

PRIME CONTRACT REQUIREMENTS

A. The following clauses of the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), Air Force Federal Acquisition Regulation Supplement (AFFARS) 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.arnet.gov/far>. Supplies and Services procured under this Contract may be used to support multiple prime contracts for U.S. Air Force, NASA, other U.S. Government Agencies, and commercial customers. All clauses apply unless otherwise indicated.

1. FAR FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
52.227-01	AUTHORIZATION AND CONSENT (DEC 2007) (This clause does not apply when Work supplied under this Contract is used to provide launch services to NASA.)
52.227-02	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Applies if this Contract exceeds \$100,000. Notes 2 and 3 apply. This clause does not apply when Work supplied under this Contract is used to provide launch services to NASA.)
52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applicable if Contract involves international air transportation.)
52.248-01	VALUE ENGINEERING (FEB 2000) ALTERNATE II (FEB 2000) (This clause with Alternate II is in lieu of the basic clause identified in the applicable Doc. Note 1 applies, except in paragraphs (c)(5) and (m), where Note 3 applies, and except in (b)(3) where Note 4 applies, and where "Government" precedes "cost" throughout. Note 2 applies.)

2. DFARS FLOWDOWN CLAUSE

<u>Clause Number</u>	<u>Title/Applicability</u>
252.223-7001	HAZARD WARNING LABELS (DEC 1991) (Applies if this contract requires the delivery of hazardous materials as defined in the clause.)
252.223-7007	SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITIONS AND EXPLOSIVES (SEP 1999) (Applies if this Contract is for the development, production, manufacture, or purchase of arms, ammunitions and explosives; or when arms, ammunitions, and explosives will be provided to CONTRACTOR as Government-furnished property.)
252.225-7013	DUTY FREE ENTRY (OCT 2006) (In paragraph (c), Notes 1 and 2 apply. The prime contract number and identity of the Contracting Officer are contained elsewhere in this Contract. If this information is not available, contact the Procurement Representative.)
252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (MAR 2006) (Applicable if Work supplied under this Contract contains ball or roller bearings. Note 1 applies to subparagraph (a) (2).)

3. AFFARS FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
5352.223-9000	ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS) (APR 2003) (The blank in paragraph (d) is completed with "NONE". In paragraph (d) Note 2 applies.)
5253.227-9000	EXPORT-CONTROLLED DATA RESTRICTIONS (AFMC) (JULY 1997) ALT I (JUL 1997) (Note 2 applies)
5352.227-9002	VISIT REQUESTS BY FOREIGN OWNED OR CONTROLLED FIRMS (AFMC) (JUL 1997)
5352.242-9001	COMMON ACCESS CARDS FOR CONTRACTOR PERSONNEL (AUG 2004) (Applicable if CONTRACTOR will perform work on a Government Installation or have access to the Government information technology systems. Note 5 applies.)

4. NFS FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
1852.219-74	USE OF RURAL AREA SMALL BUSINESSES (SEP 1990)
1852.219-75	SMALL BUSINESS SUBCONTRACTING REPORTING (MAY 1999) (Applicable if FAR 52.219-9 applies to this Contract and if the Contract exceeds \$550,000.)
1852.219-76	NASA 8% GOAL (JUL 1999)

1852.223-70	SAFETY AND HEALTH (MAR 1997) (Applies if (i) the work will be conducted completely or partly on premises owned or controlled by the Government; (ii) the work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold; (iii) the work, regardless of place of performances, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable); and (iv) when the Contractor (or subcontractor or supplier) determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.)
1852.225-70	EXPORT LICENSES (FEB 2000) ALT 1 (FEB 2000)
1852.227-14	RIGHTS IN DATA – GENERAL (UNDATED) (This clause applies in lieu of Corp Doc clauses at DFARS 252.227-7013, 252.227-7014, 252.227-7015 for NASA missions. Note 5 applies.)
1852.228-75	MINIMUM INSURANCE COVERAGE (OCT 1988)
1852.228-78	CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES (SEPTEMBER 1993) (Applies when hardware or services procured under this Contract are used to provide launch services to NASA)

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) COLLABORATION CLAUSE

If ground/flight anomalies occur on common vendor supplied components, the EELV contractor with the defective component shall collaborate appropriately (e.g. data sharing, issue resolution, etc.) with other appropriate EELV contractors concerning no mission assurance degradation on similar components has occurred that could affect subsequent Government missions. This clause applies to the extent that common components and/or COTS hardware is involved pursuant to GIDEP on other similar industry wide notifications. There is no requirement established or intended via this clause for the Contractor to share proprietary technologies or otherwise disclose information that would cause competitive harm.

2) COMMERCIAL SPACE LAUNCH ACT

(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.)

As required by the Commercial Space Launch Act (CSLA), 49 U.S.C. §§ 70101 - 70119 as amended, the Parties agree as follows:

(a) ULA may provide commercial launch services as a subcontractor to either The Boeing Company or Lockheed Martin Corporation or their affiliates or subsidiaries (Prime Contractor). CONTRACTOR may request coverage provided by the U.S. Government for any space launch related peril pursuant to Public Law 100-657, "The Commercial Space Launch Act", to the extent provided by the CSLA and approved by the United States Government. ULA shall forward such request to the appropriate Prime Contractor who may forward such request to the United States Government.

(b) ULA and the CONTRACTOR hereby agree to a reciprocal waiver of liability pursuant to which each Party agrees not to bring a claim in arbitration or otherwise or sue the other Party, the United States Government and its contractors and subcontractors at every tier or any Related Third Parties of the other Party, as defined in paragraph (f), for any property loss or damage it sustains and any property loss or personal injury, including death, sustained by any of its Related Third Parties, arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.

(c) ULA and the CONTRACTOR shall each be responsible for property damage which they sustain and for bodily injury or property damage sustained by their employees arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.

(d) ULA and CONTRACTOR shall extend the waiver and release of claims and assumption of responsibility described in paragraphs (a) and (b) above to its Related Third Parties (other than employees, directors and officers) by requiring them (1) to waive and release all claims of liability they may have against CONTRACTOR and ULA, its Related Third Parties, and the United States Government and its contractors and subcontractors at every tier, and (2) to agree to be responsible for any property loss or damage or bodily injury, including death, sustained by any of them or their employees and arising in any manner in connection with the performance of or activities carried out pursuant to a CSLA license.

(e) The waivers described in this paragraph shall extend to and bind the successors and assigns of each Party and its Related Third Parties, whether by subrogation or otherwise. Each Party shall obtain a waiver of subrogation and release of any right of recovery against the other Party and its Related Third Parties from any insurer providing coverage for the risks of loss for which the Party hereby waives claims under this paragraph.

(f) CONTRACTOR shall defend, hold harmless and indemnify ULA, the Prime Contractor, its Related Third Parties and the United States Government and its contractors and subcontractors, from and against any and all liabilities, costs and expenses (including attorneys' fees) arising out of (1) any failure by CONTRACTOR to obtain the waivers and releases of claims of liability and the assumption of responsibility described in this paragraph, and (2) bodily injury or property damage sustained by CONTRACTOR's own employees in connection with the performance of or activities carried out pursuant to a CSLA license.

(g) For purposes of this paragraph, Related Third Parties shall mean (1) directors, officers, employees and agents of either Party or of any customer to whom ULA may provide launch services; (2) parties having any right, title or interest in any of the vehicles or equipment utilized by ULA in providing launch services, including but not limited to satellites, transponders and launch vehicles; (3) contractors, subcontractors and suppliers at any tier, of either Party or of any customers of ULA; and (4) additional parties involved in the launch services provided by ULA or other activities governed by the CSLA.

3) CONTRACTOR IDENTIFICATION

(a) Contractor personnel and their subcontractors must identify themselves as Contractors or subcontractors during meetings, telephone conversations, in electronic messages, or correspondence related to this contract.

(b) Contractor-occupied facilities (on AFSPC or other Government installations) such as offices, separate rooms, or cubicles must be clearly identified with Contractor supplied signs, name plates or other identification, showing that these are work areas for Contractor or subcontractor personnel.

4) ENABLING CLAUSE FOR GENERAL SYSTEMS ENGINEERING AND INTEGRATION

(a) This Contract covers part of the EELV program which is under the general program management of SMC/LR. The Air Force has entered into a contract with The Aerospace Corporation for the services of a technical group, which will support the DoD program office by performing General Systems Engineering and Integration.

(b) General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of the CONTRACTORS' technical performance through meetings with the CONTRACTORS and its subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk; providing comments and recommendations in writing to the DoD System Program Manager and/or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting the CONTRACTOR's efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.

(c) In the performance of this Contract, subject to coordination with ULA, the CONTRACTOR agrees to cooperate with The Aerospace Corporation by responding to invitations from authorized personnel to attend meetings; by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications and procedures, parts and quality control procedures, records and data; manufacturing and assembly procedures; and schedule and milestone data; all in their original form or reproduced form and including cost* data; by delivering data as specified in the Supplier Data Requirements List; by discussing technical matters relating to this program; by providing access to CONTRACTOR facilities utilized in the performance of this contract; and by allowing observation of technical activities by appropriate Aerospace technical personnel. The Aerospace personnel engaged in general systems engineering and integration effort are authorized access to any technical information pertaining to this contract.

(d) The CONTRACTOR further agrees to include in each subcontract a clause requiring compliance by subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (c) above, subject to coordination with the CONTRACTOR. This agreement does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and the CONTRACTOR or its subcontractors.

(e) The Aerospace Corporation personnel are not authorized to direct the CONTRACTOR in any manner. The CONTRACTOR agrees to accept technical direction as follows:

1. Direction under this Contract will be given to the CONTRACTOR solely by the Procurement Representative.
2. Whenever it becomes necessary to modify the contract and redirect the effort, a Change Order signed by the designated Procurement Representative or a Contract Modification signed by both the designated Procurement Representative and the CONTRACTOR will be issued.

* Cost data is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a project or program.

5) ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS

(a) The Government has or may enter into contracts with one or more of the following companies to provide Contracted Advisory and Assistance Services (CAAS) and/or Systems Engineering and Technical Assistance (SETA):

1. Scitor Corporation
2. General Dynamics
3. Tecolote Research, Inc.
4. Analex
5. SRS Technologies
6. Northrop Grumman (TASC)
7. L3 Communications
8. BD Systems
9. Trisept

(b) In the performance of this Contract, subject to coordination with ULA, the CONTRACTOR agrees to cooperate with the companies listed above (hereafter referred to as (CAAS/SETAs). Cooperation includes allowing observation of technical activities by appropriate CAAS/SETA technical personnel, discussing technical matters related to this program; responding to invitations from authorized CAAS/SETA personnel to attend meetings; and providing access to technical information and research and development planning data. The CONTRACTOR shall provide CAAS/SETA personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts, and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data. CAAS/SETA personnel engaged in general systems engineering and integration effort are normally authorized access to any technical information pertaining to this contract. However, exceptions, such as the case where the CONTRACTOR seeks to preclude CAAS/SETA personnel from having access to CONTRACTOR trade secrets, will be handled on a case-by-case basis. If the CONTRACTOR seeks to limit distribution of data to Government personnel only, the CONTRACTOR must submit this request in writing through ULA to the Prime contract contracting officer.

(c) The CONTRACTOR further agrees to include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (b) above, subject to coordination with the Contractor. This agreement does not relieve the CONTRACTOR of responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or CAAS/SETAs and CONTRACTOR or its subcontractors.

(d) CAAS/SETA personnel are not authorized to direct the CONTRACTOR in any manner. The CONTRACTOR agrees to accept technical direction as follows:

1. Technical direction under this contract will be given in accordance with the contract.

2. Whenever it becomes necessary to modify the contract and redirect the effort, a Change Order signed by the designated Procurement Representative or a Contract Modification signed by both the designated Procurement Representative and the CONTRACTOR will be issued.

(e) **CAAS/SETA contracts will contain an organizational conflict of interest clause that requires the CAAS/SETA contractor to protect contract data and prohibits the CAAS/SETA contractor from using such data for any purpose other than that for which the data was presented.**

6) GOVERNMENT INSIGHT AND ACCESS

(a) CONTRACTOR acknowledges that the Government has reserved certain insight rights into CONTRACTOR's performance under this Contract. This Government insight will include, but is not limited to, access to facilities used in the performance of this Contract, access to data directly related to the performance of this Contract (other than financial data) through electronic or other means, attendance and participation at meetings and participation in scheduled program events. **The Government's insight does not include approval/disapproval rights, nor the right to require new data or documents to be created.**

(b) Government insight is defined as gaining an understanding necessary to knowledgeably concur/non-concur with the CONTRACTOR's actions through watchful observation, documentation, meeting attendance, reviews, tests and compliance evaluations. Where Government insight is required, the CONTRACTOR shall notify the Procurement Representative of meetings, reviews, or tests in sufficient time to permit meaningful Government participation.

(c) Should insight identify non-compliance with the terms and conditions of the contract, a difference in interpretation of test results, or disagreement with the CONTRACTOR technical directions, the Government, through ULA, will take appropriate action within the terms of the contract to ensure compliance via written direction to the CONTRACTOR.

(d) In accordance with paragraph (a), CONTRACTOR's documents, reports, records, software and data provided to ULA be made available to the Government in compliance with the Prime Contracts. CONTRACTOR will label all information provided to ULA under this Contract as either "ULA Proprietary Information" or "[CONTRACTOR] Proprietary Information" as appropriate in accordance with the data rights provisions of this Contract. Except as noted in paragraph (c), the Government's access to such CONTRACTOR data shall not constitute delivery of data, software or information to the Government and the Government shall only have the right to review and evaluate, and print out and incorporate the data into other documents for Governmental purposes.

(e) ULA's rights in data shall be determined under the "Intellectual Property" provision of the General Provisions.

The following additional paragraph applies for a NASA mission:

(f) If this Contract is for production work, the Government's rights in data shall be determined under FAR 52.227-14 with ALTs II and III, and 1852.227-14.

7) INSPECTION SYSTEM RECORDS

Pursuant to the "Quality Control System" provision of the General Provisions, the CONTRACTOR shall maintain records evidencing inspections until ULA approves destruction of such records, but in no event for less than three (3) years after delivery of all items and/or completion of all services called for by this Contract.

8) KENNEDY SPACE CENTER ("KSC") SECURITY CONTROLS (KSC 52.204-90, SEP 1998)

(Applies if this Contract requires the CONTRACTOR's entry onto KSC.)

(a) Identification of Employees

1. The CONTRACTOR shall require each employee engaged on the work site to display NASA-furnished identification badges and special access badges at all times. The CONTRACTOR shall obtain and submit badging request forms for each person employed or to be employed by the CONTRACTOR under this Contract. The CONTRACTOR shall designate its own security and badging officials to act as points-of-contact for the KSC Security Office. Prior to proceeding with onsite performance, the CONTRACTOR shall submit the following information to the Protective Services Branch, Code TA-E2, Kennedy Space Center:

- a. Contract number and location of work site(s)
- b. Contract commencement and completion dates
- c. Status as prime or subcontractor
- d. Names of designated security and badging officials

2. Identification and badging of employees shall be accomplished as soon as practicable after award of the Contract. During performance of the Contract, the CONTRACTOR shall, upon termination of an employee, immediately deliver badges and/or passes issued to the employee to the NASA Security Office. It is agreed and understood that all NASA identification badges/passes remain the property of NASA, and the Government reserves the right to invalidate such badges/passes at any time.

(b) Access to Controlled Areas within KSC

1. Certain areas within KSC have been designated as Controlled Areas. These are normally surrounded by fencing and have an entrance gate monitored by a guard or monitoring device. Access into such areas is classified into "escorted" or "unescorted" access. For each employee for which the CONTRACTOR desires to have unescorted access, the prescribed forms must be submitted to the NASA Security Office. Due to the time required to process requests for unescorted access, the CONTRACTOR is advised to complete and submit the required forms as soon as practicable after contract award. Within 14 working days after the receipt of the forms, the NASA Security Office will determine whether the person is eligible for unescorted access.

2. The prime CONTRACTOR is responsible for providing escort services for any of his employees and/or any subcontractor employees who are not eligible for unescorted access.

3. All requests for unescorted access by subcontractors will be submitted through the prime contractor for forwarding to the NASA Security Office.

9) Liability For Third Party Claims Arising From NASA Launches

This clause applies to Third Party claims that arise from the conduct of hazardous launch activities when hardware or services procured under this Contract are used to provide launch services to NASA. This clause explains the approach of NASA, ULA and CONTRACTOR to addressing Third Party claims between NASA, ULA and CONTRACTOR for damage to or loss of property or personal injury or death arising from the burning, explosion, detonation, combustion or impact of a Launch Vehicle (LV), its payload, or a component thereof, whether or not the payload is separated from the LV, from the time of launch until thirty (30) days after launch. This clause applies in lieu of indemnification under Public Law 85-804 for launch services provided to NASA using hardware or services provided by CONTRACTOR under this Contract.

(a) Definitions

1. Covered Launch Activities: Any and all activities involved in the preparation of a launch vehicle and payload for launch, and conduct of the launch, when those activities take place at a launch site in the United States.
2. Launch: The intentional ignition of the first-stage motor(s) of the LV that has been integrated with the payload.
3. Party or Parties: NASA, ULA, and Contractor (for purposes of this clause only).
4. Related Party:
 - (i) Any of the Parties' directors, officers, agents, employees or customers.
 - (ii) Any of the Parties' contractors, subcontractors, or suppliers at any tier involved directly or indirectly in the performance of this Contract.
 - (iii) Any entity having any right, title or interest, whether through sale, lease or service arrangement or otherwise, directly or indirectly, in the payload, the LV, or the launch service.
5. Third Party: Any person or entity other than NASA, ULA, CONTRACTOR and Related Parties.

(b) Required ULA Insurance for Liability to Third Parties

1. ULA shall continue in effect or acquire insurance to protect itself and CONTRACTOR from liability for claims from Third Parties for damage to or loss of property or personal injury or death arising in connection with the covered launch activities under ULA's NASA Launch Services (NLS) Contract No. NAS10-00-060. The amount of insurance required under the NLS Contract for each launch shall be the lesser of \$500 million or the maximum amount available in the commercial marketplace at reasonable cost. The insurance coverage required under the NLS Contract shall attach no later than the arrival of the LV at the launch site and shall remain in force for at least thirty (30) days following launch.
2. The foregoing insurance requirement does not preclude ULA from acquiring or continuing in effect insurance in excess of \$500 million; however, such additional insurance is not required under this Contract.

(c) Third Party Claims in Excess of Required Insurance

1. NASA has determined that launches under ULA's NLS Contract, are conducted by NASA in performance of its functions, as specified in 42 U.S.C. § 2473(a). As a result, once ULA or its insurers have paid out for its Third Party claims the amount of required insurance under paragraph (b) above, NASA will consider any additional Third Party claims for damage to or loss of property or personal injury or death arising from the launches as claims against the United States under the authority of 42 U.S.C. § 2473 (c)(13).
2. ULA (once it or its insurers have paid to third party claimants, from their own funds, an amount equal to the amount of required insurance for a Launch) shall adjust, settle and pay meritorious and reasonable additional Third Party claims in excess of the amount of required insurance. To the extent NASA determines that such costs exceed \$25,000, it will forward such claim to the secretary of Treasury for certification and payment pursuant to 31 U.S.C. § 1304(a). Such costs are subject to the usual tests for allowability and the total of such costs shall be paid up to a limit of \$1.5 billion above the insurance obtained by ULA for the benefit of ULA and Contractor for each launch.
3. In evaluating Third Party claims against the United States paid by ULA on behalf of the Contractor, ULA will consider such a claim to be meritorious unless the claim represents:
 - (i) Liabilities for which the Contractor is otherwise responsible under the express terms or conditions of the contract or a task order issued under this Contract
 - (ii) Liabilities for which Contractor has failed to insure or to maintain insurance as required by the Contract
 - (iii) Liabilities that result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
 - (a) All or substantially all of the Contractor's business
 - (b) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed
 - (c) Separate and complete major industrial operation in connection with the performance of this contract
 - (iv) Liabilities that arise from the willful misconduct or gross negligence of the claimant or, in the case of a claim based on death, the claimant's descendant.

10) MISHAP INVESTIGATION

This clause applies to Air Force Missions. CONTRACTOR's Responsibilities in the Event of Mission Failure of an EELV mission:

- (a) In the event of mission failure(s), as defined herein below, and if directed by ULA, the CONTRACTOR shall support a mishap investigation including engineering analysis that is adequate to determine the cause of the mishap and the corrective action necessary to prevent future mishaps. The

CONTRACTOR shall allow Government observers. In the event of a mission failure, CONTRACTOR shall impound and place under positive control all of its or its subcontractors' flight and processing data that is accessible directly or through agreements with other agencies and subcontractors. ULA may provide to CONTRACTOR any applicable data (e.g. radar tracking, camera video, etc.) generated by the Government during the mishap. The CONTRACTOR shall prepare and furnish to ULA all the data and reports applicable to the mishap investigation and corrective action determination, including any revisions or updates of the information, at no increase in contract price. Access to information under this clause does not constitute delivery of data, software, or information. Neither the Government nor ULA shall be held liable for inadvertent release where the CONTRACTOR failed to place appropriate restrictive legends on the data. In the event the Air Force elects to perform its own independent mishap investigations, the CONTRACTOR shall support and cooperate as may be requested by the Government or ULA.

(b) The Parties agree to work in good faith, including escalation of unresolved issues to executive management, to agree on the corrective actions necessary to return to flight. If ULA and/or the Government and the CONTRACTOR cannot agree on the corrective actions necessary to return to flight, ULA and/or the Government shall have the right to direct the CONTRACTOR to proceed with the corrective actions on launch vehicles required for launch Services under this Contract, as deemed necessary by the Government or ULA. CONTRACTOR shall be obligated to proceed upon receipt of the Procurement Representative's direction. Nothing in this paragraph shall preclude ULA from exercising its right to terminate.

(c) If an Air Force Safety Investigation Board (SIB) and an Accident Investigation Board (AIB) are convened, the data arising out of the mishap will be controlled by the Air Force and released in accordance with Air Force policies and 10 USC 2254. This data will be released as quickly as possible to the CONTRACTOR for its use in the engineering analysis. The CONTRACTOR shall not release this data or its engineering analysis to the public without the approval, through ULA, of the Air Force in compliance with 10 USC 2254.

(d) If the SIB or AIB or any other Air Force organizations requires tests, analysis, or investigation in addition to that performed in engineering analysis and as part of the Air Force's independent mishap investigation, the CONTRACTOR shall cooperate and support the independent investigation.

(e) Definitions: For purposes of this clause the following definitions shall apply:

(1) Mission Failure: total or constructive total failure.

(2) Total Failure: The payload is destroyed or lost during the booster processing or launch phase or the payload cannot be separated from the Launch Vehicle, and the Launch Vehicle performed in a manner that caused the payload to be destroyed, lost, or unable to be separated.

(3) Constructive Total Failure: The operational utility loss of the payload is such that no payload mission objectives can be achieved, and it is determined from the flight data that the Launch Vehicle performed in a manner that caused damage to the payload.

(4) Mission Success: ULA did insert the payload in the prescribed orbit under the conditions specified in the approved prime contract Interface Control Document (ICD).

(5) Insertion in the Prescribed Orbit: The release of the payload at the separation from the EELV within the altitude, environmental, and other such conditions as specified in the applicable system specification and the appropriate approved ICD, and at such a point and with such a velocity into an orbit from which a useful payload mission can be established.

(g) In the event of a mishap concerning a mission utilizing the Atlas V system which is procured outside of the EELV Program, the Government nevertheless shall have the right to participate in the mishap investigation in an informational role only to the extent such participation is permitted under the terms of ULA's agreement with its customer for the mission. ULA and the Government shall have access to all data available to the mishap investigation team regarding the mishap, including impounded data.

11) MISSION SUCCESS: Investigation and Corrective Action

This clause applies to NASA missions.

(a) In the event of an anomaly or failed mission, a NASA-chaired Failure Review Board ("FRB") will determine the cause of anomaly or failure, if activated. The FRB will evaluate all available data from the launch vehicle, payload, Range, and other sources in order to determine if the mission failure was attributable to the launch vehicle or conditions for which the CONTRACTOR would normally be expected to control or avoid.

(b) The Government and ULA will determine the scope of the investigation and shall conduct and control the investigation. The CONTRACTOR shall, if requested by ULA, assist in the investigation as to the Work performed by CONTRACTOR under this Contract. The Government or ULA may designate representatives to observe and participate in CONTRACTOR's failure investigation. If the CONTRACTOR changes design of any hardware delivered hereunder, the CONTRACTOR shall provide NASA, through ULA, insight into the change. The Government or ULA may establish an independent assessment team to assess the CONTRACTOR's investigative and corrective actions.

(c) The CONTRACTOR shall present to the Government, through ULA, its findings resulting from the investigation and the proposed corrective actions (return to flight activities), if any. The CONTRACTOR shall be responsible for proving the corrective action is sufficient to return to flight. ULA or NASA may either accept or reject any finding or corrective action. If ULA and NASA accept a finding and the related corrective action, the CONTRACTOR shall be responsible for the cost of the corrective action including re-acceptance for NASA missions. In the event ULA or the Government requires additional analyses or tests beyond those planned by the CONTRACTOR, the CONTRACTOR shall implement the ULA Procurement Representative's written direction to perform the additional tests or analyses. The costs of implementing these additional tests or analyses may be the basis for an adjustment to this Contract. ULA or the Government may, at its option and its expense, conduct its own investigation of the anomaly or failure. The CONTRACTOR shall cooperate with and fully support any such ULA or Government investigation.

(d) The CONTRACTOR shall report to NASA, through ULA, any flight anomalies of its supplies or services related to the Work under this Contract, from non-NASA missions.

12) PATENT INDEMNITY

This clause applies to NASA missions.

The CONTRACTOR shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Contract, provided the Contractor is reasonably notified of such claims and proceedings.

13) PRIORITY RATING

For NASA missions, this Contract has a priority rating of DO-C9 and as such, is certified for national defense use. For Air Force missions, this Contract has a priority rating of DX-A2 and as such, is certified for national defense use. The CONTRACTOR shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).