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**PRIME CONTRACT REQUIREMENTS**

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> . With regard to any clauses contained in this document which are incorporated by reference into any other exhibit to this Contract, the version of the clause contained in this document, inclusive of any notes attached thereto, shall take precedence.

**1. FAR FLOWDOWN CLAUSES**

**Clause Number      Title/Applicability**

- 52.203-08      CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (Applies in lieu of any other version of 52.203-08 incorporated in other exhibits of this Contract.) (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.)
- 52.203-10      PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (Applies in lieu of any other version of 52.203-10 incorporated in other exhibits of this Contract.) (If the Government reduces ULA's price or fee for violation of the Act by CONTRACTOR or its Subcontractors at any tier, ULA may withhold from sums owed CONTRACTOR the amount of the reduction. Note 1 applies to paragraph (d).)
- 52.203-13      CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010) (Applies in lieu of any other version of 52.203-13 incorporated in other exhibits of this Contract.) (Applicable if the Contract equals or exceeds \$5 Million and the period of performance is 120 days or over. Paragraph (c) does not apply to small businesses. Disclosures made under this clause shall be made directly to the Government entities identified in the clause, with a copy to ULA.)
- 52.203-14      DISPLAY OF HOTLINE POSTER (DEC 2007) (Applies in lieu of any other version of 52.203-14 incorporated in other exhibits of this Contract.) (This clause does not apply if this Contract is performed entirely outside the United States.)
- 52.209-06      PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013) (Applies in lieu of any other version of 52.209-06 incorporated in other exhibits of this Contract). Applies when this Contract equals or exceeds \$30,000. Note 2 applies.)
- 52.215-21      REQUIREMENT FOR CERTIFIED COST OR PRICING DATA OR INFORMATION OTHER THAN CERTIFIED COST AND PRICING DATA – MODIFICATIONS (OCT 2010) ALT IV (OCT 2010) (Note 2 applies. ALT IV applies in lieu of ALT III of 52.215-21)
- 52.219-08      UTILIZATION OF SMALL BUSINESS CONCERNS (Jul 2013) (Applies in lieu of any other version of 52.219-08 incorporated in other exhibits of this Contract).
- 52.219-09      SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011) ALT II (OCT 2001) (Applicable if the CONTRACTOR is not a small business and this contract equals or exceeds \$650,000. Note 2 applies to paragraph (c) only. The CONTRACTOR's subcontracting plan is incorporated herein by reference. Applies in lieu of any other version of 52.219-09 incorporated in other exhibits of this Contract)
- 52.222-21      PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) (Applies in lieu of any other version of 52.222-21 incorporated in other exhibits of this Contract.) (Applies to Contracts subject to the Equal Opportunity Clause.)

- 52.222-26 EQUAL OPPORTUNITY (MAR 2007) (Applies in lieu of any other version of 52.222-26 incorporated in other exhibits of this Contract.)
- 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEP 2010) (Applies in lieu of any other version of 52.222-35 incorporated in other exhibits of this Contract.) (Applies if the Contract equals or exceeds \$100,000)
- 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (OCT 2010) (Applies in lieu of any other version of 52.222-36 incorporated in other exhibits of this Contract.) (Applies if the Contract equals or exceeds \$15,000.)
- 52.222-37 EMPLOYMENT REPORTS ON VETERANS (SEP 2010) (Applies in lieu of any other version of 52.222-37 incorporated in other exhibits of this Contract.) (Applies if the Contract equals or exceeds \$100,000)
- 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Applies in lieu of any other version of 52.222-50 incorporated in other exhibits of this Contract.)
- 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013) (Applies in lieu of any other version of 52.222-54 incorporated in other exhibits of this Contract.) (Applies if this Contract is for commercial or non-commercial services, has a value of more than \$3,000 and includes work performed in the U.S.)
- 52.227-01 AUTHORIZATION AND CONSENT (DEC 2007)
- 52.227-02 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Notes 2 and 3 apply.)
- 52.227-11 PATENT RIGHTS- OWNERSHIP BY THE CONTRACTOR (DEC 2007) (Applies if this Contract, at any tier, is for experimental, developmental, or research work. Reports required by this clause shall be filed with the agency identified in this Contract. If no agency is identified, contact the Procurement Representative identified on the face of the Contract.)
- 52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987)

**2. NFS FLOWDOWN CLAUSES**

**Clause Number      Title/Applicability**

- 1852.204-76 SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2011) (Applies if this Contract includes processing, managing, access or storage NASA Electronic Information. Notes 2 and 3 apply.)
- 1852.211-70 PACKAGING, HANDLING, AND TRANSPORTATION (SEP 2005)
- 1852.219-74 USE OF RURAL AREA SMALL BUSINESSES (SEP 1990)
- 1852.219-76 NASA 8% GOAL (JUL 1997) (Applies if Contractor is not a small business or if not a commercial item.)
- 1852.223-72 SAFETY AND HEALTH (SHORT FORM) (APR 2002) (Note 4 applies in (c) and (d). Applies if contract exceeds \$3,000.)
- 1852.225-70 EXPORT LICENSES (FEB 2000) ALT I (FEB 2000)
- 1852.225-71 RESTRICTION ON FUNDING ACTIVITY WITH CHINA (FEB 2012). Note 2 applies in (c).
- 1852.227-70 NEW TECHNOLOGY (MAY 2002) (Does not apply if selling a commercial item.)
- 1852.227-72 DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (JUL 1997) (Note 5 applies)
- 1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCT 2012)

- 1852.237-72 ACCESS TO SENSITIVE INFORMATION (JUN 2005) (Applies if Contract may involve access to sensitive information.)
- 1852.237-73 RELEASE OF SENSITIVE INFORMATION (JUN 2005) (Applies if Contract may involve furnishing of sensitive information.)
- 1852.244-70 GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)
- 1852.245-73 FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (JAN 2011) (CONTRACTOR will submit annual reports to ULA no later than October 10<sup>th</sup>.)
- 1852.245-74 IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011) (Note 1 applies. Paragraph (e) should be revised to read "The data required in paragraphs (c) and (d) of this clause shall be delivered to ULA as required by this Contract.")
- 1852.245-78 PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY (JAN 2011)
- 1852.246-73 HUMAN SPACE FLIGHT ITEM (MAR 1997)

## **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. ENVIRONMENTAL HEALTH AND SAFETY PERFORMANCE**

a. CONTRACTOR acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract. ULA expects that CONTRACTOR's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. CONTRACTOR will convey the substance of this clause on all new subcontracts under this contract.

b. If Work performed under this Contract is on a Government installation, CONTRACTOR will (i) conform to the specific safety requirements contained in this Contract, (ii) for those related activities not directly addressed by this Contract, conform to the applicable safety rules prescribed by the Government installation applicable to physically entering the installation, but not applicable to utilization of and/or reporting through Government safety-related systems, and (iii) take such additional precautions as ULA or the Contracting Officer under ULA's Government contract may reasonably require for safety and accident prevention purposes.

### **2. PROTECTION OF PROPERTY AND EVIDENCE OF CITIZENSHIP**

a. Protection of Property. CONTRACTOR assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed or otherwise. CONTRACTOR waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against ULA and its customers, its subsidiaries and their respective directors, officers, employees and agents for any such loss or destruction of or damage to any property of CONTRACTOR, any subcontractor or their respective employees. At all times CONTRACTOR shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to ULA or customer's property. If any such property is damaged by the fault or negligence of CONTRACTOR or any subcontractor thereof, CONTRACTOR shall, at no cost to ULA, promptly and equitably reimburse ULA for such damage or repair or otherwise make good such property to ULA or its customer's satisfaction. If CONTRACTOR fails to do so, ULA may do so and recover from CONTRACTOR the cost thereof.

b. Evidence of Citizenship or Immigrant Status.

(i) ULA may be required to obtain information concerning citizenship or immigrant status of CONTRACTOR's personnel or CONTRACTOR's subcontractor personnel entering the premises of ULA. Consistent with all applicable local statutes and regulations including those provisions that permit CONTRACTOR to provide such information when such provision is

consented to by CONTRACTOR's personnel or CONTRACTOR's subcontractor personnel, CONTRACTOR shall furnish such information before commencement of work and at any time thereafter before substituting or adding new personnel to work on ULA's premises. If CONTRACTOR determines that it may submit such information, it shall be certified by an authorized representative of CONTRACTOR as being true and correct. CONTRACTOR acknowledges that if it is unable to provide such information and certification, access to ULA premises may be limited due to ULA compliance with applicable U.S. export control statutes and regulation.

(ii) With respect to CONTRACTOR personnel or CONTRACTOR's subcontractor personnel entering the premises of ULA to perform work under this Contract, CONTRACTOR specifically agrees that it is, and will remain, in compliance with the United States statute known as the Immigration Reform and Control Act of 1986, as amended, and will permit ULA, upon reasonable notice, to inspect and audit CONTRACTOR's records documenting such compliance with respect to said personnel to the extent allowable under all applicable local statutes and regulations. CONTRACTOR subcontracts for work under this Contract shall suitably modify the parties in this paragraph and include the substance of this paragraph in subcontracts such that the subcontractor has the same obligation as CONTRACTOR.

### **3. CUSTOMER INSIGHT AND ACCESS**

a. CONTRACTOR shall provide ULA and its Customers insight, to include watchful observation, documentation, meeting attendance, reviews, tests, and compliance evaluations, into the following tasks and milestones:

- i. Fleet changes or any changes that may affect the Work
- ii. Baseline vehicle design, analyses, and configuration management
- iii. Production program reviews, plans, and schedules
- iv. Production and systems test Material Review Boards
- v. Safety and Mission Assurance compliance evaluations (prime and subcontractors)
- vi. Pre-ship reviews
- vii. Design and qualification reviews
- viii. Major/critical problems
- ix. Major system and integrated systems tests
- x. Post-test data
- xi. Anomaly resolutions
- xii. Failure analysis
- xiii. Vehicle/ground support equipment procedures
- xiv. Launch site support work schedules and plans
- xv. Launch site vehicle preparations and closeout data
- xvi. Vehicle walk down inspections
- xvii. Operations and procedure discipline
- xviii. Work practices and documentation
- xix. Conduct of Contractor chaired Mission, launch, and Flight Readiness Reviews
- xx. Post-flight vehicle, tracking, and range data
- xxi. Post-flight anomaly investigations/close-outs
- xxii. Critical flight hardware pedigrees

b. CONTRACTOR shall notify the appropriate ULA of meetings, reviews, or tests in sufficient time to permit meaningful participation by ULA and its Customers.

c. ULA's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and configuration control shall extend to the ULA's customers including those that are departments, agencies or instrumentalities of the United States Government, including the United States Government Federal Aviation Administration and any successor agency or instrumentality of the United States Government. Nothing in this Contract shall be interpreted to limit United States Government access to CONTRACTOR's facilities pursuant to law or regulation.

### **4. PERFORMANCE OF WORK ON GOVERNMENT PREMISES**

Any Work under this Contract which is performed by CONTRACTOR or any of its subcontractors on premises under Government control is subject to all provisions of this Contract governing such work and to the following:

a. All CONTRACTOR and subcontractor personnel shall at all times conspicuously display a distinctive badge provided by CONTRACTOR, identifying such personnel as employees of CONTRACTOR and shall observe and otherwise be subject to such security regulations as are in effect for the particular premises involved.

b. Except as may be otherwise specified in this Contract, CONTRACTOR shall furnish all supplies, material and equipment required for the work to be performed.

c. CONTRACTOR shall provide direct supervision of its own employees but shall not supervise or accept supervision from any Government personnel.

d. CONTRACTOR shall designate to ULA in writing an on-the-premises representative to serve as point of contact for CONTRACTOR with the Contracting Officer or his duly authorized representative.

e. Performance of Work on Government premises shall be confined to the area(s) specified by the Contracting Officer or his duly authorized representative.

## **5. OFFSET CREDITS AND FOREIGN CONTENT REPORTING**

a. CONTRACTOR shall use its best efforts to cooperate with ULA and its customers in the fulfillment of any Industrial Participation (IP), Offsets, Co-Production or similar obligations to certain foreign governments that ULA's customers may have accepted as a requirement for the sale of products to foreign customers.

b. CONTRACTOR agrees to use reasonable efforts to identify the foreign content of goods or services that CONTRACTOR either produces itself and/or procures from subcontractors for work directly related to this Contract. Promptly after selection of a non-U.S. subcontractor for work under this Contract, CONTRACTOR shall notify ULA of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.

## **6. MATERIAL SUBSTITUTION PROHIBITION**

### **a. Unauthorized Material Substitution (General)**

Unauthorized material substitutions are not permitted on any Work under this Contract. Unauthorized material substitution includes any deviation from the engineering definition of a raw material. Engineering definition includes design drawing and applicable specifications, product specification, form, size, shape, chemistry, melt method, origin, temper/condition, product testing or surface finish. Alternate materials specified in the engineering definition (and often described as approved material substitutions therein) do not constitute unauthorized material substitution.

Contact the Procurement Representative for details regarding definitions for metallic materials and processing and deviations to authorized materials. CONTRACTOR agrees and understands that such deviations only apply to this purchase contract.

### **b. Metallic Materials (Specific)**

Temper or Condition Conversion - Unless specifically authorized by the engineering definition, conversion of a raw material (i.e. heat treat to change the temper or condition of the material) constitutes material substitution of the condition provided by the manufacturer.

Metallic Raw Materials – Engineering drawings may refer to obsolete or superseded specifications covering several forms, thicknesses, widths, etc. of the alloy or alloys. The required characteristics of these materials are defined not only by the objective test standards of the specification, but by the processes/methods by which this final form is achieved. These requirements are often captured in the definitions of the required material forms, and may not be explicitly called out in the detailed requirements. The raw material certification results from both the process used to make it and the tests to verify basic properties. CONTRACTOR shall ensure that metallic materials covered by current or obsolete/superseded specifications are produced using the standard industry practices designed strictly for the production of stock to the specified thickness, diameter, width or cross sectional area, achieved by thermo-mechanical processing or casting process. Chemical, electrochemical and mechanical methods used for the removal of surface scale or contamination, or the production of the required surface finish, in accordance with the material specification are acceptable. Raw material must not be re-certified with respect to thickness, diameter, width or cross sectional area or product form. Machining or cutting of thicker product or other product forms shall not be supplied in lieu of specified product unless specifically authorized by ULA. Raw material certifications for material or parts shall reflect the form and size of the raw material as originally manufactured by the raw material producer.

### **c. Specification Supersession:**

For government specifications and standards canceled after June 1994, CONTRACTOR and subcontractors at all tiers shall use the last active revision of the canceled specification and standard until an acceptable replacement is included in the requirements of this Contract. Contact the Procurement Representative in the event of any inconsistency in applicable specification or standard.

d. Reports (Full Pedigree from melt to final product) - Raw material certifications shall show clear traceability to the manufacturer(s) of the raw material including ingot source, all thermo-mechanical processing (i.e. forging, rolling, drawing, etc.), heat treatment, chemical processing and inspections as required by applicable raw material specification requirements.

- e. Chain of Custody (Disguising intermediate ownership) – Suppliers shall not disguise the pedigree of material or chain of ownership by removal of a previous supplier’s name, nomenclature or identification.
- f. Source of Additional Information - Addition information and guidance may be found through the Procurement Representative.
- g. The substance of this clause shall be flowed in all subcontracts at every tier.

**7. INDEMNIFICATION AND CROSS WAIVERS OF LIABILITY**

**a. COMMERCIAL SPACE LAUNCH ACT INDEMNIFICATION**

The following shall apply to articles and services to be utilized on launch vehicles launched pursuant to the Commercial Space Launch Act. Insurance requirements under the, "Insurance/Entry on ULA Property" provision of the General Provisions, would not be applicable for third party liability incurred in connection with licensed launch activities, but would otherwise be applicable.

(i) 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. ch. 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 as follows:

(a) 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, ch. 509, or the Regulations, respectively.

(b) 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.

(c) 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.

(d) 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)(i) 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.

(e) 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.

(f) 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.

**b. NASA ACT INDEMNIFICATION**

The following shall apply to articles and services to be utilized on launch vehicles launched pursuant to the NASA Act.

- i. NFS 1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES. (OCT 2012) (Deviation)
- (a) The Intergovernmental Agreement for the International Space Station (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:

- 1) "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.
- 2) "Damage" means:
  - i. Bodily injury to, or other impairment of health of, or death of, any person;
  - ii. Damage to, loss of, or loss of use of any property;
  - iii. Loss of revenue or profits; or
  - iv. Other direct, indirect, or consequential Damage.
- 3) "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:
  - 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.
- 4) "Launch Services" means:
  - i. Activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, Payload, or crew (including crew training), if any, for launch; and
  - ii. The conduct of a Launch.
- 5) "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.
- 6) "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.
- 7) "Party" means a party to an Agreement involving activities in connection with the ISS, including this contract.
- 8) "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.
- 9) "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:
  - i. 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
  - ii. 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.
- 10) "Reentry" means to return or attempt to return, purposefully, a Transfer Vehicle, Payload, or crew from the ISS, Earth orbit, or outer space to Earth.
- 11) "Reentry Services" means:
  - i. Activities involved in the preparation of a Transfer Vehicle, Payload, or crew (including crew training), if any, for Reentry; and
  - ii. The conduct of a Reentry.
- 12) "Related Entity" means:
  - i. A contractor or subcontractor of a Party or a Partner State at any tier;
  - ii. A user or customer of a Party or a Partner State at any tier; or
  - iii. 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.
- 13) "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:



- 1) 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)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This crosswaiver 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:
    - i. A Party as defined in (b)(7) of this clause;
    - ii. A Partner State, including the United States of America;
    - iii. A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or
    - iv. The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.
  - 2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause, to its Related Entities by requiring them, by contract or otherwise, to:
    - i. Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and
    - ii. Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.
  - 3) 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.
  - 4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:
    - i. Claims between a Party and its own Related Entities or between its Related Entities;
    - ii. 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;
    - iii. Claims for Damage caused by willful misconduct;
    - iv. Intellectual property claims;
    - v. Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors or related entities, pursuant to paragraph (c)(2) of this clause;
    - vi. Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.
    - vii. Claims against Passengers or Commercial Cargo Customers.
  - 5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (d) Waiver of claims Between the Government and Contractor:
- 1) This clause provides for a reciprocal waiver of claims between the Government and the Contractor and their Related Entities as described in paragraph (c) above, except that the Government shall waive such claims only to the extent such claims exceed the maximum amount of the Contractor's insurance or financial capability required under paragraph (f) below. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this contract.
  - 2) Pursuant to paragraph (c)(2), the Contractor shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government and its Related Entities.
- (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) ULA or Prime Contractor shall maintain insurance, or demonstrate financial capability to compensate, for damages (as defined in paragraph (b)(2)(ii)) to U.S. Government property, except for damage to all on orbit ISS structures, modules, and systems required for functionality of the ISS, during Launch Services, Reentry Services, or transportation to, from, in proximity of, or docking with the ISS under this contract. For purposes of this paragraph (f), "preparation" of a Launch Vehicle or Transfer Vehicle includes test, assembly, integration or operations of the Launch Vehicle, Transfer Vehicle or their Payloads on a Government installation. Such insurance shall be an amount up to \$100 million, or the maximum amount available in the market at reasonable cost, subject to approval by the Contracting Officer. Financial capability, if authorized by the Contracting Officer, shall be in the amount of \$100 million. The Contractor shall provide acceptable evidence of the insurance or financial capability to the Contracting Officer, subject to Contracting Officer approval. Insurance policies shall

name the United States Government as an additional insured party. Once approved by the Contracting Officer, insurance policies may not be modified or canceled without the prior, written approval of the Contracting Officer.

## **8. EXPORT LICENSING INFORMATION/OFFSHORE PROCUREMENT**

a. This Contract, including any attachments or exhibits hereto, may contain information which is subject to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) which may not be released to foreign concerns or foreign persons either inside or outside the United States without first obtaining the proper export authority. CONTRACTOR shall obtain an export license pursuant to the requirements set forth herein for any items that CONTRACTOR either manufactures or subcontracts outside the U.S or before allowing access to any technical data by a foreign person in the United States. If CONTRACTOR is a "Foreign Person" (as defined by the International Traffic in Arms Regulations [ITAR] reference 22 CFR Sub-chapter M) the CONTRACTOR shall, upon request of the Procurement Representative and without additional cost, provide such information as may be necessary to support ULA's application for export license(s) covering any items ordered from CONTRACTOR hereunder.

b. This Contract may contain defense related technical data. ULA has obtained, or will obtain, the approval of the U.S. Government to furnish to CONTRACTOR the data, and any other items hereunder requiring such approval, which are necessary for CONTRACTOR to perform this Contract. U.S Government approval is based upon the following ITAR requirements with which CONTRACTOR agrees to comply:

(1) CONTRACTOR shall use the technical data furnished by ULA only in the manufacture of defense articles in accordance with this Contract.

(2) CONTRACTOR shall not disclose or provide technical data furnished by ULA to any person except authorized U.S. citizen, protected person, permanent resident alien (immigrant alien). If CONTRACTOR is a "Foreign Person," it may also disclose or provide technical data furnished by ULA to its employees who are citizens of the same country and qualified subcontractors in the same country which require the data in performance of the subcontracts.

(3) CONTRACTOR shall not disclose or provide technical data furnished by ULA to any foreign person either in the U.S. or abroad unless obtaining prior authorization directly from the U.S. Department of State Office of Defense Trade Controls (ODTC). ITAR defines a "foreign person" as any person who is not a U.S. citizen, permanent resident alien, or a protected individual as defined by 8 USC 1324B(a)(3). Foreign person also means a foreign corporation (corporation not incorporated in the U.S.), foreign government, and any agency or subdivision of foreign governments (i.e. diplomatic mission).

(4) CONTRACTOR shall not acquire any rights in the data furnished by ULA except to use it in the performance of this Contract. CONTRACTOR also shall not convey to its qualified subcontractors any greater rights in the data than CONTRACTOR has. CONTRACTOR's qualified subcontractors shall only have the right to use the data as required in performance of their subcontracts.

(5) CONTRACTOR shall deliver the defense articles manufactured in accordance with this Contract only to ULA or to the U.S. Government.

(6) Upon completion or termination of this Contract, CONTRACTOR shall destroy or return to ULA all technical data furnished to CONTRACTOR by ULA pursuant to this Contract. At ULA's election, ULA may direct CONTRACTOR to return or destroy the data and may require CONTRACTOR to certify in writing that CONTRACTOR has complied.

(7) CONTRACTOR shall impose these requirements, (1) through (7), suitably revised to identify the parties properly, on all of its subcontractors to which CONTRACTOR intends to furnish technical data provided by ULA for use by the subcontractors in performance of the subcontracts.

## **9. RELEASE OF INFORMATION SUPPLEMENT**

CONTRACTOR shall flowdown requirements of Release of Information clause in all subcontracts under this Contract.

## **10. 52.227-14 RIGHTS IN DATA – GENERAL, (DEC 2007) (Deviation) /ALTERNATE I, (DEC 2007) (Deviation) / ALTERNATE II, (DEC 2007)(Deviation) / ALTERNATE III (DEC 2007) (Deviation) / AS MODIFIED PER 1852.227-14 RIGHTS IN DATA – GENERAL**

(a) *Definitions.* As used in this clause—

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

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

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Government purpose” means any activity in which the United States Government is a party, including, but not limited to, cooperative activities with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement.

“Government purpose rights” means the rights to

(i) Use, modify, reproduce, manufacture, release, perform, display, or disclose data within the Government without restriction; and

(ii) Release or disclose data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, manufacture, release, perform, display, or disclose that data for United States Government purposes.

“Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited rights data” means data, other than computer software, developed wholly or in part at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

“Restricted computer software” means computer software developed wholly or in part at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

- (i) Data first produced in the performance of this contract exclusively at Government expense;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

- (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
- (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(3) There shall be a presumption that modifications to data identified in FAR 52.227-15 comprise limited rights data or restricted computer software.

(4) Data delivered under this contract, in which the Government previously obtained less than limited or restricted rights, as defined in paragraph (g) of this clause, pursuant to the terms of another contract or agreement, comprises limited rights data or restricted computer software under this contract.

(5) In the event this contract is terminated for default, the Government shall have Government purpose rights in all data first produced, and all software first developed, wholly or in part at private expense in performance of this contract.

(c) *Copyright—*

(1) Data first produced in the performance of this contract.

- (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.
- (ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).
- (iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

- (i) Identifies the data; and
- (ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall

acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3)

(i) The Contractor agrees not to establish claim to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the Contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert".

(4) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) *Unauthorized marking of data.*

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C.253d, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in

accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.*

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

- (i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or
- (ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

- (i) Identify the data being withheld; and
- (ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following "Limited Rights Notice" to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

*Limited Rights Notice (Dec 2007) (Deviation)*

*(a) These data are submitted with limited rights under Government Contract No.\_\_\_\_(and subcontract \_\_\_\_\_, if appropriate). These data may be reproduced and used by the Government and The Boeing Company with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government to support service contractors and/or pursuant to agreements and contracts related to the International Space Station; provided that the Government makes such disclosure subject to prohibition against further use and disclosure.*

*(b) In the event this contract is terminated for Contractor default, the Government shall have Government purpose rights in all data first produced wholly or in part at private expense in performance of this contract.*

*(c) This notice shall be marked on any reproduction of these data, in whole or in part.*

*(End of notice)*

- (i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following "Restricted Rights Notice" to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

*Restricted Rights Notice (Dec 2007) (Deviation)*

(a) This computer software is submitted with restricted rights under Government Contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Government or The Boeing Company except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) In the event this contract is terminated for Contractor default, the Government shall have Government purpose rights in all computer software first developed wholly or in part at private expense in performance of this contract.

(f) This notice shall be marked on any reproduction of this computer software, in whole or in part.  
(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

*Restricted Rights Notice Short Form (Jun 1987)*

*Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract, if appropriate) with \_\_\_\_\_ (name of Contractor and subcontractor).*

*(End of notice)*

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government except as specifically set forth in paragraph (b) of this clause.

## **11. HUMAN SPACE FLIGHT ITEMS**

FOR USE 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 THE PURCHASER.