



America's Ride to Space

FLOWDOWN PROVISIONS
SIERRA NEVADA CORPORATION (SNC) CRS2 CONTRACT

PRIME CONTRACT REQUIREMENTS

This Draft Doc 610 (06-17) was written by ULA to anticipate what will be included in ULA's contract with its Customer. ULA is in the process of negotiating a contract and will finalize these terms and conditions upon award of definitized contracts. Any such revision would be subject to the Changes clause.

A. The following clauses of the Federal Acquisition Regulation (FAR) and National Aeronautics and Space Administration Federal Acquisition Regulation Supplement (NFS) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable during the performance of this Contract. The full text of a clause may be accessed electronically at the following address: http://www.acquisition.gov/far

1. FAR FLOWDOWN CLAUSES

Table with 2 columns: Clause Number and Title/Applicability. Lists FAR clauses 52.203-6 through 52.247-64 with their respective titles and applicability conditions.

2. NFS FLOWDOWN CLAUSES

Table with 2 columns: Clause Number and Title/Applicability. Lists NFS clauses 1852.204-76 through 1852.237-73 with their respective titles and applicability conditions.

**NOTES**

1. Substitute "ULA" for "Government" 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.

**B. The following additional provisions apply to this Contract:**

**1) COMMUNICATION, NEWS, AND PUBLIC RELEASE**

a) ULA's Customer shall be solely responsible for all liaison, coordination, and communication with the Government or the media with regard to and as it affects the Prime Contract and the Contract. Except as required by law, CONTRACTOR shall not communicate with the Government or the media with respect to the Prime Contract, this Contract, and/or any related contract without prior written approval from ULA. CONTRACTOR shall promptly notify ULA of any communications formally communicated to the CONTRACTOR initiated by the Government that affect the Prime Contract, this Contract, and/or any related contract.

(b) CONTRACTOR shall not make, deny, or confirm any public statements, news releases, advertisements, media interviews, or public announcements concerning the Contract. This provision shall not apply to any disclosure deemed by CONTRACTORs legal counsel to be required by law or by regulation of any federal, state or local government agency.

(c) CONTRACTOR shall include, and require its subcontractors to include, this Clause, including this sentence, in each of its subcontracts under the Contract.

**2) PRIORITY RATING**

This Contract has a priority rating of DO-C9 and as such, is certified for national defense use. The CONTRACTOR shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700). CONTRACTOR shall include the contents of this provision in all subcontracts issued under this Contract at any tier.

**3) CHANGES (DEVIATION)**

In addition to the circumstances where changes would be applicable in the Changes clause of this Contract, ULA's procurement representative may direct changes in any of the following:

- (a) Statement of Work
- (b) Amount of furnished property
- (c) Quantity

CONTRACTOR shall provide written notice of its intent to assert a claim for equitable adjustment within ten (10) working days from the date of receipt by CONTRACTOR of such written notice of change.

**4) MAINTENANCE OF RECORDS (DEVIATION)**

Notwithstanding anything to the contrary in the Maintenance of Records clause of this Contract, CONTRACTOR shall retain all records related to this Contract for a period of 4 years from the date of final payment.

**5) INSURANCE (DEVIATION)**

a) CONTRACTOR shall procure and maintain the types and amounts of insurance coverage listed in the Insurance clause with the following additional provisions and shall require any lower-tier subcontractors to maintain such insurance if such lower-tier subcontractors perform work on ULA's Customer's premises, or perform work unique to this Contract:

- (i) CONTRACTOR's Worker's Compensation policy shall include a waiver of subrogation in favor of ULA and ULA's Customer.
- (ii) CONTRACTOR's Commercial General Liability policy shall include ULA and ULA's Customer as an additional insured, and the policy shall include a waiver of subrogation in favor of ULA and ULA's Customer.
- (iii) CONTRACTOR's Commercial Automobile Liability policy shall include ULA and ULA's Customer as an additional insured, and the policy shall include a waiver of subrogation in favor of ULA and ULA's Customer.

**6) CROSS-WAIVER OF LIABILITY**

a) In accordance with NFS 1852.228-76 (OCT 2012), which is incorporated by reference to the extent expressly stated herein, the Commercial Space Launch Act, 51 U.S.C. Ch. 509, §§ 50901-23 (2011) (as amended by the U.S. Commercial Space Launch Competitiveness Act of 2015 or as amended), CONTRACTOR and ULA hereby agree, to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraph (b) below based on Damage arising out of Protected Space Operations (as each term is defined in NFS 1852.228-76). 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.

b) The cross-waiver described in (a) shall apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) A party to a NASA Space Act agreement or contract that contains the cross-waiver of liability provision authorized by 14 C.F.R. Part 1266.102 Involving activities in connection with the ISS, including this contract

(ii) A Partner State, as that term is defined in NFS 1852.228-76, including the United States of America;

(iii) A Related Entity, as that term is defined in NFS 1852.228-76 of any entity identified in paragraphs; (b)(1) or (b)(2) above, or

(iv) The employees of any of the entities identified in paragraphs (b) (1) through (b) (3) above

Notwithstanding any other provisions in NFS 1852.228-76, this cross-waiver of liability shall not be applicable where exclusions are provided in NFS 1852.228-76, including, without limitation NFS 1852.228-76(c) (4).

c) CONTRACTOR shall require that its subcontractors at any tier and any customers waive all claims against the entities or persons identified in paragraphs (b) (1) through (b) (3) above.

d) ULA agrees to flow a clause substantially similar to this clause (Cross-Waiver of Liability) to all of its subcontractors whose scope of work interfaces with or otherwise relates to the services under this Contract.

e) ULA must obtain a Federal Aviation Administration (FAA) license, in accordance with 51 U.S.C. 50901 *et seq.*, for Launch and Reentry Services performed under specific missions. The waivers of claims shall not apply to Launch Services and Reentry Services that are subject to the FAA license under the CSLA.

f) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist. Nothing in this clause shall affect the CONTRACTOR's duty to perform its obligations under this Contract.

g) As used in the definition of Protected Space Operations, "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 or Payload) from Earth: (i) in a suborbital trajectory; (ii) in Earth orbit in outer space; or (iii) otherwise in outer space, including activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, or Payload for launch.

#### **7) COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS FOR LICENSED LAUNCH ACTIVITY**

(a) This clause applies to Third Party claims that arise when Work procured under this Contract is ultimately used to provide launch services covered by the Commercial Space Launch Act "CSLA".

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

"Bodily Injury" means physical injury, sickness, disease, disability, shock, mental anguish, or mental injury sustained by any person, including death.

"Contractor's Subcontractors" means those entities that are involved at any level, directly or indirectly, in the performance by CONTRACTOR of its obligations under this Agreement, and includes suppliers of property and services, and the component manufacturers of the Launch Vehicle.

"CSLA" means the Commercial Space Launch Act, as amended, 51 U.S.C. Chapter 509 *et. seq.*, including implementing regulations at 14 C.F.R. Parts 415 and 440.

"Customer" means a customer of ULA under a Launch Services Agreement.

"Customer's Related Third Parties" means those contractors, subcontractors and suppliers at any tier involved directly or indirectly in the performance by Customer of its obligations under a Launch Services Agreement, Customer entities involved with payload processing or other activities in the payload processing facilities and parties having any right, title or interest in the satellite to be launched under the Launch Services Agreement or the Launch Vehicle.

"Launch License" means: (a) such current licenses issued by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to ULA, including all license orders issued in connection therewith; and (b) any future launch license issued to ULA in accordance with the CSLA and notified to CONTRACTOR.

"Launch Services Agreement" means the launch services agreement entered into between ULA and a Customer for the provision of launch services.

"Launch Vehicle" means the launch vehicle system consisting of (an Atlas lower stage and Centaur upper stage connected by an interstage adapter, the payload fairing and the payload adapter with separation system collectively identified as the Atlas) to perform launch services under the Launch License.

"Licensed Activity" means the launch of the Launch Vehicle in accordance with the terms of a Launch License.

“Property Damage” means partial or total destruction, impairment, or loss of tangible property, real or personal.

“ULA’s Subcontractors” means those entities, other than CONTRACTOR and Contractor’s Subcontractors that are involved at any level, directly or indirectly, in the performance by ULA of Licensed Activity.

“United States” means the United States and its agencies involved in Licensed Activity.

“United States’ Subcontractors” means those entities that are involved at any level, directly or indirectly, in the performance by the United States of any Licensed Activity.

(c) Launch Liability Insurance. ULA shall obtain and maintain in effect a policy of liability insurance as required by the terms of the Launch License and in the amount prescribed therein to pay claims by third parties for Bodily Injury and Property Damage resulting from Licensed Activity and shall name CONTRACTOR and Contractor’s Subcontractors as additional insureds thereunder.

(d) Waiver and Release of Claims.

(i) ULA hereby waives and releases claims against CONTRACTOR and Contractor’s 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 against ULA and ULA’s Subcontractors, the United States, United States’ Subcontractors, Customer and Customer’s Related Third Parties for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activity, regardless of fault.

(e) Assumption of Responsibility.

(i) ULA shall be responsible 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 shall be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activity, regardless of fault.

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

(i) ULA hereby agrees to implement a waiver and release of claims with each of ULA’s Subcontractors, each Customer, each Customer’s Related Third Parties, the United States and United States’ Subcontractors, under which each such party waives and releases claims against CONTRACTOR and Contractor’s Subcontractors and agrees to assume financial responsibility for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees and, except in the case of the United States and United States’ Subcontractors, agrees to hold harmless and indemnify CONTRACTOR and Contractor’s Subcontractors from Bodily Injury or Property Damage sustained by its employees, resulting from Licensed Activity, regardless of fault, provided that the waiver and release to be implemented by ULA with the United States and United States’ Subcontractors shall apply only to the extent of claims that exceed the amount of launch liability insurance obtained by ULA under paragraph (a) of this clause.

(ii) CONTRACTOR hereby agrees to implement a waiver and release of claims with each of Contractor’s Subcontractors that have personnel or property at risk in the conduct of Licensed Activity, under which each of such Contractor’s Subcontractors waives and releases claims against ULA, ULA’s Subcontractors, Customers, Customer’s Related Third Parties, the United States and United States’ Subcontractors and agrees to assume financial responsibility for Property Damage such Contractor’s Subcontractor sustains and for Bodily Injury or Property Damage sustained by its own employees and agrees to hold harmless and indemnify each such party from Bodily Injury or Property Damage sustained by such Contractor’s Subcontractor’s employees, resulting from Licensed Activity, regardless of fault.

(g) Indemnification.

(i) ULA shall defend, 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 any of ULA’s Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activity, regardless of fault.

(ii) CONTRACTOR shall defend, hold harmless and indemnify ULA, 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 any of Contractor’s Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activity, regardless of fault.

(iii) Any limitation of liability in this Contract shall not apply to this clause.

(h) Property Insurance. 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 Subcontractors and, in the case of CONTRACTOR, a waiver of subrogation for the benefit of ULA's Subcontractors, Customer, Customer's Related Third Parties, the United States and United States' Subcontractors.

(i) Limitation. Notwithstanding any provision of this clause 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 the party claiming relief, or the directors, officers, agents and employees of such party.

## **8) SITE REQUIREMENTS**

- a) In the event that the CONTRACTOR, including its personnel, enter ULA's Customer's or the Government's premises for any reason in connection with the Contract, CONTRACTOR shall comply with all site requirements, and shall ensure that all of its personnel comply with all site requirements,
- b) Unless otherwise authorized in writing by ULA, CONTRACTOR's personnel assigned to work at ULA's Customer's or the Government's premises shall while at such location (i) not bring weapons of any kind; (ii) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) not possess hazardous materials of any kind; (iv) remain in authorized areas only; (v) not solicit ULA's Customer or the Government's employees for employment during business hours; and/or (vi) make unauthorized reproductions or photographs of the premises, operations or other information that is accessible.
- c) All CONTRACTOR personnel, property, and vehicles entering or leaving ULA's Customer or Government premises are subject to search.
- d) CONTRACTOR shall promptly notify ULA and provide a report of any and all physical altercations, assaults or harassment, and accidents or security incidents involving death, personal injury or loss of or misuse of or damage to ULA's Customer or the Government's property, while on such premises.
- e) ULA and ULA's Customer, may at its sole discretion, remove or require CONTRACTOR to remove any specified personnel of from ULA's Customer or the Government's premises and request that such personnel not be reassigned to any premises under this Contract or any other contract. Any costs arising from or related to removal of such employee shall be borne solely by employer.
- f) CONTRACTOR acknowledges that ULA, ULA's Customer and/or the Government have a zero tolerance policy for harassing behavior. CONTRACTOR, its employees, and its lower-tier subcontractors (when permitted) shall comply with the conduct requirements in effect at a worksite. ULA, ULA's Customer and the Government reserve the right to exclude or remove from any worksite, any individual who has been deemed careless, uncooperative, or whose continued employment has been determined by to be contrary to the purposes of this Contract, or the public's interest. Exclusion from the worksite under the circumstances described in this clause shall not relieve CONTRACTOR from full performance of the Contract, nor will it provide the basis for an excusable delay or any claims against ULA, ULA's Customer or the Government.

## **9) NASA INSIGHT AND APPROVAL**

The CONTRACTOR shall provide insight into certain CONTRACTOR tasks and milestones in support of ULA's Customer's prime contract requirements as defined below.

- a) Customer insight is defined as watchful observation, documentation [limited to i) CONTRACTOR's documentation which is both existing and readily available, and ii) CONTRACTOR's lower-tier subcontractor's documentation which is both existing and readily available and the CONTRACTOR has the ability to share with ULA], meeting attendance, attendance at reviews, tests and compliance evaluations, which shall be only applicable to CONTRACTOR's work (i.e., not CONTRACTOR's lower-tier subcontractors work) unless otherwise formally agreed to by CONTRACTOR.
- b) Where Customer insight is required, the CONTRACTOR shall notify ULA of meetings, reviews, or tests in sufficient time to permit meaningful Customer participation.
- c) Customer shall have insight into any CONTRACTOR changes that may affect the contracted Launch Services. This insight shall be accommodated with no increase in Contract price. Specific areas to be open to Customer insight are:
- i) Production program reviews, plans, and schedules.
  - ii) Production and systems test Material Review Boards.
  - iii) Safety and Mission Assurance compliance evaluations.
  - iv) Pre-ship reviews.
  - v) Design and qualification reviews.
  - vi) Major/critical problems.
  - vii) Major system and integrated systems tests.
  - viii) Post-test data.
  - ix) Anomaly resolutions.
  - x) Failure analysis.
  - xi) Vehicle/ground support equipment procedures.
  - xii) Launch site support work schedules and plans.
  - xiii) Launch site vehicle preparations and closeout data.
  - xiv) Vehicle walkdown inspections.
  - xv) Operations and procedure discipline.

- xvi) Work practices and documentation.
- xvii) Conduct of CONTRACTOR Mission, launch, and Flight Readiness Reviews.
- xviii) Post-flight vehicle, tracking, and range data.
- xxv) Post-flight anomaly investigations/close-outs.

d) Subject to appropriate export, regulatory, confidentiality, security and/or safety limitations, Customer shall have access to CONTRACTOR's mission hardware final assembly factory to witness CONTRACTOR's mission hardware final acceptance activities. Customer will similarly have access to the launch site, launch complex and Satellite encapsulation area to witness major Customer-related mission tests and to attend regular coordination meetings.

#### 10) DISCONTINUANCE

CONTRACTOR shall provide ULA with notice at least 12 months prior to CONTRACTOR taking any action to discontinue or otherwise make unavailable any Work or material components thereof. CONTRACTOR shall provide ULA sufficient opportunity to acquire needed quantities of Work or material components thereof prior to their discontinuance or unavailability.

#### 11) RESTRICTED SOFTWARE

a) As used in this paragraph, "Restricted Software" means commercial computer software or software that has been developed at private expense, and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted, and so marked when delivered or otherwise furnished.

b) Notwithstanding any provisions to the contrary contained in any CONTRACTOR's standard commercial licenses or lease agreements, CONTRACTOR grants the following rights to ULA and the Government in the Restricted Software delivered under this Contract:

- (1) The Restricted Software may be:
  - (i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
  - (ii) Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;
  - (iii) Reproduced for safekeeping (archives) or backup purposes;
  - (iv) Modified, adapted, or combined with other software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, Restricted Software shall be subject to same restrictions set forth in this Contract;
  - (v) Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in this Agreement; and
  - (vi) Used or copied for use in or transferred to a replacement computer.

c) CONTRACTOR agrees that ULA and the Government, and other persons to whom ULA and the Government may have released or disclosed Restricted Software delivered or otherwise furnished under this Contract, shall have no liability for any release or disclosure of such Restricted Software that are not marked to indicate that such Restricted Software are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

#### C. CERTIFICATIONS AND REPRESENTATIONS:

**This clause contains certifications and representations that are material representations of fact upon which ULA will rely in making awards to CONTRACTOR. CONTRACTOR certifies to the representations and certifications as set forth below by submitting its written offer, providing oral offers/quotations, or accepting any Contract with ULA. 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) Certification Regarding Political Contributions, Fees, and Commissions Paid In Connection with Sales Subject to the Provisions of the Arms Export Control Act

(1) CONTRACTOR warrants and certifies that in accordance with 22 C.F.R. 130, neither CONTRACTOR nor its subcontractors at any tier have paid, offered or agreed to pay, or will pay or offer or agree to pay, in respect to the Work to be provided to ULA under this or any Contract awarded, political contributions, fees, or commissions in amounts as specified in 22 C.F.R. 130.9.