) (OCT 2012) (DEVIATION)

(a) This clause applies when Work procured under this Contract is ultimately used to provide launch services to NASA in support of ISS activities. The Intergovernmental Agreement for the ISS contains a cross-waiver of liability provision to

encourage participation in the exploration, exploitation, and use of outer space through the ISS. The cross-waiver of liability in this clause is intended to be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(i) "Agreement" refers to any NASA Space Act agreement or contract that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(ii) "Damage" means:

- (1) Bodily injury to, or other impairment of health of, or death of, any person;
- (2) Damage to, loss of, or loss of use of any property;
- (3) Loss of revenue or profits; or
- (4) Other direct, indirect, or consequential Damage.

(iii) "Launch" means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:

- (1) in a suborbital trajectory;
- (2) in Earth orbit in outer space; or
- (3) otherwise in outer space, including activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.

(iv) "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth or returning to Earth, which carries Payloads or persons, or both.

(v) "Partner State" includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor Agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.

(vi) "Party" means a party to a NASA Agreement involving activities in connection with the ISS. For purposes of this cross-waiver of liability, "Party" also means a contractor or subcontractor of a party to such a NASA agreement.

(vii) "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.

(viii) "Protected Space Operations" means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space performed in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA's obligations under these Agreements. It includes, but is not limited to:

- (1) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and
- (2) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. "Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. "Protected Space Operations" excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(ix) "Related Entity" means:

- (1) A contractor or subcontractor of a Party or a Partner State at any tier;
 - (2) A user or customer of a Party or a Partner State at any tier; or
 - (3) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.
- The terms "contractor" and "subcontractor" include suppliers of any kind.

(x) "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(i) ULA and CONTRACTOR each agree to a cross-waiver of liability pursuant to which each waives all claims against any of the entities or persons listed in paragraphs (c)(i)(1) through (c)(i)(4) of this clause based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

- (1) A Party as defined in (b)(vii) of this clause;
- (2) A Partner State, including the United States of America;
- (3) A Related Entity of any entity identified in paragraph (c)(i)(1) or (c)(i)(2) of this clause; or
- (4) The employees of any of the entities identified in paragraphs (c)(i)(1) through (c)(i)(3) of this clause.

(ii) In addition, CONTRACTOR shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(i) of this clause, to its Related Entities by requiring them, by contract or otherwise, to:

- (1) Waive all claims against the entities or persons identified in paragraphs (c)(i)(1) through (c)(i)(4) of this clause; and
- (2) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(i)(1) through (c)(i)(4) of this clause.

(iii) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(iv) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

- (1) Claims between a Party and its own Related Entities or between its Related Entities;
- (2) Claims made by a natural person (with the exception of Passengers and Commercial Cargo Customers), his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;
- (3) Claims for Damage caused by willful misconduct;
- (4) Intellectual property claims;
- (5) Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its subcontractors or related entities, pursuant to paragraph (c)(2) of this clause;
- (6) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.
- (7) Claims against Passengers or Commercial Cargo Customers.

(d) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(e) This cross-waiver shall not apply when 51 U.S.C. Subtitle V, chapter 509 applies.