



DOC 3 INT
INTERNATIONAL SUBCONTRACTS/PURCHASE ORDERS (ALL AGENCIES) FOR NON-COMMERCIAL ITEMS
UNDER A U.S. GOVERNMENT PRIME CONTRACT

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SECTION I: GENERAL PROVISIONS

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- (a) "Background Intellectual Property" means all Intellectual Property Made by or for a party apart from the performance of Work under this Contract.
(b) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, that includes these General Provisions, all referenced documents, exhibits, and attachments.
(c) "CONTRACTOR" means the party identified on the face of this Contract with whom ULA is contracting.
(d) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
(e) "Foreground Intellectual Property" means all Intellectual Property Made by or for a party in the performance of Work under this Contract.
(f) "Government" means the Government of the United States of America or any department or agency thereof.
(g) "Intellectual Property" means all (i) inventions, discoveries and improvements, (ii) all documented information in whatever form such as information embodied in drawings, specifications, process documents, technical reports, and computer software (e.g., object code and source code) and related computer software documentation, and (iii) all domestic and foreign legal and statutory rights to the foregoing, including but not limited to, patents, trade secrets, copyrights, mask work registrations, and the like.
(h) "Made" means conceived, developed, first produced, or created.
(i) "Procurement Representative" means the person authorized by ULA's cognizant procurement organization to administer and/or execute this Contract.
(j) "Subcontractor" means CONTRACTOR's subcontractors at any tier.

(k) "ULA" means ULA, LLC as identified on the face of this Contract.

(l) "Work" means all required labor, articles, materials, supplies, goods, services and deliverable information and materials constituting the subject matter of this Contract.

1. ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS

(a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

(b) CONTRACTOR's acknowledgment, acceptance of payment, or commencement of performance, shall constitute CONTRACTOR's unqualified acceptance of this Contract.

(c) Unless expressly accepted in writing by ULA, additional or differing terms or conditions proposed by CONTRACTOR or included in CONTRACTOR's acknowledgment are objected to by ULA and have no effect.

2. APPROVALS

ULA's approval of documents shall not relieve CONTRACTOR of its obligations to comply with the requirements of this Contract.

3. ASSIGNMENT

CONTRACTOR shall not assign any of its rights or interest in this Contract or subcontract all or substantially all of its performance of this Contract, without ULA's prior written consent. CONTRACTOR, may assign rights to be paid amounts due, or to become due, to a financing institution if ULA is promptly furnished a signed copy of such assignment reasonably in advance of the due date for payment of any such amounts. Amounts assigned shall be subject to setoff or recoupment for any present or future claims of ULA against CONTRACTOR. ULA shall have the right to make settlements and/or adjustments in price without notice to any assignee financing institution.

4. COMMUNICATION WITH ULA CUSTOMER

ULA shall be solely responsible for all liaison and coordination with the ULA customer unless explicitly stated in another clause, including the U.S. Government, as it affects the applicable prime contract, this Contract, and any related Contract. If another clause requires direct communication with ULA customer, CONTRACTOR shall notify ULA immediately and provide ULA a copy of the communication.

5. COMPLIANCE WITH EXPORT AND IMPORT LAWS

(a) In performing the obligations of this Contract, the CONTRACTOR shall comply with export, import and sanctions laws, regulations, orders, and authorizations to include without limitation, Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control. Such performance shall apply to the export, re-export and import of controlled technology, data, software, services, and/or hardware. Before exporting or re-exporting any technology, data, software, services and/or hardware, CONTRACTOR must independently verify whether such items are subject to the export, import and sanctions laws, regulations, orders, or authorizations.

(b) If CONTRACTOR is a US Person (as defined in the ITAR) and is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles, or furnishing defense services, CONTRACTOR represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export and import compliance program.

6. COMPLIANCE WITH LAWS

(a) In performing this Contract, CONTRACTOR agrees to comply with all applicable local, state, and federal laws, orders, rules, regulations, codes and ordinances ("Laws") that may affect performance of this Contract. CONTRACTOR shall indemnify ULA against any liability, fine or penalty that may be imposed upon ULA as a result of CONTRACTOR's failure to comply with such Laws.

(b) CONTRACTOR represents that each chemical substance constituting or contained in Work sold or otherwise transferred to ULA hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) as amended.

(c) CONTRACTOR shall provide to ULA, with each delivery, any Material Safety Data Sheet applicable to the Work in conformance with and containing such information as required by the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder, or its State approved counterpart.

(d) CONTRACTOR represents and warrants that it is not included on the Excluded Parties List System (EPLS) and agrees to notify ULA immediately upon learning that it or any of its affiliates has been proposed for inclusion in the Excluded Parties List System (EPLS).

7. CONTRACT DIRECTION

(a) Only the Procurement Representative has authority to make changes to this Contract. All changes to this Contract must be in writing and executed by the parties.

(b) ULA personnel other than the Procurement Representative may from time to time render assistance or give technical advice or discuss or effect an exchange of information with CONTRACTOR's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.

(c) Under the "Changes" clause of this Contract, the Procurement Representative may direct changes as to the terms and conditions of this Contract required to meet ULA's obligations under Government prime contracts.

(d) Except as otherwise provided herein, all notices to be furnished by the CONTRACTOR shall be in writing and sent to the Procurement Representative.

8. DISPUTES AND ARBITRATION

(a) **Continuation of Performance.** CONTRACTOR will perform the Work as set forth in this Contract. If ULA requires CONTRACTOR to perform work that CONTRACTOR does not believe this Contract requires it to perform (hereafter referred to as "Disputed Work"), then CONTRACTOR will perform the Disputed Work and will start the dispute resolution procedure in accordance with this clause, to determine whether CONTRACTOR should be paid additional money for this work.

(b) **Management Consultation.** Any dispute between the parties will first be referred to each party's senior management for resolution. The senior managers will meet and confer with respect to the subject under dispute.

(c) **Arbitration.** Any dispute arising out of or relating to this Contract, or any breach of this Contract, that the parties have been unable to resolve by management consultation as provided in paragraph (b), will be resolved exclusively by arbitration. The arbitration will be in accordance with the rules prepared by the American Arbitration Association except as specifically modified in this Contract.

(i) **Agreement to Arbitrate.** The award of the arbitrator shall be final and binding upon the parties.

(ii) **Governing Rules.** The arbitration shall be in accordance with the rules of commercial arbitration of the American Arbitration Association, except that in the event of any conflict between those rules and the arbitration provisions of this Contract, the provisions of this Contract shall govern.

(iii) **Appointment of Arbitrator.** The number of the arbitrators shall be one. Upon application of one of the parties to this Contract, the American Arbitration Association in Denver, Colorado shall appoint the arbitrator. The arbitration, including the making of the award, shall take place in Denver, Colorado.

(iv) **Commencement of Arbitration.** Either party may commence an arbitration by applying to the American Arbitration Association office in Denver for appointment of an arbitrator. The application for appointment will identify the other party to this Contract by name and address. A copy of the application for appointment of an arbitrator will be sent to the other party.

(v) **Issues in Dispute.** The application for appointment will specify the issues that are in dispute, the position of the initiating party as to those issues, the identity of the parties with whom the initiating party is in dispute, and will state the remedy that the initiating party seeks.

(vi) **Award.** The arbitrator is authorized to award damages to the prevailing party and to order specific performance of any contractual obligation that he finds a party is failing to perform. The arbitrator will make the award within thirty (30) business days from the date established for final submittal of oral or written statements and documents to the arbitrators. An award will be in writing, will state the precise reasons for the award and will specify the remedy or relief granted, if any.

(vii) **Enforcement.** An award by the arbitrator will be final and conclusive as to the issue or issues that were the subject of the arbitration. The parties to this Contract exclude any right of application or appeal to any court and, in particular, in connection with any questions of jurisdiction or question of law arising in the arbitration or out of the award. The award will be enforceable in any court having jurisdiction over the party against whom enforcement is sought.

(viii) **Language.** The parties will use English as the single language for the arbitration proceeding. Simultaneous interpretation shall be allowed.

(ix) **Interim or Provisional Remedies.** Any party commencing an arbitration under this Contract may seek from any court of competent jurisdiction a temporary remedy (such as an injunction or order to refrain from taking certain action) that is needed to preserve assets or the rights of that party while the arbitration is being conducted. Once an arbitrator is appointed, the arbitrator may impose a temporary remedy, in addition to or to supplement any temporary remedy imposed by the court.

(x) **Attorneys' Fees and Expenses.** Each party shall bear its own costs, including attorneys' fees, related to any arbitration proceeding brought pursuant to this Contract.

9. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. CONTRACTOR shall be liable for handling charges and return shipment costs for any excess quantities. If Work is manufactured with reference to ULA's proprietary information or materials, CONTRACTOR agrees that, pursuant to the "Intellectual Property" clause of this Contract, it will not sell or offer such Work for sale to anyone other than ULA without ULA's prior written consent.

10. FINAL ACCEPTANCE

(a) ULA's final acceptance shall be at destination.

(b) If CONTRACTOR delivers non-conforming Work, ULA may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work.

(c) CONTRACTOR shall not re-tender rejected Work without disclosing the corrective action taken.

11. FURNISHED PROPERTY

(a) ULA may provide to CONTRACTOR property owned by either ULA or its non-U.S. Government customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in ULA or its non-U.S. Government customer. CONTRACTOR shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, CONTRACTOR shall be responsible for, and shall promptly notify ULA of, any loss or damage. Without additional charge, CONTRACTOR shall manage, maintain, and preserve Furnished Property in accordance with good commercial practice.

(d) At ULA's request, and/or upon completion of this Contract, the CONTRACTOR shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by ULA.

(e) The Government Property Clause contained in Section II shall apply in lieu of paragraphs (a) through (d) above with respect to Government furnished property, or property to which the Government may take title under this Contract.

12. GOVERNING LAW AND VENUE

(a) Other provisions of the contract shall be construed and interpreted in accordance with the substantive law, excluding choice of law rules, of the State of Colorado. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

(b) Any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasijudicial agencies of the Federal Government.

13. GRATUITIES/KICKBACKS

(a) No gratuities (in the form of entertainment, gifts or otherwise) for the purpose of obtaining or rewarding favorable treatment as a supplier, and no kickbacks, shall be offered or given by CONTRACTOR to any employee of ULA.

(b) CONTRACTOR shall contact ULA's Office of Internal Governance, at 1-800-511-4173, if any employee of ULA requests a gratuity and/or kickback.

(c) By accepting this Contract, CONTRACTOR certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

14. INDEPENDENT CONTRACTOR RELATIONSHIP

CONTRACTOR is an independent contractor in all its operations and activities hereunder. The employees used by CONTRACTOR to perform Work under this Contract shall be CONTRACTOR's employees exclusively without any relation whatsoever to ULA.

15. INFORMATION OF ULA

CONTRACTOR agrees to comply with the terms of any Confidentiality Agreement entered into by the parties and respect any proprietary and other restrictive markings that may be applied by ULA to anything provided hereunder to CONTRACTOR. Information provided by ULA, to CONTRACTOR remains the property of ULA and such information, including tangible items conveying or embodying such information, is deemed the proprietary, confidential and/or trade secret information of ULA. Such information may be used by CONTRACTOR solely for the purposes of this Contract. CONTRACTOR may not disclose to any third party such information without the prior written consent of ULA.

16. INFORMATION OF CONTRACTOR

ULA personnel are not authorized to receive any information in confidence from CONTRACTOR. All communications of any kind from CONTRACTOR to ULA, accordingly, shall be deemed to be on a non-confidential basis unless CONTRACTOR and ULA have executed a Confidentiality Agreement protecting CONTRACTOR information.

17. INSURANCE AND ENTRY ON ULA PROPERTY

(a) The provisions of this subparagraph (a) shall apply only in the event that CONTRACTOR, its employees, agents, or Subcontractors enter the site(s) of ULA or its customers for any reason in connection with this Contract

(i) CONTRACTOR and its Subcontractors shall procure and maintain for the performance of this Contract the following types of insurance:

(a) Worker's Compensation in amounts as required by law, including U.S. Longshoreman and Harbor Worker's Act, if applicable, and Employer's Liability at a limit no less than \$1 Million.

(b) Commercial General Liability covering Premises Liability, Contractual Liability, Products and Completed Operations and Personal Injury Liability at a limit no less than \$3 Million each occurrence and annual aggregate. This policy shall name ULA as an additional insured and include a Waiver of Subrogation in favor of ULA; and

(c) Commercial Automobile Liability covering all owned, non-owned and hired vehicles, including loading and unloading thereof at a limit of no less than \$1 Million.

(ii) CONTRACTOR and its Subcontractors shall comply with all site requirements.

(b) CONTRACTOR may also have to provide other insurance as ULA may reasonably require.

(c) CONTRACTOR shall provide ULA thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of CONTRACTOR's required insurance, provided however such notice shall not relieve CONTRACTOR of its obligations to carry the required insurance. At Contract inception and annually thereafter, CONTRACTOR shall send a "Certificate of Insurance" showing CONTRACTOR's compliance with these requirements. Insurance maintained pursuant to this clause shall be considered primary as respects to the interest of ULA and is not contributory with any insurance which ULA may carry. CONTRACTOR's obligations to carry insurance coverages are freestanding and are not affected by any other language in this Contract.

18. INTELLECTUAL PROPERTY AND INDEMNITY

(a) All Foreground Intellectual Property and Background Intellectual Property Made by a party shall be the exclusive property of that party. Foreground Intellectual Property Made jointly by CONTRACTOR and ULA shall be jointly owned by CONTRACTOR and ULA.

(b) CONTRACTOR agrees to grant and hereby grants to ULA an irrevocable, nonexclusive, royalty-free, paid-up, transferable, worldwide license to: (i) reproduce, (ii) make derivatives of, (iii) perform, (iv) display, (v) distribute, and (vi) disclose all CONTRACTOR Foreground Intellectual Property and have others do so on behalf of ULA. ULA may only exercise the license

granted herein in connection with this Contract and the performance of any related contract ULA may have with the U.S. Government.

(c) CONTRACTOR grants to ULA an irrevocable, nonexclusive, paid-up, transferable, worldwide license under any Background Intellectual Property owned or controlled by CONTRACTOR, but only to the extent that the Background Intellectual Property of CONTRACTOR would otherwise interfere with the license granted ULA above in paragraph (b) hereof.

(d) In the event that this Contract is issued under a higher-tier contract, the rights granted to ULA additionally include the right to grant sublicenses of the scope set forth hereinabove to the extent required in said higher-tier contract.

(e) The licenses granted to ULA hereunder shall survive expiration or termination of this Contract and/or the U.S. Government contracts of ULA, whichever occurs last.

(f) CONTRACTOR warrants that the Work performed or delivered or licenses granted under this Contract will not infringe or otherwise violate the Intellectual Property rights of any third party.

(g) CONTRACTOR shall defend and hold harmless and shall indemnify ULA, its agents, employees, contractors and customers and the consultants of such customers from and against any loss, damage or liability including attorney's fees and costs, based on a claim of infringement or misappropriation of any third party's Intellectual Property rights by the Work performed or delivered hereunder. ULA shall notify CONTRACTOR promptly of any such claim and, at CONTRACTOR's option and expense, shall provide to CONTRACTOR reasonable and necessary information, assistance (at CONTRACTOR's expense) and authority to defend or settle said claim. If required by ULA, CONTRACTOR shall provide proof of having sufficient resources or insurance to support this indemnification obligation. In case any Work provided hereunder in any suit is held to constitute a violation of such third party's Intellectual Property rights and its use is enjoined, CONTRACTOR shall at its option and expense (i) procure for ULA the right to continue using the Work, or (ii) modify the same to make it non-infringing, or (iii) replace the same with Work that is non-infringing and acceptable to ULA. CONTRACTOR shall not have any liability for infringement or misappropriation if the alleged infringement or misappropriation would not have occurred except for ULA's unauthorized modification of the Work and/or Assigned Intellectual Property or unauthorized combination with other articles, materials, supplies, goods or Intellectual Property.

(h) The obligation of CONTRACTOR to defend, indemnify, and hold harmless ULA and its agents, employees, contractors and customers and the consultants of such customer under paragraph (g) above shall not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to the relevant ULA U.S. Government contract or a subcontract with another customer, provided however, ULA and/or its customer are not subject to any actions for claims, damages, losses, costs, and expenses, including reasonable attorney's fees by a third party.

19. LANGUAGE AND STANDARDS

All reports, correspondence, drawings, notices, marking, and other communications shall be in the English language. The English version of the Contract shall prevail. Unless otherwise provided in writing all documentation and work shall employ the units of United States Standard weights and measures.

20. MAINTENANCE OF RECORDS

(a) CONTRACTOR shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate CONTRACTOR's charges hereunder. Such records shall include, but not be limited to, applicable time sheets, job cards, phone bills, travel receipts and job summaries. CONTRACTOR shall retain such records for three (3) years from final payment of this Contract.

(b) ULA shall have access to such records, and any other records CONTRACTOR is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained.

21. PACKING AND SHIPMENT

(a) Unless otherwise specified, all Work is to be packed in accordance with good commercial practice.

(b) A complete packing list shall be enclosed with all shipments. CONTRACTOR shall mark containers or packages with necessary lifting, loading, and shipping information, including the ULA Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number.

(c) Unless otherwise specified, delivery is FCA Free Carrier, in accordance with INCOTERMS 2000. Carrier and site of delivery for the Work shall be specified in the Contract.

22. PARTS OBSOLESCENCE

ULA may desire to place additional orders for Work purchased hereunder. CONTRACTOR shall provide ULA with a "Last Time Buy Notice" at least twelve (12) months prior to any action to discontinue any Work purchased under this Contract.

23. PAYMENTS, TAXES, AND DUTIES

(a) Unless otherwise provided, terms of payment shall be net thirty (30) days from the latest of the following: (i) ULA's receipt of the CONTRACTOR's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery of the Work.

(b) Each payment made shall be subject to reduction to the extent of amounts which are found by ULA or CONTRACTOR not to have been properly payable, and shall also be subject to reduction for overpayments. CONTRACTOR shall promptly notify ULA of any such overpayments found by CONTRACTOR.

(c) ULA shall have a right of setoff or recoupment against payments due or at issue under this Contract or any other contract between the parties.

(d) Payment shall be deemed to have been made as of the date of mailing ULA's payment or electronic funds transfer.

(e) Unless otherwise specified, prices include all applicable federal, state, local and foreign taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. When taxable and non-taxable items are invoiced under this Contract, taxable versus non-taxable items shall be separately stated. If Work purchased qualifies for tax exemption, then an exemption certificate will be presented from ULA to CONTRACTOR.

(f) The prices stated in the Contract are firm, fixed prices in United States dollars.

24. PRECEDENCE

Any inconsistencies in this Contract shall be resolved in accordance with the following descending order of precedence: (i) Face of the Purchase Order and/or Task Order, release document, the schedule of this Contract, (including any continuation sheets), and/or any special terms and conditions; (ii) Terms and Conditions, including this Document; (iii) Statement of Work; (iv) Specifications; (v) Drawings; and (vi) any other exhibits of this Contract.

25. PRIORITY RATING

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

26. PROHIBITED SOFTWARE

(a) This clause only applies to Work that includes the delivery of software.

(b) As used herein, "Prohibited License" means the General Public License ("GPL") or Lesser/Library GPL, the Artistic License (e.g., PERL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, or variations thereof, including without limitation licenses referred to as "GPL Compatible, Free Software License."

(c) As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates ULA to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.

(d) Unless CONTRACTOR has obtained ULA's prior written consent, which ULA may withhold in its sole discretion, CONTRACTOR shall not use in connection with this Contract, or deliver to ULA, any Prohibited Software.

27. QUALITY CONTROL SYSTEM

(a) CONTRACTOR shall provide and maintain a quality control system to an industry-recognized Quality Standard and in compliance with any other specific quality requirements identified in this Contract.

(b) All quality records to Work performed under this Contract shall be kept complete and available to ULA and its customers.

(c) CONTRACTOR shall promptly notify ULA of any violation of or deviation from CONTRACTOR's approved quality control system. CONTRACTOR shall notify ULA of any Work delivered to ULA during the period of any such violation or deviation.

(d) If CONTRACTOR becomes aware of any nonconformance in the Work purchased under this Contract, CONTRACTOR shall notify the Procurement Representative immediately.

28. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by CONTRACTOR without the prior written approval of ULA. All requests for release of information must be received by ULA no later than fifty-five (55) days before release.

29. RIGHTS AND REMEDIES

Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the parties may have at law or in equity.

30. SEVERABILITY

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

31. SURVIVABILITY

(a) If this Contract expires, is completed, or is terminated, CONTRACTOR shall not be relieved of those obligations contained in the following clauses:

Compliance with Export and Import Laws

Compliance with Laws

Disputes

Governing Law and Venue

Independent Contractor Relationship

Information of ULA

Insurance and Entry on ULA Property

Intellectual Property and Indemnity

Language and Standards

Prohibited Software

Quality Control System

Release of Information

Warranty

(b) Those U. S. Government flowdown provisions that by their nature should survive.

(c) Any Confidentiality Agreement entered into by the parties applicable to this Contract.

32. TIMELY PERFORMANCE

(a) CONTRACTOR's timely performance is of essence and is a material element of this Contract.

(b) Unless advance shipment has been authorized in writing by ULA, ULA may store at CONTRACTOR's expense, or return, shipping charges collect, all Work received in advance of the scheduled delivery date.

(c) If CONTRACTOR becomes aware of difficulty in performing the Work, CONTRACTOR shall timely notify ULA, in writing, giving pertinent details. This notification shall not change any delivery schedule.

(d) If CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, CONTRACTOR shall immediately give notice, including all relevant information, to the Procurement Representative.

(e) In the event of a termination for convenience or a Contract change, no claim will be allowed for any manufacture or procurement in advance of CONTRACTOR's normal flow time unless there has been prior written consent by ULA.

33. WAIVERS

Any failures, delays or forbearances of either party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

34. WARRANTY

CONTRACTOR warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable statement of work, specifications, drawings, samples, descriptions, and other requirements of this Contract and be free from defects in design, material, and workmanship. This warranty shall begin upon final acceptance and extend for a period of two (2) years. If any non-conforming Work is identified within the warranty period, CONTRACTOR at ULA's option, shall promptly repair, replace, or reperform the Work. Transportation of replacement Work, return of non-conforming Work, re-performance of Work shall be at CONTRACTOR's expense. If repair, replacement, or re-performance of Work is not timely, ULA may elect to return, reperform, repair, replace, or reprocure the non-conforming Work at CONTRACTOR's expense. All warranties shall run to ULA and its customer(s).

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract. The full text for a FAR clause may be accessed electronically at the following address:
<http://www.arnet.gov/far>

B. GOVERNMENT SUBCONTRACT

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

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

C. NOTES

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

D. PRESERVATION OF THE GOVERNMENT'S RIGHTS

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

E. FAR FLOWDOWN CLAUSES

REFERENCE TITLE

1. The following FAR clauses apply to this Contract:

(a) 52.203-08 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (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.)

(b) 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (Note 2 applies.)

(c) 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA - MODIFICATIONS (OCT 1997) ALT II (OCT 1997) and ALT III (OCT 1997) (Note 2 applies. Insert "CD/DVD" in (c) of Alt III.)

(d) 52.222-19 CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES (FEB 2008)

(e) 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) (Note 2 applies. In paragraph (e), Note 3 applies.)

(f) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)(Note 5 applies.)

(g) 52.232-17 INTEREST (OCT 2008) (Note 1 applies.)

(h) 52.234-01 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994) (Notes 1 and 2 apply.)

(i) 52.242-13 BANKRUPTCY (JUL 1995) (Notes 1 and 2 apply.)

(j) 52.242-15 STOP-WORK ORDER (AUG 1989) (Notes 1 and 2 apply.)

(k) 52.242-17 GOVERNMENT DELAY OF WORK (APR 1984) (In paragraph (b)(1) insert 10 for the number of days.)

(l) 52.243-01 CHANGES - FIXED PRICE (AUG 1987) (Notes 1 and 2 apply.)

(m) 52.244-06 SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2009)

(n) 52.246-04 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996) (Note 3 applies except in paragraphs (e) and (f) where Note 1 applies.)

(o) 52.249-02 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) (Notes 1 and 2 apply. Note 4 applies to the first time "Government" appears in paragraphs (b)(4) and (b)(6), it applies to all of paragraph (b)(8) and it applies to the second time "Government" appears in paragraph (d). In paragraph (n) "Government" means "ULA and the Government". In paragraph (c) "120 days" is changed to "60 days". In paragraph (d) "15 days" is changed to "30 days", and "45 days" is changed to "60 days". In paragraph (e) "1 year" is changed to "6 months". Paragraph (j) is deleted. In paragraph (l) "90 days" is changed to "45 days". Settlements and payments under this clause may be subject to the approval of the Contracting Officer.)

(p) 52.249-08 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) (Notes 1 and 2 apply, except Note 1 is not applicable to paragraph (c). Note 4 applies to the second and third time "Government" appears in paragraph (d). Timely performance is a material element of this Contract. Reference to "Government" in paragraph (c)(2) means the U.S. Government. Failure of the United States Government to issue any required export license, or withdrawal/termination of a required export license by the United States Government, shall relieve ULA of its obligations under this Contract.)

2. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

(a) 52.203-06 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(b) 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) (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).)

(c) 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2003)

(d) 52.215-02 AUDIT AND RECORDS-NEGOTIATION (MAR 2008) (Applicable if: (1) CONTRACTOR is required to furnish cost or pricing data, or (2) the Contract requires CONTRACTOR to furnish cost, funding, or performance reports. Note 3 applies.)

3. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$650,000:

(a) 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) (Applicable if not otherwise exempt under FAR 15.403.)

(b) 52.215-13 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable for modifications if not otherwise exempt under FAR 15.403.)

4. The following FAR clauses apply to this Contract if the value of this Contract equals or exceeds \$ 5 Million:

(a) 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008) (Applicable if 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 and notification to ULA is not required.)

5. The following FAR clauses apply to this Contract as indicated:

(a) 52.204-02 SECURITY REQUIREMENTS (AUG 1996) (Applicable if the Work under this Contract requires access to classified information. The reference in paragraph (c) to the Changes clause shall be deemed to refer to the Changes clause of this Contract.)

(b) 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) (Applicable if submission of cost or pricing data is required. Notes 2 and 4 apply except the first time “Contracting Officer” appears in paragraph (c)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

(c) 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS (OCT 1997) (Applicable if submission of cost or pricing data is required for modifications. Notes 2 and 4 apply except the first time “Contracting Officer” appears in paragraph (d)(1). Rights and obligations under this clause shall survive completion of the Work and final payment under this Contract.)

(d) 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004) (Applicable if this Contract meets the applicability requirements of FAR 15.408(g). Note 5 applies.)

(e) 52.215-16 FACILITIES CAPITAL COST OF MONEY (JUN 2003) (Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the CONTRACTOR proposed facilities capital cost of money in its offer.)

(f) 52.215-17 WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997) (Applicable only if this Contract is subject to the Cost Principles at FAR Subpart 31.2 and the CONTRACTOR did not propose facilities capital cost of money in its offer.)

(g) 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if this Contract meets the applicability requirements of FAR 15.408(j). Note 5 applies.)

(h) 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applicable if this Contract meets the applicability requirements of FAR 15.408(k). Note 5 applies.)

(i) 52.230-03 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2008) (When referenced in this Contract, modified CAS coverage applies. “United States” means “United States or ULA”. Delete paragraph (b) of the clause.)

(j) 52.230-06 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008) (Applicable if FAR 52.230-2 or FAR 52.230-3 applies.)

(k) 52.233-03 PROTEST AFTER AWARD (AUG 1996) (In the event ULA’s customer has directed ULA to stop performance of the Work under the prime contract under which this Contract is issued pursuant to FAR 33.1, ULA may, by written order to CONTRACTOR, direct CONTRACTOR to stop performance of the Work called for by this Contract. “30 days” means “20 days” in paragraph (b)(2). Note 1 applies except the first time “Government” appears in paragraph (f). In paragraph (f) add after “33.104(h)(1)” the following: “and recovers those costs from ULA”.)

(l) 52.243-06 CHANGE ORDER ACCOUNTING (APR 1984) (Applicable if the prime contract requires Change Order Accounting. Note 2 applies.)

(m) 52.245-01 GOVERNMENT PROPERTY (JUNE 2007) Alt I (JUN 2007) (“Contracting Officer” means “ULA” except in the definition of Property Administrator and in paragraph (h)(1)(iii) and where it is unchanged, and in paragraphs (c) and (h)(4) where it includes ULA. “Government” is unchanged in the phrases “Government property” and “Government furnished property” and where elsewhere used except in paragraph (d)(1) where it means “ULA” and except in paragraph (d)(2) and (g) where the term

includes ULA. The following is added as paragraph (n) "CONTRACTOR shall provide to ULA immediate notice of any disapproval, withdrawal of approval, or nonacceptance by the Government of property control system.)

(n) 52.248-01 VALUE ENGINEERING (FEB 2000) (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.)

6. The following FAR clauses apply to this Contract, if Work under the Contract will be performed in the United States or CONTRACTOR recruits employees in the United States to Work on the Contract:

(i) The following FAR clauses apply to this Contract:

(a) 52.219-08 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

(b) 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(ii) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$10,000:

(a) 52.222-26 EQUAL OPPORTUNITY (MAR 2007) (Only paragraphs (b) (1)-(11) applies.)

(b) 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(iii) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$100,000:

(a) 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

(b) 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)

(c) 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

(iv) The following FAR Clauses apply to this Contract if the value of this Contract equals or exceeds \$550,000:

(a) 52.219-09 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008) (Applicable if the CONTRACTOR is not a small business. Note 2 is applicable to paragraph (c) only. The CONTRACTOR's subcontracting plan is incorporated herein by reference.)

F. CERTIFICATIONS AND REPRESENTATIONS

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

(a) FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Applicable to solicitations and contracts exceeding \$100,000)

(1) Definitions. As used in this provision--

"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8).

The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(2) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(3) Certification. The CONTRACTOR, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee

of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Contract.

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

(5) Penalty. Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(b) FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

(1) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR and/or any of its Principals, (as defined in FAR 52.209-5,) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

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

(2) The following FAR clauses apply to this Contract if Work under this Contract will be performed in the United States or CONTRACTOR is recruiting employees in the United States to work on this Contract.

(a) FAR 52.222-22 Previous Contracts and Compliance Reports.

CONTRACTOR represents that if CONTRACTOR has participated in a previous contract or subcontract subject to the Equal Opportunity clause (FAR 52.222-26) and (i) CONTRACTOR has filed all required compliance reports and (ii) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(b) FAR 52.222-25 Affirmative Action Compliance.

CONTRACTOR represents (1) that CONTRACTOR has developed and has on file at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (2) that in the event such a program does not presently exist, CONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within 120 days from the award of this Contract.

(c) FAR 52.223-13 Certification of Toxic Chemical Release Reporting (Applicable to competitive solicitations/contracts which exceed \$100,000)

(1) Submission of this certification is a prerequisite for making or entering into this Contract imposed by Executive Order 13148, April 21, 2000.

(2) CONTRACTOR certifies that—

(a) As the owner or operator of facilities that will be used in the performance of this Contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), CONTRACTOR will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(b) None of its owned or operated facilities to be used in the performance of this Contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:

(i) The facility does not manufacture, process or otherwise use any toxic chemicals listed in 40 C.F.R. 372.65 ;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) codes or their corresponding North American Industry Classification System (NAICS); or

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis);

or

(v) The facility is not located in the United States or its outlying areas.