



Flow Downs to Subcontracts, Rev-E

Under ISS Commercial Resupply (CRS) Prime Contract

Exhibit 9606.3

ORBITAL and SUBCONTRACTOR (individually referred to as a "Party" and collectively referred to as the "Parties") agree to the following additional terms and conditions for the International Space Station (ISS) Commercial Resupply Services (CRS) Contract No. NNJ09GA02B (the "Prime Contract"), ORBITAL's Contract with the National Aeronautics and Space Administration ("NASA"):

1. LIABILITY AND RISK OF LOSS

A. Waivers of Liability Required by Prime Contract

**CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES
(NFS 1852.228-76) (DEC 1994) (DEVIATION)**

1. The Intergovernmental Agreement for the International Space Station (ISS) contains a broad cross-waiver of liability provision to encourage participation in the exploration, exploitation and use of outer space through the ISS. The objective of this clause is to implement the Prime Contract cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The Parties intend that the waiver of liability be broadly construed to achieve this objective.
2. For the purposes of this clause:
 - a. The term "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.
 - b. The term "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.
 - c. The term "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 to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

- d. The term "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.
- e. The term "Protected Space Operations" means all launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space performed under this contract, or in implementation of the IGA, MOUs concluded pursuant to the IGA, and implementing arrangements. It includes, but is not limited to:
 - (i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and
 - (ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. "Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. "Protected Space Operations" excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.
- f. The term "Related Entity" means:
 - (i) A contractor or subcontractor of NASA, SUBCONTRACTOR or a Partner State at any tier;
 - (ii) A user or customer of NASA, SUBCONTRACTOR or a Partner State at any tier; or
 - (iii) A contractor or subcontractor of a user or customer of NASA, SUBCONTRACTOR or a Partner State at any tier.

The terms "contractor" and "subcontractor" include suppliers of any kind.

The term "Related Entity" may also apply to a State, or an agency or institution of a State, having the same relationship to a Partner State as described in paragraphs (2)(f)(i) through (2)(f)(iii) of this clause or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (2)(e) above.

- g. The term "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.



3. Waiver of liability:
- a. SUBCONTRACTOR agrees to a waiver of liability pursuant to which SUBCONTRACTOR waives all claims against any of the entities or persons listed in paragraphs (3)(a)(i) through (3)(a)(iv) of this clause based on Damage arising out of Protected Space Operations. This 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) NASA ;
 - (ii) A Partner State other than the United States of America;
 - (iii) A Related Entity of any entity identified in paragraph (3)(a)(i) or (3)(a)(ii) of this clause; or
 - (iv) The employees of any of the entities identified in paragraphs (3)(a)(i) through (3)(a)(iii) of this clause.
 - b. In addition, SUBCONTRACTOR shall, by contract or otherwise, extend the waiver of liability, as set forth in paragraph (3)(a) 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 (3)(a)(i) through (3)(a)(iv) of this clause; and
 - (ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (3)(a)(i) through (3)(a)(iv) of this clause.
 - c. For avoidance of doubt, this waiver of liability includes a 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.
 - d. Notwithstanding the other provisions of this clause, this waiver of liability shall not be applicable to:
 - (i) Claims between SUBCONTRACTOR and its own Related Entity or between its own Related Entities;
 - (ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to this Agreement or is otherwise bound by the terms of this 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 NASA to extend the Prime Contract cross-waiver of liability to its Related Entities;
- (vi) Claims by a party to the Prime Contract arising out of or relating to the other Party's failure to perform its obligations under that contract .
- e. Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.
- f. This waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter. 701 is applicable.
- g. In addition, this waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the Prime Contract or to rights and obligations arising from activities that are not within the scope of that contract.

B. Cross Waivers of Liability Required by Commercial Space Launch Act

(1) In accordance with the applicable Department of Transportation commercial launch license requirements, SUBCONTRACTOR agrees to execute an agreement with Orbital in a form prescribed by Orbital for a no-fault, no-subrogation, inter-participant waiver of liability pursuant to which each shall not bring a claim against the other, its contractors and subcontractors and the United States Government and its contractors and subcontractors, and each party agrees to be responsible for any Property Damage it incurs or for any Bodily Injury to, or Property Damage incurred by, its own employees resulting from Licensed Activity (as that term is defined in 14 CFR § 440.3), irrespective of whether such Bodily Injury or Property Damage is caused by SUBCONTRACTOR, Orbital or by their contractors, subcontractors, officers, directors, agents, servants and employees and the Government and regardless of whether such Bodily Injury or Property Damage arises through negligence or otherwise. This agreement will also include any other provisions required by Orbital's launch license and/or the Commercial Space Transportation Licensing Regulations set forth at 14 CFR § 440.17.

(2) SUBCONTRACTOR and Orbital shall each be responsible for such insurance as they deem necessary to protect their respective property. Any insurance carried in accordance with this Article 1.B and any policy taken out in substitution or replacement for any such policy shall provide that the insurers shall waive any rights of subrogation against SUBCONTRACTOR, Orbital, and the United States Government, as the case may be, and their contractors and subcontractors at every tier.

(3) SUBCONTRACTOR and Orbital hereby agree to obtain a waiver in the form set forth above from any party with which it enters into an agreement relating to the activities contemplated by this Article, including without limitation, all of its respective contractors, subcontractors and suppliers at every tier, and all persons and entities to whom it assigns all or any part of its rights or obligations under this Agreement.



(4) As used herein, "Bodily Injury" means bodily injury, sickness, disease, disability, shock, mental anguish or mental injury sustained by any person including death and damages for care and loss of services resulting therefrom. "Property Damage" means injury to or destruction of tangible property including the loss of use of such injured or destroyed property.

2. REPRESENTATIONS AND CERTIFICATIONS

By executing this Agreement, SUBCONTRACTOR represents and certifies that:

- (a) neither it, nor any of its principals, is presently debarred, suspended, proposed for debarment or otherwise declared ineligible for participating in any federal or state procurement action by any federal, state, or local government or agency;
- (b) it has not, within the last three years, been convicted of, or had a civil judgment rendered against it, for any of the following: (1) the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or agreement; (2) a violation of federal or state antitrust statutes relating to the submission or offers; or (3) the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- (c) it's performance pursuant to this Agreement will not breach any agreement that it has with another party and there is no other contract or duty on it's part now in existence inconsistent with the performance of its obligations pursuant to this Agreement;
- (d) it will comply with all applicable Federal laws and regulations regarding ethics in public acquisitions and procurement and performance of contracts;
- (e) it has not made or solicited and will not make or solicit kickbacks in violation of the Anti-Kickback Act of 1986 (41 USC 51-58);
- (f) (1) if it has participated in a previous contract or subcontract subject to the Equal Opportunity Clause (FAR 52.222-26) SUBCONTRACTOR has filed all required compliance reports and (2) that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards;
- (g) (1) SUBCONTRACTOR 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) in the event such a program does not presently exist, SUBCONTRACTOR will develop and place in operation such a written Affirmative Action Compliance Program within one hundred twenty (120) days from the award of this Agreement;



- (h) there are no relevant facts that could give rise to an “organizational conflict of interest” as defined in FAR 2.101 and FAR 9.5 in connection with the award or performance of this Agreement;
- (i) that (1) 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 his or her behalf in connection with the awarding of this Agreement; (2) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 his or her behalf in connection with this Agreement, SUBCONTRACTOR shall complete and submit OMB standard form LLL, Disclosure of Lobbying Activities, to ORBITAL ; and (3) he or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly; and
- (j) the goods and services provided under this Agreement constitute “commercial items” as defined by FAR 2.101.

SUBCONTRACTOR shall annually provide the above representations and certifications to ORBITAL.

3. MAINTENANCE AND ACCESS TO RECORDS

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

(b) The Comptroller General, at its discretion and pursuant to applicable laws and policies, shall have access to and the right to examine records of SUBCONTRACTOR or any entity that participates in the performance of this Agreement that directly pertain to and involve transactions relating to the Agreement for a period of three (3) years after the Government makes the final payment under the Prime Contract. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. Records relating to appeals under the disputes clause of this Agreement or to the litigation or settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved. As used in this clause, records include books, documents, accounting procedures and practices and other data, regardless of type of form.



4. HIGHER LEVEL CONTRACT QUALITY REQUIREMENT, FAR 52.246-11 (FEB 1999)

The Subcontractor shall comply with the higher-level quality standard selected below.

	<i>Number</i>	<i>Title</i>	<i>Revision</i>	<i>Applicability</i>
X	AS9100	SAE Aerospace Quality Management System	Latest	Compliance Required

5. PRIORITY RATING

If so identified below, this Contract is a “rated order” certified for national defense use, and the SUBCONTRACTOR shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 CFR Part 700).

Priority Rating: DO-C9

6. USE OF GOVERNMENT PROPERTY, FACILITIES AND ASSETS

(a) The SUBCONTRACTOR shall obtain and maintain any necessary agreements between the Contractor and any Government Agency authorizing the use of Government property, facilities, assets or services required in performance of this contract. All such use of NASA facilities, equipment, and services shall be governed by negotiated Reimbursable Space Act Agreements between the Contractor/Subcontractor and the NASA Centers. All remedies to disputes or performance issues shall be resolved in accordance with the terms and conditions of the executed Reimbursable Space Act Agreements.

(b) ORBITAL under this contract makes no warranty whatsoever as to the suitability for use of Government property, facilities and other assets made available under the terms and conditions of any Government use agreements or contracts. Any costs necessary to maintain, restore, refurbish, and/or replace any assets, for use under this contract, shall result in no increase in the price of this contract.

(c) The SUBCONTRACTOR is responsible for determining the suitability for use of all materials, property, and facilities acquired or made available to the SUBCONTRACTOR by NASA or ORBITAL under any contract agreement. Any use of Government-Furnished Property (GFP), materials, or facilities and services shall not relieve the SUBCONTRACTOR of full performance responsibility under the contract.

7. PRESERVATION, PACKING, PACKAGING, AND MARKING FOR DOCUMENTATION

Preservation, packing, packaging and marking for shipment of all items ordered hereunder shall be in accordance with commercial practice and adequate to insure safe transportation, acceptable by common carrier, and transportation at the most economical rate(s). The SUBCONTRACTOR



shall place identical requirements on all subcontracts for items delivered to NASA. This provision applies to requirements not covered under in Prime Contract SOW Section V.A.2.4.5, Cargo Labeling.

8. DISPUTE RESOLUTION

- 8.1 Any dispute arising under or related to this Agreement which relates to a matter that gives ORBITAL recourse against the Government under the Prime Contract shall be resolved as follows unless the parties otherwise agree to in writing. SUBCONTRACTOR understands that ORBITAL has no recourse against the Government for cost impacts of schedule adjustments made by the Government in accordance with Article II.A.20.4 of the Prime Contract and agrees that it will not submit a claim under this Article 8 or against ORBITAL for increased costs resulting from such adjustments.
- 8.2 SUBCONTRACTOR shall give ORBITAL a fully supported written claim concerning any such dispute within one year after the claim accrues, but in no event later than final payment under this Agreement, or SUBCONTRACTOR shall be barred from any remedy for such claim. The notice requirements of the Changes clause of this Agreement apply to such claims.
- 8.3 ORBITAL shall forward such claim to the Contracting Officer on SUBCONTRACTOR's behalf for final decision, subject to the limitations and other conditions contained in this provision. ORBITAL shall in good faith consult with SUBCONTRACTOR concerning the forwarding of such claim to the Contracting Officer.
- 8.4 Any decision of the Contracting Officer under the Prime Contract as it relates to this Agreement, whether or not it results from a claim submitted on SUBCONTRACTOR's behalf under the provision stated above, shall be final and binding upon SUBCONTRACTOR insofar as it relates to this Agreement; however, ORBITAL shall notify SUBCONTRACTOR immediately, if it appears SUBCONTRACTOR is adversely affected by any such decision of the Contracting Officer, and if ORBITAL elects not to appeal such decision pursuant to the "Disputes" clause of the Prime Contract. If ORBITAL thereafter receives, no less than twenty (20) days before the expiration of the period of appeal under the "Disputes" clause of the Prime Contract, a written request by SUBCONTRACTOR to appeal such decision, and if ORBITAL has the right of such appeal under the Prime Contract, ORBITAL shall file an appeal from the decision on SUBCONTRACTOR's behalf.
- 8.5 If ORBITAL appeals such a decision, whether at its election or at SUBCONTRACTOR's request, any decision upon such appeal by the Board of Contract Appeals, the United States Court of Federal Claims, or any other board or agency having jurisdiction over the appeal shall be final and binding upon SUBCONTRACTOR insofar as it relates to this Agreement. If SUBCONTRACTOR timely (i.e., no less than twenty (20) days before the expiration of the relevant period of appeal) requests ORBITAL to bring a further appeal to obtain judicial review of such decision by a court of competent jurisdiction, ORBITAL



shall do so, subject to the terms below. A final judgment in any such further appeal, if binding on ORBITAL under the Prime Contract, shall in turn be binding on SUBCONTRACTOR insofar as it relates to this Agreement.

- 8.6 In any appeal brought by ORBITAL on behalf of SUBCONTRACTOR, or at SUBCONTRACTOR's request under the above provisions, SUBCONTRACTOR shall bear all costs and expenses incurred by SUBCONTRACTOR and ORBITAL in prosecuting such appeal, including but not limited to, any legal fees or costs incurred. In any appeal taken or brought by ORBITAL, whether at its election or at SUBCONTRACTOR's request, SUBCONTRACTOR shall cooperate fully with ORBITAL in its prosecution thereof in every reasonable manner and SUBCONTRACTOR shall be afforded reasonable opportunity to participate in the prosecution thereof to the extent SUBCONTRACTOR's interest may be affected. To the extent requested by ORBITAL, SUBCONTRACTOR shall prosecute for ORBITAL any appeal taken or brought at SUBCONTRACTOR's request and, in such event, ORBITAL shall assist SUBCONTRACTOR in every reasonable manner.
- 8.7 If ORBITAL is required to certify any claim of SUBCONTRACTOR, ORBITAL shall not forward such claim unless it is satisfied the claim is in good faith, and ORBITAL can certify such claim to the Contracting Officer to the extent and manner required by the Contract Disputes Act. SUBCONTRACTOR agrees to provide ORBITAL with such information as ORBITAL may deem necessary to make this determination, including but not limited to, its own certification in the form prescribed by the Contract Disputes Act or its implementing regulations. Such certification shall be executed by a person duly authorized to bind SUBCONTRACTOR. SUBCONTRACTOR agrees that, with respect to any claim or dispute that arises under or relates to the Prime Contract which, if it were ORBITAL's claim, can properly be submitted for a decision of the Government Contracting Officer under the "Disputes" clause, its right of claim or appeal is limited to the procedures set forth in this provision.
- 8.8 SUBCONTRACTOR's failure to comply with the terms of this provision shall entitle ORBITAL to terminate any such appeal on SUBCONTRACTOR's behalf. The rights and obligations described herein shall survive completion of and final payment under this Disputes clause.
- 8.9 SUBCONTRACTOR shall proceed diligently with performance of this Agreement pending final resolution of any dispute.

9. AMENDMENTS REQUIRED BY PRIME CONTRACT AND/OR LICENSES

SUBCONTRACTOR agrees that upon the request of ORBITAL it will execute amendments to this Agreement to incorporate additional provisions herein or to change provisions hereof, as ORBITAL may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract, provisions of amendment to such Prime Contract and/or provisions of any launch or re-entry licenses issued by the Federal Aviation Administration. If any such amendment to this Agreement causes an increase or decrease in the cost of, or the time required



for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

10. PRICING INFORMATION AND ADJUSTMENTS

(a) SUBCONTRACTOR agrees to provide any information required by the Government to establish the applicability of any exemptions to the cost or pricing data submission requirements of the Truth in Negotiations Act, pursuant to FAR 15.403-1. In the event that the Government determines that cost or pricing data pertaining to the Work or any part thereof must be submitted, SUBCONTRACTOR agrees to provide such data to ORBITAL for transmittal to the Government. SUBCONTRACTOR, to the fullest extent permitted by law, shall indemnify, hold harmless and defend ORBITAL, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, incurred by ORBITAL in connection with satisfying any legal or contractual liability to the Government arising out of or related to any defect or inaccuracy in information provided in support of the prices contained in this Agreement or any modification to this Agreement, or any documentation or certification provided by SUBCONTRACTOR for any claim brought under the Disputes provision of the Agreement.

(b) If ORBITAL's contract price or fee is reduced, ORBITAL's costs are determined to be unallowable, any fines, penalties or interest are assessed on ORBITAL or ORBITAL incurs any other costs or damages as a result of any violation of applicable laws, orders, rules, regulations, or ordinances by SUBCONTRACTOR, its officers, employees, agents, suppliers or subcontractors at any tier, ORBITAL may proceed as provided in subparagraph (c) below.

(c) Upon the occurrence of any of the circumstances, other than withholdings, identified in paragraph (b) above, ORBITAL may make a reduction of corresponding amounts (in whole or in part) in the price of this Contract or any other contract with SUBCONTRACTOR, and/or may demand payment (in whole or in part) of the corresponding amounts. SUBCONTRACTOR shall promptly pay amounts so demanded. In the case of withholding(s), ORBITAL may withhold the same amount from SUBCONTRACTOR under this Contract as has been withheld under ORBITAL's contract.

11. FEDERAL ACQUISITION REGULATION ("FAR") AND NASA FAR SUPPLEMENT ("NFS") CLAUSES

The following clauses from the FAR and NFS are hereby incorporated 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. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract, the date or substance of the clause incorporated by the Prime Contract shall apply instead. The Contract Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract. As used in the FAR clauses referenced below: (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 ORBITAL's government prime contract under which this Agreement is entered; (4) "Contractor" and "Offeror" means SUBCONTRACTOR, acting as the immediate (first tier) subcontractor to ORBITAL; (5) "Prime Contract" means the contract between ORBITAL and the U.S Government or between ORBITAL and its higher-tier contractor working under a contract with the U.S. Government; and (6) "Subcontract" means any contract placed by SUBCONTRACTOR or lower-tier subcontractors under this Contract.

Notes:

1. Substitute "ORBITAL" for "Government" or "United States" throughout this clause.
2. Substitute "ORBITAL Authorized Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and ORBITAL" after "Government" throughout this clause.
4. Insert "or ORBITAL" after "Government" throughout this clause.

**ISS Commercial Resupply Services
Prime Contract NNJ09GA02B**



FAR SOURCE	TITLE AND DATE	NOTES
52.203-6	Restrictions on Subcontract Sales to the Government (Alternate I) (Sep 2006) (Oct 1995)	
52.203-7	Anti-Kickback Procedures (Jul 1995)	Applicable if value of this Contract exceeds \$100,000 except that subparagraph (c)(1) does not apply.
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Sep 2005)	Applicable if value of this Contract equals or exceeds \$100,000.
52.203-13	Contractor Code of Business Ethics and Conduct (Dec 2008)	Applicable to subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days.
52.204-9	Personal Identity Verification of Contractor Personnel (Sep 2007)	Applicable where SUBCONTRACTOR will have physical access to a federally controlled facility or access to a Federal information system.
52.212-4 Alt 1 subpara. (i)(4)	Contract Terms and Conditions-Commercial Items (Oct 2008)	Applicable to subcontracts involving work on a time and materials basis
52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Oct 1997)	Note 2 applies.
52.219-8	Utilization of Small Business Concerns (May 2004)	If Subcontractor is not a small business concern and this Contract exceeds \$550,000 (\$1,000,000 for construction of any public facility), Subcontractor must include FAR <u>52.219-8</u> in lower tier subcontracts that offer subcontracting opportunities.
52.222-21	Prohibition of Segregated Facilities (Feb 1999)	
52.222-26	Equal Opportunity (Mar 2007)(E.O. 11246)	Only subparagraphs (b)(1)-(11) apply
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006)	Applicable if value of this Contract equals or exceeds \$100,000
52.222-36	Affirmative Action for Workers with Disabilities (Jun 1998)	Applicable if value of this Contract equals or exceeds \$10,000
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004)	Applicable if value of this agreement equals or exceeds \$100,000.
52.222-50	Combating Trafficking in Persons (Feb 2009)	Note 2 applies. In paragraph (e) Note 3 applies.
52.222-54	Employment Eligibility Verification (Jan 2009)	Applicable to services subcontracts that: (1) exceed \$3,000; and (2) include work performed in the United States. This clause does not apply to subcontracts for commercial services that are (a) part of the purchase of a Commercially Available Off the Shelf (COTS) item (or an item that would be a COTS item, but for minor modifications) (b) performed by the COTS provider, and (c) are normally provided for that COTS item.



FAR SOURCE	TITLE AND DATE	NOTES
52.225-13	Restrictions on certain foreign purchases (Jun 2008)	
52.244-6	Subcontracts for Commercial Items (Dec 2008)	
52.245-1 Alt 1	Government Property (Aug 2010)	Applicable to subcontracts under which Government property is acquired or furnished for subcontract performance.
52.247-64	Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006)	
NFS Source		
1852.223-70	Safety and Health (Apr 2002)	Note 2 applies to paragraphs (c), (d), (e), (f) and (h). Note 4 applies to paragraph (g)(1). Add: "and ORBITAL Authorized Procurement Representative" after "Contracting Officer" in paragraph (i).
1852.225-70	Export Licenses (Feb 2000)	
1852.245-72	Liability for Government Property Furnished for Repair or Other Services (Mar 1989)	Note 2 applies. The words "FAR 52.243-3" in the last sentence of paragraph d are deleted. Note 3 applies only to the first two times "Government" appears in paragraph e.
1852.245-74	Identification and Marking of Government Equipment (Deviation) (September 2007)	Applicable to subcontracts that require delivery of Government equipment.

12. INCORPORATION.

Any other provision which is required to be a part of this Agreement by virtue of any applicable federal, state, and local laws, statutes, ordinances, administrative or executive orders, regulations, and rules is incorporated by reference.

13. SUBCONTRACTING WITH RUSSIAN ENTITIES FOR GOODS OR SERVICES.

- (a) Definitions: In this provision:
 - (1) The term "Russian entities" means:
 - (A) Russian persons, or
 - (B) Entities created under Russian law or owned, in whole or in part, by Russian persons or companies including, but not limited to, the following:
 - (i) The Russian Federal Space Agency (Roscosmos).
 - (ii) Any organization or entity under the jurisdiction or control of Roscosmos, or
 - (iii) Any other organization, entity, or element of the Government of the Russian Federation.



(2) The term “extraordinary payments” means payments in cash or in kind made or to be made by the United States Government prior to July 1, 2016, for work to be performed or services to be rendered prior to that date necessary to meet United States obligations under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto.

(b) This clause implements the reporting requirement in section 6(i) of the Iran, North Korea, and Syria Nonproliferation Act. The provisions of this clause are without prejudice to the question of whether the SUBCONTRACTOR or its subcontractor(s) are making extraordinary payments under section 6(a) or fall within the exceptions in section 7(1)(B) of the Act. NASA has applied the restrictions in the Act to include funding of Russian entities via U.S. Contractors.

(c) (1) The SUBCONTRACTOR shall not subcontract with Russian entities without first receiving written approval from Orbital. In order to obtain this written approval to subcontract with any Russian entity as defined in paragraphs (a), the SUBCONTRACTOR shall provide Orbital with the following information related to each planned new subcontract and any change to an existing subcontract with entities that fit the description in paragraph (a):

(A) A detailed description of the subcontracting entity, including its name, address, and a point of contact, as well as a detailed description of the proposed subcontract including the specific purpose of payments that will be made under the subcontract.

(B) The SUBCONTRACTOR shall provide certification that the subcontracting entity is not, at the date of the subcontract approval request, on any of the lists of proscribed denied parties, specially designated nationals and entities of concern found at:

BIS’s Listing of Entities of Concern (see <http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf>)

BIS’s Lit of Denied Parties (see <http://www.bis.doc.gov/dpl/Default.shtm>)

OFAC’s List of Specially Designated Nationals (*Adobe® PDF format*) (see <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>)

List of Unverified Persons in Foreign Countries (see http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html)

State Department’s List of Parties Statutorily Debarred for Arms Export Control Act Convictions (see <http://www.pmdtc.state.gov/debar059.htm>)

State Department’s Lists of Proliferating Entities (see <http://www.state.gov/t/isn/c15231.htm>)

(2) Unless relief is granted by Orbital, the information necessary to obtain approval to subcontract shall be provided to Orbital 45 business days prior to executing any planned subcontract with entities defined in paragraph (a).



(d) After receiving approval to subcontract, the SUBCONTRACTOR shall provide Orbital with a report every six months that documents the individual payments made to an entity in paragraph (a). The reports are due on July 5th and January 5th. The July 5th report shall document all of the individual payments made from the previous January through June. The January 5th report shall document all of the individual payments made from the previous July through December. The content of the report shall provide the following information for each time a payment is made to an entity in paragraph (a):

- (1) The name of the entity
- (2) The subcontract number
- (3) The amount of the payment
- (4) The date of the payment

(e) Orbital may direct the SUBCONTRACTOR to provide additional information for any other prospective or existing subcontract at any tier. Orbital may direct the SUBCONTRACTOR to terminate for convenience any subcontract at any tier with an entity described in paragraph (a), subject to an equitable adjustment.

(f) Notwithstanding FAR 52.216-7, "Allowable Cost and Payments," on or after June 30, 2016 the SUBCONTRACTOR shall be responsible to make payments to entities defined in paragraph (a) of this provision. Any subcontract with entities defined in paragraph (a), therefore, shall be completed in sufficient time to permit the U.S. Government (through Orbital) to make extraordinary payments on subcontracts with Russian entities on or before June 30, 2016.

(g) The SUBCONTRACTOR shall include the substance of this clause in all its subcontracts and shall require such inclusion in all other subcontracts of any tier. The SUBCONTRACTOR shall be responsible to obtain written approval from Orbital to enter into any tier subcontract that involves entities defined in paragraph (a).