



---

**PRIME CONTRACT REQUIREMENTS**

*This Draft Doc 613 (08-20) was written by ULA to anticipate what will be included in ULA’s contract with its Customer. ULA is in the process of negotiating certain terms with our Customer and will finalize these terms and conditions upon conclusion of negotiations. Any such revision would be subject to the Changes clause.*

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**

<b><u>Clause Number</u></b>	<b><u>Title/Applicability</u></b>
52.204-25	PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
52.227-01	AUTHORIZATION AND CONSENT (DEC 2007) ALTERNATE I (APR 1984) (Applicable if the value of the Contract exceeds \$250,000.)
52.227-02	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Applicable if the value of the Contract exceeds \$250,000.)
52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS CONTRACTORS (DEC 2013) (Applies only when the CONTRACTOR is a small business concern.)

**2. NFS FLOWDOWN CLAUSES**

<b><u>Clause Number</u></b>	<b><u>Title/Applicability</u></b>
1852.203-71	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (AUG 2014)
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.)
1852.225-70	EXPORT LICENSES (FEB 2000)
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) (Applicable to contracts over \$100,000)
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 (AUG 2015)
1852.247-71	PROTECTION OF THE FLORIDA MANATEE (JUN 2018) (Applicable to contractors and their employees who are performing water-related activities in waters adjacent to NASA's Kennedy Space Center under this Contract, including vessel operations and dockside work)

**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. HUMAN SPACE FLIGHT ITEM**

- (a) ITEMS OR SERVICES PROCURED UNDER THIS CONTRACT ARE INTENDED 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.
- (b) The CONTRACTOR shall include the statement in paragraph (a) in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level.

**2. VALIDATION AND CHALLENGE PROCEDURES FOR TECHNICAL DATA AND COMPUTER SOFTWARE**

*Definitions.* The definitions contained in FAR 52.227-14 Rights in Data – General (Deviated) as incorporated into this contract apply to this clause.

(a) *Validation of markings on technical data and computer software.*

- (1) *Presumption regarding development exclusively at private expense – Commercial Item.* The Contracting Officer will presume that the CONTRACTOR's or a subcontractor's asserted use or release restrictions with respect to a commercial item is justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not challenge such assertions unless the Contracting Officer has information that demonstrates that the commercial item was not developed exclusively at private expense.
- (2) *Justification.* The CONTRACTOR or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data or computer software delivered or required to be delivered under the contract or subcontract. Except as provided in paragraph (m)(1) of this clause, the CONTRACTOR or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (m)(4) of this clause.
- (3) *Prechallenge request for information.*
  - (i) The Contracting Officer may request the CONTRACTOR or subcontractor to furnish a written explanation for any restriction asserted by the CONTRACTOR or subcontractor on the right of the United States or others to use technical data or computer software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the CONTRACTOR or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the CONTRACTOR or subcontractor to justify the validity of any restrictive marking on technical data or computer software delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation).

The CONTRACTOR or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

- (ii) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (m)(3)(i) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer shall follow the procedures in paragraph (m)(4) of this clause.
- (iii) If the CONTRACTOR or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (m)(3)(i) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data or computer software relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (m)(4) of this clause.

(4) *Challenge.*

- (i) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the CONTRACTOR or subcontractor asserting the restrictive markings. Such challenge shall—
    - (A) State the specific grounds for challenging the asserted restriction;
    - (B) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;
    - (C) State that a Contracting Officer's final decision, issued pursuant to paragraph (m)(6) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same CONTRACTOR or subcontractor (or any licensee of such CONTRACTOR or subcontractor) to which such notice is being provided; and
    - (D) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (m)(5) of this clause.
  - (ii) The Contracting Officer shall extend the time for response as appropriate if the CONTRACTOR or subcontractor submits a written request showing the need for additional time to prepare a response.
  - (iii) The CONTRACTOR's or subcontractor's written response shall be considered a claim within the meaning of 41 U.S.C. 7101, Contract Disputes, and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.
  - (iv) A CONTRACTOR or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the CONTRACTOR or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the CONTRACTOR or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.
- (5) *Final decision when CONTRACTOR or subcontractor fails to respond.* Upon a failure of a CONTRACTOR or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the CONTRACTOR or subcontractor in accordance with this clause and the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the applicable time period as specified in this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (m)(6)(ii) through (v) of this clause.
- (6) *Final decision when CONTRACTOR or subcontractor responds.*

- (i) If the Contracting Officer determines that the CONTRACTOR or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the CONTRACTOR or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the CONTRACTOR's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the CONTRACTOR or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.
- (ii) If the Contracting Officer determines that the validity of the restrictive marking is not justified:
  - (A) The Contracting Officer shall issue a final decision to the CONTRACTOR or subcontractor in accordance with the Disputes clause of the prime contract. Notwithstanding the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the CONTRACTOR's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the CONTRACTOR or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty days after receipt of the response to the challenge notice; and
  - (B) As applicable to computer software only, if the CONTRACTOR agrees that an asserted restriction is not valid, the Contracting Officer may strike or correct the unjustified marking at the CONTRACTOR's expense; or return the computer software to the CONTRACTOR for correction at the CONTRACTOR's expense. If the CONTRACTOR fails to correct or strike the unjustified restriction and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct or strike the markings at that CONTRACTOR's expense.
- (iii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The CONTRACTOR or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the CONTRACTOR or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the CONTRACTOR or subcontractor to take the required action constitutes agreement with such Government action.
- (iv) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the CONTRACTOR or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the CONTRACTOR or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the CONTRACTOR or subcontractor agrees that the agency may, following notice to the CONTRACTOR or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the CONTRACTOR's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.
- (v) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the CONTRACTOR that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the CONTRACTOR or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the CONTRACTOR's or

subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(7) *Final disposition of appeal or suit.*

- (i) If the CONTRACTOR or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—
  - (A) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and
  - (B) If the restrictive marking is found not to be substantially justified, the CONTRACTOR or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.
- (ii) If the CONTRACTOR or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—
  - (A) The Government shall continue to be bound by the restrictive marking; and
  - (B) The Government shall be liable to the CONTRACTOR or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the CONTRACTOR or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(8) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the CONTRACTOR or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

- (i) Is publicly available;
- (ii) Has been furnished to the United States without restriction; or
- (iii) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(9) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(10) *Privity of contract.* The CONTRACTOR or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier that assert restrictive markings or who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. However, neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the CONTRACTOR's subcontractors or suppliers

(b) *Flow down to subcontractors and suppliers.*

- (1) The CONTRACTOR shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of this clause are recognized and protected.
- (2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the CONTRACTOR shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties.
- (3) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the CONTRACTOR shall use this same clause in its subcontracts or other contractual instruments, and require its

subcontractors or suppliers to do so, without alteration, except to identify the parties.

**1852.225-71 RESTRICTION ON FUNDING ACTIVITY WITH CHINA (FEB 2012) (DEVIATION)**

- (a) Definition - "China" or "Chinese-owned company" means the People's Republic of China, any company owned by the People's Republic of China or any company incorporated under the laws of the People's Republic of China.
- (b) Public Laws 112-10, Section 1340(a) and 112-55, Section 539, restrict NASA from contracting to participate, collaborate, coordinate bilaterally in any way with China or a Chinese-owned company using funds appropriated on or after April 25, 2011. Contracts for commercial and non developmental items are exempted from the prohibition because they constitute purchase of goods or services that would not involve participation, collaboration, or coordination between the parties.
- (c) This contract may use restricted funding that was appropriated on or after April 25, 2011. The CONTRACTOR shall not contract with China or Chinese-owned companies for any effort related to this contract except for acquisition of commercial and non-developmental items. If the CONTRACTOR anticipates making an award to China or Chinese-owned companies, the CONTRACTOR must contact ULA to determine if funding on this contract can be used for that purpose.

**1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES (OCT 2012) (DEVIATED)**

**This ISS Cross Waiver is applicable to the civil lunar Gateway (including all Artemis) contracts, which is considered an evolutionary capability of the ISS pursuant to Article 14 of the IGA.**

- (a) The Intergovernmental Agreement for the International Space Station ("ISS") (hereinafter, the "IGA") contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS and any addition of evolutionary capabilities utilizing Article 14 of the IGA, including the civil lunar Gateway (the "Gateway"). The cross-waiver of liability in this clause is intended to be broadly construed to achieve this objective.
- (b) As used in this clause and for purposes of this Contract, 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;
    - (iii) in lunar orbit; or
    - (iv) otherwise in outer space,
    - (v) including Launch Services 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 Gateway.
- (8) "Payload" means all property to be flown or used on or in a Launch Vehicle, Transfer Vehicle, and/or the Gateway and element(s) thereof.
- (9) "Protected Space Operations" means all Launch or Transfer Vehicle activities, Gateway 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 Gateway, 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 (which includes Gateway), as provided for in Article 14 of the IGA. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Gateway to develop further a Payload's product or process for use other than for Gateway-related activities in implementation of the IGA.
  - (iii) "Reentry" means to purposefully return or attempt to return, through completion of recovery, a Transfer Vehicle, Payload, or crew from the Gateway, Earth orbit, or outer space to Earth.
- (10) "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 through completion of recovery.
- (11) "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.
- (12) "Space Station" means the International Space Station, and any additional evolutionary capabilities made pursuant to Article 14 of the IGA, including the civil lunar Gateway.
- (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) The CONTRACTOR agrees to a cross-waiver of liability pursuant to which it 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 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:
  - (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 the CONTRACTOR and its own Related Entities or between its Related Entities;
  - (ii) 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 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 the CONTRACTOR's failure to perform its obligations under this Contract.
- (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 insurance that ULA or ULA Customer is required to carry under its contract with the government. 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.

**1852.228-78 CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION (OCT 2012)**

(a) *Applicability.* 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 that are not related to the International Space Station (ISS) or Gateway but involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

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

- (1) "Agreement" refers to any contract or NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR Part 1266.104.
- (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;
  - (iii) In lunar orbit; or
  - (iv) Otherwise in outer space,
  - (v) Including Launch Services 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) "Party" means a party to an Agreement involving activities in connection with the Artemis program.
- (7) "Payload" means all property to be flown or used on or in a Launch Vehicle, Transfer Vehicle, and/or Orion and element(s) thereof.
- (8) "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 or Gateway that involves a launch.
  - (i) Protected Space Operations includes, but not limited to:

- (A) 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
  - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.
- (ii) Protected Space Operations excludes:
- (A) 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; and
  - (B) Activities on the lunar surface.
- (9) "Reentry" means to purposefully return or attempt to return, through completion of recovery, a Transfer Vehicle, Payload, or crew from the Gateway, Earth orbit, or outer space to Earth.
- (10) "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 through completion of recovery.
- (11) "Related entity" means:
- (i) A CONTRACTOR or subcontractor of a Party at any tier;
  - (ii) A user or customer of a Party at any tier; or
  - (iii) 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.
- (12) "Transfer Vehicle" means any vehicle that operates in space a 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) The CONTRACTOR agrees to a waiver of liability pursuant to which it 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 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 –
- (i) A Party;
  - (ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;
  - (iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or
  - (iv) The employees of any of the entities identified in (c)(1)(i) through (iii) of this clause.
- (2) The CONTRACTOR agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors at all tiers 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, entered into force on 1 September 1972, in which 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:
  - (iii) Claims between the CONTRACTOR and its own Related Entities or between its Related Entities;
  - (iv) Claims made by a natural person, his/her estate, survivors, or subrogees (except when 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;
  - (v) Claims for Damage cause by willful misconduct;
  - (vi) Intellectual property claims;
  - (vii) Claims for damages resulting from a failure of the CONTRACTOR to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or
  - (viii) Claims by the Government arising out of or relating to a CONTRACTOR's failure to perform its obligations under this CONTRACTOR.

(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 insurance that ULA or ULA Customer is required to carry under its contract with the government. 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.