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July 14, 2003

RECEIVED

JUL 14 2003

Federal Communications Commission
Office of Secretary

Int'l Bureau
JUL 16 2003
Front Office

BY HAND DELIVERY

Satellite Division

~~Marlene H. Dortch~~
Secretary

Federal Communications Commission
The Portals, Room TW-A325
455 12th Street, S.W.
Washington, D.C. 20554

Received

JUL 15 2003

Policy Branch
International Bureau

Re: **EchoStar Satellite Corporation, File Nos. 167-SAT-P/LA-95; 168-SAT-P/LA-95; 54-SAT-AMEND-96**

Dear Ms. Dortch:

EchoStar Satellite Corporation ("EchoStar"), in accordance with Paragraph 187 of the Commission's recent order amending its space station licensing rules,¹ hereby submits a public version of the contract between EchoStar Orbital Corporation and Lockheed Martin Corporation for the construction of a hybrid Ku-/Ka-band satellite to be launched into the 83° W.L. orbit location for association with the above-referenced application proceeding.² This information is provided in response to a July 2, 2003 letter from Mr. Thomas S. Tycz, Chief of the Satellite Division, requesting submission of the contract for this satellite to determine if

¹ *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-5418, FCC Rcd 10760 (2003) at ¶ 187.

² With respect to the construction of a hybrid Ku-/Ka-band satellite to be launched into the 83° W.L. orbit location, the enclosed contract amends and supersedes a portion of a multi-satellite contract previously entered into by EchoStar and Martin Marietta Corporation (Lockheed's predecessor corporation). While a copy of that contract and its prior amendments was previously provided to the Commission on September 11, 2001, the amended and restated contract functions as a self-contained document.

Marlene H. Dortch
July 14, 2003
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EchoStar has met the construction commencement milestone contained in EchoStar's Ka-band license.³

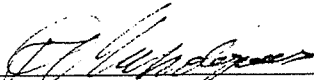
In a separate submission, EchoStar is requesting confidential treatment for the portions of the contract that were redacted from the public version.⁴ The redactions are indicated by brackets in the public version.

Please do not hesitate to contact me if you have any questions concerning this submission.

Respectfully submitted,

David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Satellite Corporation
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Littleton, CO 80120
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*Counsel for EchoStar Satellite
Corporation*

Enclosures

cc: Alyssa Roberts, International Bureau (by hand)

³ See Letter from Thomas S. Tycz, Chief, Satellite Division, FCC, to Pantelis Michalopoulos, Counsel for Echostar Satellite Corporation, dated July 2, 2003.

⁴ See Letter from Pantelis Michalopoulos, Counsel to EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, FCC, dated July 14, 2003.

AMENDMENT NUMBER NINE

TO THE CONTRACT

BETWEEN

ECHOSTAR SATELLITE CORPORATION

AND

LOCKHEED MARTIN CORPORATION

Int'l Bureau

JUL 16 2003

Front Office

This Amendment is effective as of the 25th day of January, 2003.

WITNESS THAT:

WHEREAS, EchoStar Satellite Corporation, a corporation organized under the laws of the State of Colorado, having a place of business at 5701 S. Santa Fe Drive, Littleton, Colorado 80120 ("Buyer"), and Lockheed Martin Corporation, a corporation organized under the laws of the State of Maryland, having a place of business at 100 Campus Drive, Newtown, Pennsylvania 18940 ("Contractor") desire to amend and restate their respective rights, duties and obligations under the Contract solely and exclusively with respect to Spacecraft Flight #4;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, Buyer and Contractor agree to modify the Contract, as follows:

1. AMEND AND RESTATE CONTRACT WITH RESPECT TO SPACECRAFT FLIGHT #4

- a. Buyer and Contractor hereby agree that, solely and exclusively with respect to Spacecraft Flight #4, the Contract is hereby amended, restated and superceded in its entirety by the terms and conditions attached hereto as Exhibit A (including all Exhibits and the Attachments thereto), which is hereby incorporated by reference in its entirety, and Buyer and Contractor further hereby agree that Exhibit A represents the entire understanding and agreement between the Buyer and Contractor with respect to Spacecraft Flight #4, and supersedes all prior negotiations and agreements with respect to the subject matter thereof.

2. MISCELLANEOUS

- a. Except as expressly modified herein, the Contract shall remain in full force and effect in accordance with its terms and conditions. All capitalized terms not defined herein shall have the meaning ascribed to them in the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to the Contract.

ECHOSTAR SATELLITE CORPORATION

By: *David K. Moskowitz*
David K. Moskowitz
Senior Vice President, General Counsel
and Secretary

LOCKHEED MARTIN CORPORATION

By: *Peter H. Wiggett*
Peter H. Wiggett
Manager, Contracts Administration

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EXHIBIT A
TERMS AND CONDITIONS
FOR
SPACECRAFT FLIGHT #4

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ARTICLE 1. SCOPE OF WORK

- A. Buyer desires to purchase and Contractor desires to provide a Ku/Ka-Band satellite (the "Satellite" or "Spacecraft") and services as hereinafter specified, and Buyer and Contractor (hereinafter referred to as "Parties") desire to define the terms and conditions under which the same shall be furnished.
- B. The Contractor shall provide the necessary personnel, material, services, and facilities to perform work in accordance with the provisions of this Contract, including the ATTACHMENTS hereto, which are made a part hereof, and the EXHIBITS listed below, which are attached hereto, and made a part hereof, and to make Delivery to Buyer of the equipment and services set forth in ARTICLE 2. EQUIPMENT AND SERVICES TO BE FURNISHED AND PRICES THEREFOR in accordance with the Delivery schedule specified in ARTICLE 3. DELIVERY SCHEDULE:

EXHIBIT A: Spacecraft Flight #4 Statement of Work (SOW) 20109200-SOW

EXHIBIT B: Spacecraft Flight #4 Performance Specification 20109200-PS

EXHIBIT C: Spacecraft Flight #4 Test Plan 20109200-CTP

EXHIBIT D: A2100 Program Product Assurance Plan 20109200-PA

In the event of any inconsistency among or between the parts of this Contract set forth above, such inconsistency shall be resolved by giving precedence in the order of the parts as set forth below:

1. Terms & Conditions, Satellite Contract Dated January 25, 2003, including ATTACHMENT A hereto
 2. Spacecraft Flight #4 Statement of Work, EXHIBIT A
 3. Spacecraft Flight #4 Performance Specification, EXHIBIT B
 4. Spacecraft Flight #4 Test Plan, EXHIBIT C
 5. A2100 Program Product Assurance Plan, EXHIBIT D
- C. [

D. [

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ARTICLE 2. EQUIPMENT AND SERVICES TO BE FURNISHED AND PRICES THEREFOR

A. Upon the full, satisfactory and timely completion and Delivery, as required, of each item of work specified below, and acceptance by Buyer thereof in accordance with the requirements of this Contract, Contractor shall be entitled to payment by Buyer of the applicable price specified below in accordance with terms and conditions of this Contract, as such price may be adjusted in accordance with the provisions of the Contract. The prices stated below, which are inclusive of the In-Orbit Incentives and include all transportation and related charges for Delivery of Spacecraft and associated equipment to destination and all Launch ("Launch" means the launch of the Spacecraft as defined in the launch services agreement the Buyer enters into with the launch service provider or in the event of a change from one Launch provider to another, then the definition will be changed to that Launch provider who actually launches the Spacecraft, and which definition Buyer will provide to Contractor upon request) and mission support and services through In-Orbit Test (IOT) which includes post IOT support as specified in EXHIBIT A: SPACECRAFT FLIGHT #4 STATEMENT OF WORK. Except as otherwise provided for herein, the prices stated below include all applicable taxes and all copyright and patent rights necessary to effectuate this Contract.

<u>Item</u>	<u>Quantity</u>	<u>Description</u>	<u>Total Price</u>
1.	1	Spacecraft as defined in EXHIBIT B	[]
2.	1 Lot	Launch and mission support services for Spacecraft on a baseline launch vehicle to be determined after the second Milestone has been completed (the "Baseline Launch Vehicle")	[]
3.	1 Lot	Optional incremental costs to Item 1, in support of a Launch from Ariane, Proton, SeaLaunch or additional launch vehicles to be determined after the second Milestone has been completed, at their respective locations:	
3a.	1 Lot	Optional incremental cost for Launch out of Kourou, French Guiana on an Ariane Launch	[]
3b.	1 Lot	Optional incremental cost for Launch out of Baikonur, Kazakhstan on a Proton Launch	[]

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3c. 1 Lot Optional incremental cost for Launch out of Long Beach, CA on a SeaLaunch (Zenit) []

3d. 1 Lot Optional incremental cost for additional launch vehicles to be determined after the second Milestone has been completed [TBD]

TOTAL PRICE []

(i) Total Price for Spacecraft, including without limitation the cost of Delivery of Spacecraft to Cape Canaveral, Florida. Total Price for Spacecraft is based upon EXHIBIT B: SPACECRAFT FLIGHT #4 PERFORMANCE SPECIFICATION.

(ii) Does not include the price of the Optional items.

B. The Spacecraft will include some imported goods. In the event the Spacecraft and its included imported goods are not exported in a timely manner due to the actions or inactions of Buyer, any duties and penalties arising therefrom will be the responsibility of Buyer. Contractor shall pay such above duties and penalties as may be required by law to be so paid and Buyer agrees to reimburse the Contractor for payments so made; provided that Contractor uses reasonable commercial efforts to challenge the imposition of such duties and penalties and keeps Buyer reasonably apprised of its activities in that regard.

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D. Option to select a Launch other than the Baseline Launch Vehicle. Buyer, after entering into a launch services agreement with the Launch provider, may exercise this option by providing Contractor authorization to proceed with any one of the Launch vehicles listed in Item 4, of ARTICLE 2(A) in lieu of the Baseline Launch Vehicle, at the applicable optional incremental cost increase to Item 1, of ARTICLE 2(A) no later than: (a) [] months prior to the then anticipated Delivery Date for the Satellite for Ariane, Proton or additional launch vehicles to be determined after the second Milestone has been

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[Signature]

completed, and (b) [] prior to the then anticipated Delivery Date for the Satellite for Sea Launch, in each case without affecting schedule. In either case, the coupled loads analysis as well as a mission analysis plan will not be available until after the Launch provider is contracted for by Buyer, as delineated in EXHIBIT A: SPACECRAFT FLIGHT #4 STATEMENT OF WORK.

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ARTICLE 3. DELIVERY SCHEDULE

- A. "Delivery", in the case of the Spacecraft, shall mean delivery of the Spacecraft, at Contractor's expense, to the applicable Launch site and, in the case of all other equipment, shall mean delivery of such equipment, at Contractor's expense, to the applicable delivery destination.
- B. Delivery shall be as indicated below:

<u>Item</u>	<u>Description</u>	<u>Delivery Date</u>
1.	Spacecraft as defined in EXHIBIT B.	May 25, 2005
2.	Launch and Mission Operation Support Services	Commencing on Delivery of the Spacecraft to the Launch Site and Continuing Through On Orbit Check-out and all mission support and services through IOT together with post IOT support as specified in EXHIBIT A
3.	1 Lot Optional incremental Delivery days to be added to Item 1, in support of a Launch from Ariane, Proton, SeaLaunch or additional launch vehicles to be determined after the second Milestone has been completed, at their respective locations	
3a.	1 Lot Optional incremental Delivery days for Launch out of Kourou, French Guiana on an Ariane Launch	[]
3b.	1 Lot Optional incremental Delivery days for Launch out of Baikonur, Kazakhstan on a Proton Launch	[]
3c.	1 Lot Optional incremental Delivery days for Launch out of Long Beach, CA on a SeaLaunch (Zenit)	[]
3d.	1 Lot Optional incremental Delivery days for Launch out of additional location(s) to be determined after the second Milestone has been completed	[TBD]

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ARTICLE 4. PAYMENT

- A. The total price stipulated in ARTICLE 2. EQUIPMENT AND SERVICES TO BE FURNISHED AND PRICES THEREFOR, as such price may be adjusted in accordance with the provisions of the Contract, shall be paid by Buyer to Contractor in accordance with the payment arrangements specified for the construction payments in the Spacecraft Payment Plan set forth in paragraph B of this ARTICLE (the "Payment Plan"), and the payment arrangements for the In-Orbit Incentives as described in paragraph C of this ARTICLE and ARTICLE 6. IN-ORBIT INCENTIVE PAYMENTS. The amounts specified in the Payment Plan shall in each case be paid by Buyer to Contractor on the dates indicated; provided that: (i) Contractor submits an invoice for each payment no later than thirty (30) days in advance of the payment due date; and (ii) Contractor completes the applicable milestone no later than three (3) business days in advance of the payment due date. Notwithstanding the foregoing, in the event that Contractor does not deliver an invoice to Buyer at least thirty (30) days prior to the applicable payment date and/or does not achieve the relevant milestone, or provide a work-around that does not affect schedule and is otherwise acceptable to Buyer, at least three (3) business days prior to the applicable payment date, Buyer may suspend construction payments until such time as the relevant invoice is received and milestone is completed. Within thirty (30) days following Buyer's receipt of the relevant invoice or three (3) business days following Contractor's completion of the relevant milestone, whichever occurs later, Buyer shall pay Contractor for all construction payments that were required to have been made but were not as a result of the suspension. In the event that any of the Milestone Payments set forth below is not made by Buyer when due, Contractor shall have the right (in addition to any other rights that Contractor may have hereunder), but not the obligation, to suspend performance of the work hereunder until such time as the relevant payment is made by Buyer and the Contract shall be equitably adjusted in accordance with the provisions of ARTICLE 19. CHANGES.

All payments required to be made to Contractor under this Contract shall be made by either cable transfer to Citibank New York [] , New York, New York [] Lockheed Martin, [] , or by check payable to Lockheed Martin Corporation sent by overnight mail carrier (at Contractor's expense) to the address and attention of the Lockheed Martin representative designated in paragraph C of ARTICLE 10. PROGRESS MEETING, PRESENTATIONS AND DOCUMENTATION DELIVERABLES.

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B. SPACECRAFT PAYMENT PLAN

1. The construction payments applicable to Spacecraft shall be made as follows:

Milestone Payment Schedule for Spacecraft Flight #4

Milestone Description*	Months after EDC**	Amount, \$	Cumulative Amount, \$
Program Kickoff/Initial Planning Phase	15 days after EDC	[]	[]
Complete Revised EXHIBIT B: Spacecraft Flight #4 Performance Specification	5	[]	[]
Deliver Monthly Report	6	[]	[]
Deliver Program Management Plan & Deliver Hardware Heritage/Qualification Status	7	[]	[]
Conduct Quarterly Management Review and Deliver Report	8	[]	[]
Place All Subcontractor Orders	9	[]	[]
Conduct System PDR	10	[]	[]
Complete Payload ICD	11	[]	[]
Start Panel Design	12	[]	[]
Begin Ka-Band Feed Assembly	13	[]	[]
Begin S/C Structure Assembly @ PCI	14	[]	[]
Conduct System CDR	15	[]	[]
Start Antenna I&T	16	[]	[]
Start Battery Assembly	17	[]	[]
Deliver CORE to PSS I&T	18	[]	[]
Conduct Spacecraft/Launch Vehicle Kickoff Meeting	19	[]	[]
Start Propulsion Subsystem I&T (Propulsion Fabrication)	20	[]	[]
Deliver OMUX's	21	[]	[]
Deliver Solar Arrays and Batteries	22	[]	[]
Deliver Electronic Boxes	23	[]	[]
Complete Payload Initial Turn-Ons (Entire Payload)	24	[]	[]
Complete System Module Mate to Core in Sunnyvale	25	[]	[]
Complete Thermal Vacuum Test	26	[]	[]

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Complete Vibration/Acoustic Tests	27	[]	[]
Complete PreShip Review	28	[]	[]
Ship Satellite to Launch Site	29	[]	[]
Complete IOT Review	30	[]	[]

Work arounds that do not affect schedule and are otherwise acceptable to Buyer will satisfy the milestone event.

**For the avoidance of doubt, since EDC is January 25, 2003, then each "month after EDC" shall correspond to the 25th day of the applicable month.

During the Initial Planning Phase of the Contract, Contractor shall perform program management tasks to plan the implementation of the Satellite Program through Launch and in-orbit testing, and Contractor and Buyer will jointly develop a revised EXHIBIT B: SPACECRAFT FLIGHT #4 PERFORMANCE SPECIFICATION (based upon the existing EXHIBIT B: SPACECRAFT FLIGHT #4 PERFORMANCE SPECIFICATION) that will better allow Buyer to execute its business plan. After the second Milestone has been completed, the Contract (including without limitation the Total Price of the Satellite; Milestone Payment Schedule, provided that in no event shall the amount of the second Milestone payment be changed; Delivery Date for the Satellite; EXHIBIT A: SPACECRAFT FLIGHT #4 STATEMENT OF WORK; EXHIBIT C: SPACECRAFT FLIGHT #4 TEST PLAN; ARTICLE 36. DRY MASS PENALTY; Early Delivery Incentive Date; Liquidated Damages Date; amount of In-Orbit Incentives; amount of Liquidated Damages; amount of Early Delivery Incentives; ARTICLE 18. TERMINATION FOR CONVENIENCE; and ARTICLE 37. KEY PERSONNEL) shall be equitably adjusted in light of the revised EXHIBIT B: SPACECRAFT FLIGHT #4 PERFORMANCE SPECIFICATION developed and agreed to by the Parties during the Initial Planning Phase of the Contract and in such a manner that the resulting adjustments, individually, and the adjusted Contract, as a whole, are competitive in the market for like satellites with like manufacturers at the time such adjustments are made, and this Contract shall be modified in writing accordingly. The Parties shall use their respective reasonable commercial efforts to negotiate and agree upon the necessary equitable adjustments to the Contract and to enter into a written modification to the Contract reflecting such agreed-upon equitable adjustments as soon as reasonably practicable after the second Milestone has been completed. In the unlikely event that the Parties are unable to reach agreement on such equitable adjustments within thirty (30) days after the second Milestone has been completed, Contractor shall have the right (in addition to any other rights that Contractor may have hereunder), but not the obligation, to suspend performance of the work towards completion of the next milestone until such time as such equitable adjustments have been mutually agreed upon.

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Buyer and Contractor hereby agree to use their respective reasonable commercial efforts to complete the second Milestone, within one hundred fifty (150) days after EDC. In the event that, notwithstanding the exercise of such reasonable commercial efforts, the second Milestone has not been completed within the period set forth above, Contractor shall have the right (in addition to any other rights that Contractor may have hereunder), but not the obligation, to suspend performance of work towards completion of the next milestone until such time as the second Milestone has been completed.

Notwithstanding the above milestones, if it becomes reasonably clear that problems with deliverables caused solely by Contractor and/or its subcontractors, agents or representatives at any tier, or any of them, are reasonably likely to cause schedule delays, then the construction payments may be suspended, at Buyer's option, and the date for payment of each subsequent construction payment delayed, by an amount of time equal to the difference between the Delivery date for the Spacecraft set forth in ARTICLE 3. DELIVERY SCHEDULE and the revised forecast Delivery date. In the event that Contractor subsequently recovers all or a portion of the originally scheduled Delivery date, the construction payments will again be revised to reflect that recovery. Further, if, following completion of a milestone, a problem arises which requires rework of elements of the milestone, then all construction payments may be suspended, at Buyer's option, until the milestone is again complete.

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C. Spacecraft In-Orbit Incentive Payments

1. In addition to the Milestone Payments described above, Buyer shall pay In-Orbit Incentives in accordance with the requirements set forth in ARTICLE 6. IN-ORBIT INCENTIVE PAYMENTS.

D. Failure to make any payments required hereunder, shall constitute a default by Buyer subject to the provisions of paragraph F of ARTICLE 17. TERMINATION FOR DEFAULT.

- E. 1. For the Spacecraft delivered by Contractor which, following Launch, does not achieve Successful Injection, as a result of a Launch vehicle failure unrelated to the Spacecraft, Contractor shall be entitled to receive [] which payment is in lieu of and in full satisfaction of the In-Orbit Incentives.

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For purposes of this paragraph, the Spacecraft shall be deemed to have been "Successfully Injected" provided that:

(a) at the time of separation from the launch vehicle, the transfer orbit perigee altitude error, apogee altitude error, inclination error, argument of perigee error, Spacecraft attitude, and Spacecraft spin are within or equal to ± 3 sigma limits of their specified values; and

(b) []

[]

2. []

F. Except in the case of a bona fide dispute, in the event that either Party fails to make any payment required hereunder when due, such payment shall bear interest at the rate of [] per annum until paid.

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ARTICLE 5. (RESERVED)

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ARTICLE 6. IN-ORBIT INCENTIVE PAYMENTS

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ARTICLE 7. INSPECTION AND FINAL ACCEPTANCE

A. Inspection

Buyer, or its designated representative, shall have the right to witness and review the results of the final acceptance testing at the system level of the deliverable hardware at the facilities of Contractor. To allow Buyer to most effectively schedule the monitoring stated above, Contractor shall give Buyer reasonably timely notification of the acceptance testing of the deliverable hardware.

B. Final Acceptance

Final acceptance of the items to be delivered hereunder shall be in accordance with the requirements of this Contract, including the EXHIBITS. Delivery and final acceptance shall be as provided herein.

1. The Spacecraft furnished under this Contract shall be tested by Contractor in the presence of Buyer or Buyer's representative, and in the case of Spacecraft to be delivered to storage, shall be finally accepted by Buyer upon demonstration at Contractor's facility, prior to Delivery of Spacecraft to storage, by means of test results obtained pursuant to the test requirements set forth in EXHIBIT C: SPACECRAFT FLIGHT #4 TEST PLAN, that the Spacecraft meets the performance specification set forth in EXHIBIT B: SPACECRAFT FLIGHT #4 PERFORMANCE SPECIFICATION.
2. In the case of Spacecraft delivered for launch, upon arrival of Spacecraft at the Launch site, as required by EXHIBIT A: SPACECRAFT FLIGHT #4 STATEMENT OF WORK, Contractor shall promptly conduct an inspection and test the Spacecraft, in accordance with the requirements of EXHIBIT C: SPACECRAFT FLIGHT #4 TEST PLAN, in the presence of Buyer or Buyer's representative.
3. However, in paragraphs 1 and 2 above, Contractor may conduct the test without the Buyer's presence providing Buyer or Buyer's representative is notified within a reasonable time before the test is to be conducted.
4. At the written request of the Contractor, Buyer or Buyer's representative shall either finally accept the Spacecraft in writing or notify Contractor in writing of those particulars in which the Spacecraft to be delivered does not meet the requirements of this Contract. For the purposes of paragraph 2 above, this action shall take place no later than [] after Buyer or Buyer's representative has received the final Launch System Performance Test (LSPT) Test Data. Upon remedy of such particulars to meet the requirements of this Contract, the Spacecraft shall be deemed to have been Delivered and finally

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accepted. Notwithstanding the above, if Buyer or Buyer's representative is not present (provided that Buyer or Buyer's representative was notified within a reasonable time before the test was to be conducted) and Contractor presents the test results to Buyer and Buyer does not respond within [] Delivery and Final Acceptance will have been deemed to have taken place.

5. Final acceptance of items other than the Spacecraft shall take place after Delivery by Contractor to the applicable delivery destination and, if required by Contract, completion of installation and inspection. Contractor shall promptly conduct an inspection and, if required, test the items other than the Spacecraft, in accordance with the requirements of EXHIBIT C: SPACECRAFT FLIGHT #4 TEST PLAN, in the presence of Buyer or Buyer's representative. However, Contractor may conduct the test without the Buyer's presence providing Buyer or Buyer's representative is notified within a reasonable time before the test is to be conducted. At the written request of the Contractor, Buyer shall either finally accept the item(s) in writing or notify Contractor in writing of those particulars in which the items to be delivered do not meet the requirements of this Contract. Upon remedy of such particulars to meet the requirements of this Contract, the item involved shall be deemed to have been Delivered and finally accepted. Notwithstanding the above, if Buyer or Buyer's representative is not present (provided that Buyer or Buyer's representative was notified within a reasonable time before the test was to be conducted) and Contractor presents the test results to Buyer and Buyer does not respond within [] Delivery and final acceptance will have been deemed to have taken place.

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ARTICLE 8. TITLE AND ASSUMPTION OF RISK

- A. Unless otherwise stated herein, the following shall apply:
1. Title and risk of loss or damage to a Spacecraft shall pass to Buyer at Launch, even in the case of a Spacecraft delivered to storage.
 2. Title and risk of loss or damage to items other than Spacecraft shall pass to Buyer upon final acceptance pursuant to ARTICLE 7. INSPECTION AND FINAL ACCEPTANCE.
- B. Buyer agrees to cause its insurer(s) to waive all rights of subrogation against Contractor and its officers, agents, servants, subsidiaries and employees, subject to terms and conditions as are then customarily available regarding such waivers.
- C. EXCEPT WITH RESPECT TO WILLFUL MISCONDUCT OR GROSS NEGLIGENCE BY CONTRACTOR, UPON AND AFTER LAUNCH OF THE LAUNCH VEHICLE FOR THE SPACECRAFT, CONTRACTOR'S SOLE FINANCIAL RISK, AND THE SOLE AND EXCLUSIVE REMEDIES OF BUYER, WITH RESPECT TO THE USE OR PERFORMANCE OF THE SPACECRAFT, SHALL BE AS SET FORTH IN ARTICLES 6, 13, 14, 15 AND 21.

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ARTICLE 9. ACCESS TO WORK

- A. For the purpose of observing the quality of Contractor's performance of work, Contractor shall afford a reasonable number of Buyer's personnel (including without limitation Buyer's consultants) access, with office facilities as delineated in EXHIBIT A: SPACECRAFT FLIGHT #4 STATEMENT OF WORK, to all work in process at Contractor's facilities. Upon Buyer's request, Contractor will request and attempt to obtain similar access to work related to the Spacecraft that is being performed at Contractor's major subcontractors.
- B. (Reserved)
- C. Information disclosed to Buyer pursuant to this ARTICLE shall be subject to the limitations set forth in ARTICLE 25. DISCLOSURE AND USE OF INFORMATION BY THE PARTIES.

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ARTICLE 10. PROGRESS MEETINGS, PRESENTATIONS AND DOCUMENTATION DELIVERABLES

A. Meetings and Presentations

In addition to any other meetings called for under the provisions of this Contract and without limitation thereto, Contractor shall provide the manpower, facilities, materials and support required to conduct the following periodic meetings and presentations:

1. Informal Program Manager meetings.
2. Technical Review meetings as determined by Contractor's Program Manager.
3. Quarterly Summary Executive Reviews.

Copies of view graphs or other documents utilized during these meetings shall be furnished or be made available to Buyer and Buyer's consultants. Buyer's management personnel, as may be deemed appropriate by Buyer, shall be invited to the Quarterly Summary Executive Reviews. Contractor shall be represented by its Program Manager and such other personnel as are specifically required to support the particular presentation. All periodic meetings shall be held at Contractor's facilities at either Sunnyvale, CA or Newtown, PA, or such other locations that the Parties shall mutually agree to.

B. Distribution of Reports

All materials, reports and documentation furnished pursuant to this ARTICLE shall be the property of Buyer subject to the limitations set forth in ARTICLE 25. DISCLOSURE AND USE OF INFORMATION BY THE PARTIES, except that, Contractor or its subcontractors may retain copies for their own purposes, including the using of such materials and reports in the performance of other contracts.

C. Correspondence

All correspondence, including notices, reports and documentation deliverables, to be provided to Buyer or Contractor under this Contract shall be sent in writing to Buyer or Contractor, signed by the Party issuing them, and sent by either: (i) facsimile transmission; (ii) first class certified mail, postage prepaid; or (iii) overnight courier service, charges prepaid, to the Party to be notified, addressed to such Party at the address set forth below, or sent by facsimile to the fax number set forth below, or such other address or fax number as such Party may have substituted by notice given to the others in accordance with this paragraph C. The sending of such notice with confirmation of successful receipt of the complete transmission (in the case of facsimile transmission) or

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receipt of such notice (in the case of delivery by certified mail or by overnight courier service) shall constitute the giving thereof.

If to Buyer:

EchoStar Satellite Corporation
5701 S. Santa Fe Drive
Littleton, Colorado 80120
Attn: David K. Moskowitz, Senior Vice President, General Counsel and Secretary
Fax: 303.723.1699

With copies (sent via separate mailings) to:

Rohan Zaveri
(same address)
Fax: 303.723.1099

and

David W. Bair
(same address)
Fax: 303.723.1099

If to Contractor:

Lockheed Martin Corporation
100 Campus Drive
Newtown, Pennsylvania 18940

Attn: Peter H. Wiggett
Fax: 215.497.4026

- D. The only representative of Buyer and Contractor authorized to sign contractual documents and to direct work under this Contract are:

BUYER:

Mr. Charles W. Ergen
Mr. David K. Moskowitz

Or others authorized by written delegation of Charles W. Ergen

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CONTRACTOR:

Mr. T. G Gavrilis
Ms. L. Thompson
Mr. A.M. Hyman
Mr. P.H. Wiggett

Or others authorized by written delegation by Lockheed Martin Corporation

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ARTICLE 11. RIGHTS IN DATA

- A. Except as provided in paragraph B below, Buyer shall have an unlimited right to use, duplicate, and disclose the information contained in the Spacecraft Operations Manual (SOM) furnished pursuant to EXHIBIT A: SPACECRAFT FLIGHT #4 STATEMENT OF WORK for any Buyer purpose associated with the operation of the Spacecraft, however, if any written material furnished as part of said document is copyrighted, Buyer shall have an unlimited right to make copies of such copyrighted material and to use such copies for any Buyer purpose associated with the operation of the Spacecraft without payment of additional compensation to Contractor to the extent that Contractor has the authority to grant such right. In the event Contractor does not have such right, Contractor will exert its best efforts to obtain such rights for Buyer. Subject to paragraph B below, Buyer shall have the limited right to sublicense the information contained in the Spacecraft Operations Manual (SOM) furnished pursuant to EXHIBIT A: SPACECRAFT FLIGHT #4 STATEMENT OF WORK for the Spacecraft solely to Affiliates (as defined below) of Buyer for the sole purpose of such Affiliates designing and/or manufacturing satellites with Contractor, however, if any written material furnished as part of said document is copyrighted, Buyer shall have a limited right to sublicense such copyrighted material solely to Affiliates of Buyer for the sole purpose of such Affiliates designing and/or manufacturing satellites with Contractor without payment of additional compensation to Contractor to the extent that Contractor has the authority to grant such right. In the event Contractor does not have such right, Contractor will exert its best efforts to obtain such rights for Buyer. For purposes of this Contract, "Affiliate" shall mean, with respect to a Party, any person or entity directly or indirectly controlling, controlled by or under common control with such Party.
- B. All data that are or may be delivered or disclosed by either Party to the other shall be subject to ARTICLE 25. DISCLOSURE AND USE OF INFORMATION BY THE PARTIES.
- C. Notwithstanding any other provision hereof, the ownership and title to copyrights and computer programs and their related documentation delivered to Buyer by Contractor in accordance with this Contract shall remain in Contractor or its licensor. Contractor shall grant to Buyer a paid up non-exclusive, non-transferable license to sublicense (solely to Affiliates of Buyer for the sole purpose of such Affiliates designing and/or manufacturing a satellite with Contractor) and to use (including "to duplicate" and "to adapt") solely for use in connection with this Contract, the copies of computer programs and their related documentation specified in the Contract required for the operation of the Spacecraft delivered under this Contract.

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ARTICLE 12. PUBLIC RELEASE OF INFORMATION

During the term of this Contract, neither Party, its Affiliates, subcontractors, employees, agents and consultants shall release items of publicity of any kind, including, without limitation, news releases, articles, brochures, advertisements, prepared speeches, company reports or other information releases, related to the work performed hereunder, including the denial or confirmation thereof, without the other Party's prior written consent which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may disclose this Contract to the extent required by any laws, rules, or regulations.

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ARTICLE 13. INDEMNIFICATION

A. Each Party shall defend the other Party and its officers, agents, servants, subsidiaries and employees, and any of them, from and against all claims, actions, suits and proceedings (collectively "Claims") alleging damage to any property, private or public, and injuries, including death, to persons caused by any act or omission of the indemnifying Party and/or the indemnifying Party's agents or representatives at any tier or any of them, and, notwithstanding the provisions of ARTICLE 28. LIMITATION OF LIABILITY, shall pay any final judgment or settlement, provided the indemnifying Party is given prompt written notice of any such Claim and full authority to resist, defend and settle such Claim. The indemnified Party shall provide at the indemnifying Party's request such assistance and information as may be required by the indemnifying Party. The indemnifying Party shall in no event be liable for any costs or expenses incurred without its written authorization.

B. [

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C. Other than as provided in ARTICLES 6, 13, 14, 15 and 21, upon and after Launch of the launch vehicle for the Spacecraft, Contractor shall not be liable to Buyer, customers of Buyer or their customers for any damages resulting from: (i) any loss or destruction of the Spacecraft; or (ii) failure of the Spacecraft or its subsystems to operate satisfactorily, except any such liabilities, losses and damages that are caused by the gross negligence or willful misconduct of Contractor. Buyer also agrees to cause its insurers to waive all right of subrogation against Contractor and its officers, agents, servants, subsidiaries and employees, subject to terms and conditions as are then customarily available regarding such waivers.

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ARTICLE 14. PATENT INDEMNITY

- A. Contractor shall defend Buyer and its officers, agents, servants, subsidiaries and employees, and any of them from and against all Claims alleging that the manufacture of any Spacecraft, delivered under this Contract or the use, lease, sale or other disposition of any such Spacecraft infringes any U.S. patent, and, notwithstanding ARTICLE 28. LIMITATION OF LIABILITY, shall pay any final judgment or settlement, provided Contractor is given prompt written notice of any such Claim and full authority to resist, defend and settle such Claim. Buyer shall provide at Contractor's request such assistance and information as may be required by Contractor.
- B. If an injunction or other order is obtained against the manufacture, use, lease, sale or other disposition of any Spacecraft hereunder, Contractor agrees to use its best efforts either to procure rights so that such Spacecraft and the manufacture, use, lease, sale or other disposition thereof is no longer infringing or to modify or replace such Spacecraft so that it is no longer subject to such order. In the event that such injunction or order becomes permanent and that neither of the foregoing alternatives is suitably accomplished and Contractor is unable to reasonably perform its obligations hereunder, Buyer may terminate this Contract and receive a refund of all amounts paid to Contractor hereunder.
- C. Contractor shall in no event be liable for any costs or expenses incurred without Contractor's written authorization and, except in the case of gross negligence or willful misconduct, in no event shall Contractor's total liability to Buyer under, or as a result of compliance with, the provisions of this ARTICLE exceed the aggregate Spacecraft price for all Spacecraft under construction or delivered. The foregoing states the entire warranty by Contractor and the exclusive remedy of Buyer, with respect to any alleged patent infringement by such product or part.

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ARTICLE 15. INDEMNIFICATION FOR TAXES

Contractor shall assume responsibility, and shall defend Buyer, its officers, agents, employees, servants, subsidiaries and assignees, or any of them, from and against all Claims arising out of, or relating to, taxes, which may be required under present federal, state, or local laws and which become due by reason of the performance of work under this Contract, and, notwithstanding the provisions of ARTICLE 28. LIMITATION OF LIABILITY, shall pay any final judgment or settlement (including without limitation any interest or penalties), provided Contractor is given prompt written notice of any such Claim and full authority to resist, defend and settle such Claim, and Contractor shall execute and deliver such other and further documents, and comply with such requirements of said laws, as may be necessary thereunder to confirm and effectuate this Contract, including making of payment of any interest or penalties related to or arising from such taxes. Buyer shall provide at Contractor's request such assistance and information as may be required by Contractor. Contractor shall in no event be liable for any costs or expenses incurred without its written authorization. It is Contractor's belief that no sales, use, income or personal property taxes will be incurred under this Contract as presently structured. [

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ARTICLE 16. EXCUSABLE DELAYS

Without limiting any other provision specifying what constitutes an excusable delay under this Contract, acts of God or of the public enemy, acts of the Government in its sovereign or contractual capacity, including Government priorities, allocations, regulations or orders affecting materials, facilities, or completed Spacecraft (including changes in the launch specifications); fires; floods; snowstorms; earthquakes; epidemics; quarantine restrictions; strikes; wars; freight embargoes; or any similar events which cause failure or delay to perform hereunder, and in every case are beyond the reasonable control and without fault or negligence of a Party or its subcontractors hereunder shall constitute an excusable delay, if notice thereof is given to the other Party as soon as possible but in no event later than within thirty (30) days after such event shall have occurred. In the event of a delay resulting from any of the above causes, the Delivery requirement shall be extended for the period of the excusable delay.

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ARTICLE 17. TERMINATION FOR DEFAULT

- A. Buyer may, by written notice of default sent to Contractor in accordance with paragraph C of ARTICLE 10. PROGRESS MEETINGS, PRESENTATIONS, AND DOCUMENTATION DELIVERABLES, terminate the whole or any part of this Contract in any one of the following circumstances:
1. If Contractor fails to make Delivery of the Satellite before [
] or Contractor fails to make Delivery of any other equipment within the time specified herein.
 2. If Contractor fails to perform any of the other provisions of this Contract or so fails to make progress as to endanger performance of this Contract in accordance with its terms and within the time periods set forth in subsection 1 of this paragraph, and in either of these two circumstances does not correct such failure within a period of thirty (30) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.
- B. To the extent the Contract is terminated under this ARTICLE, Buyer shall use all reasonable efforts to utilize all work in process hereunder in order to mitigate any costs sustained by Buyer as a result of Contractor's default. Contractor will pay to Buyer all costs reasonably incurred by Buyer in obtaining all of the work described in this Contract, according to the schedule set forth herein, provided that Buyer enters into a contract for such work within twelve (12) months of Contractor's default.
- C. If this Contract is terminated as provided in this ARTICLE, Contractor shall promptly refund all payments made by Buyer for the terminated work, except that Buyer shall remain liable to Contractor for and pay Contractor: (a) the Contract price for completed items which are Delivered to Buyer and finally accepted by Buyer pursuant to ARTICLE 7. INSPECTION AND FINAL ACCPETANCE; and (b) the cost of, and a reasonable profit on, all work in process, materials in stock and services for which Buyer takes Delivery and which Buyer finally accepts pursuant to ARTICLE 7. INSPECTION AND FINAL ACCEPTANCE.
- D. If this Contract is terminated as provided in this ARTICLE, Contractor shall protect and preserve property in the possession of Contractor in which Buyer has an interest.
- E. Absent gross negligence or willful misconduct, the remedies set forth in this ARTICLE, and ARTICLES 6, 13, 14, 15, 21 and 30, shall be the sole recourse to which Buyer is entitled, under paragraph 1 or paragraph 2 above, in the event of Contractor's default, and Contractor shall have no liability for special, indirect, incidental or consequential damages for lost profits or lost revenues.

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- F. In the event Buyer fails to perform any obligation which it is required to perform pursuant to this Contract, Contractor may, if such failure is not corrected within thirty (30) days after written notice of such failure is given by Contractor to Buyer in accordance with paragraph C of ARTICLE 10. PROGRESS MEETINGS, PRESENTATIONS, AND DOCUMENTATION DELIVERABLES, halt work on this Contract and consider this entire Contract to be terminated due to the default of Buyer. In the event that Contractor terminates this Contract pursuant to this paragraph F, Contractor shall be entitled to compensation as set forth in ARTICLE 18. TERMINATION FOR CONVENIENCE. Absent gross negligence or willful misconduct, the remedies set forth in this paragraph F shall be the sole recourse to which Contractor is entitled, under this ARTICLE, in the event of Buyer's default, and Buyer shall have no liability for special, indirect, incidental or consequential damages for lost profits or lost revenues.
- G. If, after notice of termination of the Contractor's right to proceed under the provisions of this ARTICLE, it is determined for any reason that the Contractor was not in default under the provisions of this ARTICLE, or that the delay was excusable under the provisions of ARTICLE 16. EXCUSABLE DELAYS, the rights and obligations of the Parties shall be the same as if notice of termination had been issued pursuant to ARTICLE 18. TERMINATION FOR CONVENIENCE.
- H. If, after notice of termination of the Buyer's right to proceed under the provisions of this ARTICLE, it is determined for any reason that the Buyer was not in default under the provisions of this ARTICLE, or that the delay was excusable under the provisions of ARTICLE 16. EXCUSABLE DELAYS, the rights and obligations of the Parties shall be the same as if Contractor was terminated for default under this ARTICLE.

ARTICLE 18. TERMINATION FOR CONVENIENCE

A. Buyer, by written notice to Contractor, may terminate this Contract in whole, or in part, for any reason or for Buyer's convenience at any time prior to final acceptance of all the work. In the event of such termination, Contractor will cease work as directed in the termination notice. The termination charges shall be limited to [

] In the event of termination by the Buyer of any deliverable item, it is agreed that the termination charges shall be negotiated but shall not exceed the total price for the deliverable item set forth in ARTICLE 2. EQUIPMENT AND SERVICES TO BE FURNISHED AND PRICES THEREFOR, hereof. Notwithstanding the above, in no event shall the Buyer's liability, under this paragraph A, exceed the percentage of the total price of the Spacecraft, as such total price is set forth in ARTICLE 2. EQUIPMENT AND SERVICES TO BE FURNISHED AND PRICES THEREFOR which corresponds to the month such termination occurs in the following schedule:

Spacecraft Termination Liability Schedule

Months after EDC	% of Total Price of Spacecraft
1	[]
5	[]
6	[]
7	[]
8	[]
9	[]
10	[]
11	[]
12	[]
13	[]
14	[]
15	[]
16	[]
17	[]
18	[]
19	[]
20	[]

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21	[]
22	[]
23	[]
24	[]
25	[]
26	[]
27	[]
28	[]
29	[]
30	[]

- B. Direct costs (including applicable overhead charges) and costs incurred by Contractor in connection with the reassignment of the personnel involved in the Spacecraft program shall be determined in accordance with Contractor's standard accounting practice and may be verified, at Buyer's option and expense, by an independent certified public accounting firm to be mutually agreed upon by the Buyer and Contractor.
- C. Buyer shall pay Contractor the aforesaid termination charges within thirty (30) days following the submission of an invoice. Upon payment of Contractor's invoice, Contractor shall deliver to Buyer all termination inventory which has not been credited by Contractor against the termination charges pursuant to paragraph D.2 below. In the event that Contractor's invoice is not paid within thirty (30) days following submission, Buyer shall be in default pursuant to paragraph F of ARTICLE 17. TERMINATION FOR DEFAULT.
- D. Final payment shall be in the amount of the total termination charges, less the following:

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In the event the amount set forth in this paragraph D above exceeds the termination charges defined in paragraph A of this ARTICLE, Contractor shall promptly refund such excess to Buyer.

- E. In no event shall the total amount paid to Contractor pursuant to this Contract, including termination charges paid pursuant to this ARTICLE, exceed the total price stated in ARTICLE 2. EQUIPMENT AND SERVICES TO BE FURNISHED AND PRICES THEREFOR, nor shall the termination charges paid to Contractor pursuant to this ARTICLE for work performed commencing at EDC and through and including completion of the second Milestone exceed [, without Buyer's prior written approval.
- F. The remedies set forth in this ARTICLE shall be the sole recourse to which Contractor is entitled in the event of Buyer's exercise of termination for convenience.
- G. In addition to Contractor's obligations under paragraph 2 of subsection D of this ARTICLE, Contractor agrees to use all reasonable efforts to assist Buyer in disposing/selling of the work in process upon termination pursuant to this ARTICLE.
- H. Notwithstanding anything to the contrary set forth herein, through and including completion of the second Milestone, Buyer shall have no liability whatsoever to compensate Contractor for work performed beyond the work necessary to achieve any completed milestone (or the first completed milestone in a series of completed milestones) for which payment in accordance with the Milestone Payment schedule was not received by Contractor, and Buyer's liability to compensate Contractor for the work necessary to achieve such completed milestone shall be calculated in accordance with the provisions of this ARTICLE, without regard to the amount of the Milestone Payment applicable to such completed milestone.

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ARTICLE 19. CHANGES

In addition to the equitable adjustments to be made to the Contract pursuant to ARTICLE 4(B)(1) after the second Milestone has been completed, Buyer may, from time to time between EDC and the completion of this Contract, by written change order issued by Buyer, make changes within the general scope of this Contract in drawings, designs, specifications, method of shipment or packing, quantities of items to be furnished, place of Delivery, postpone Delivery, require additional work, or direct the omission of work. If any such change or suspension of work by Contractor under ARTICLE 4(A) or ARTICLE 4(B)(1) causes an increase or decrease in costs of, or the time required for, the performance of this Contract, an equitable adjustment shall be made in the price, or Delivery schedule, or both, and any other affected provision, [

] and this Contract shall be modified in writing accordingly; [

] Any claim by Contractor for adjustment under this paragraph shall be deemed waived unless asserted in writing within thirty (30) days from the date of receipt by Contractor of the change order or re-commencement of work following suspension of work by Contractor under ARTICLE 4(A) or ARTICLE 4(B)(1). The amount of the claim shall be stated when it is submitted, or at a later date, not to exceed sixty (60) days from the date for assertion of the claim, which later date shall be requested at the time of such submission. Unless Contractor has waived its claim, all changes and equitable adjustments pursuant to this ARTICLE shall be subject to negotiation between and approval by both Parties prior to the implementation of any such change. The Parties shall use their respective reasonable commercial efforts to negotiate and agree upon the necessary equitable adjustments to the Contract and to enter into a written modification to the Contract reflecting such agreed-upon equitable adjustments as soon as reasonably practicable after Buyer's receipt of a valid claim by Contractor. Except for Excusable Delays pursuant to ARTICLE 16. EXCUSABLE DELAYS, none of the Contract dates will change unless mutually agreed upon in writing by the Parties.

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ARTICLE 20. ASSIGNMENT

- A. Except as otherwise expressly set forth to the contrary herein, neither Party shall assign or delegate this Contract or any of its rights, duties, or obligations hereunder to any other person without the prior express written approval of the other Party, such approval shall not be unreasonably denied. Nothing contained in this ARTICLE shall restrict Contractor from subcontracting work or procuring parts/materials or services in the ordinary course of performance of this Contract.
- B. Notwithstanding the foregoing, Buyer may assign this Contract in whole or in part (including without limitation the right to receive all refunds, if any, under paragraph D of ARTICLE 18. TERMINATION FOR CONVENIENCE, and the right to receive all termination inventory, if any, under paragraph C of ARTICLE 18. TERMINATION FOR CONVENIENCE) at any time to EchoStar Communications Corporation ("EchoStar") or any of its direct or indirect subsidiaries without Contractor's consent; provided that, in the latter case, EchoStar guarantees all of the obligations and duties of such subsidiary under this Contract.
- C. Notwithstanding the foregoing, Buyer may grant a security interest in, grant a collateral assignment of, and/or pledge, any or all of Buyer's estate, right, title and interest in, to and under this Contract to EchoStar without Contractor's consent.

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ARTICLE 21. WARRANTY

- A. Contractor warrants that the goods and services furnished hereunder shall be free from any defects in material or workmanship and shall be manufactured in conformity with the performance specifications applicable to such goods and services.
- B. Buyer shall have the right at any time during the period of this warranty and irrespective of prior inspections or acceptance to reject any goods or services not conforming to the above warranty and require that Contractor at its expense, correct or replace as promptly as is reasonably possible, at Contractor's option, such goods or services with conforming goods or services.
- C. For the Spacecraft, this warranty shall run for a period of one (1) year from the date of final acceptance by Buyer or until Launch, whichever is sooner. Notwithstanding the foregoing, Contractor shall investigate any and all anomalies arising during the life of the Spacecraft, and use reasonable best efforts to correct any such anomaly that is correctable by Contractor from Buyer's SCF using the facilities and equipment available at such site.
- D. Except for the Spacecraft, this warranty shall run for a period of one (1) year from the date of final acceptance by Buyer.
- E. Contractor shall pass on or assign to Buyer all warranties on goods or services given by suppliers or manufacturers other than Contractor to the extent to which Contractor is permitted by the terms of its purchase contracts with such suppliers or manufacturers.
- F. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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ARTICLE 22. ARBITRATION

- A. Any dispute or disagreement arising between the Parties in connection with any interpretation of any provision of this Contract, or the compliance or noncompliance therewith, or the validity or enforceability thereof, or any other dispute under any ARTICLE hereof which is not settled to the mutual satisfaction of the Parties within thirty (30) days (or such longer period as may be mutually agreed upon) from the date that either Party informs the other, in writing, that such dispute or disagreement exists, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, in effect on the date that such notice is given.
- B. Either Party which demands arbitration of the controversy shall, in writing, specify the matter to be submitted to arbitration and, at the same time, choose and nominate a competent person to act as an arbitrator; thereupon, within fifteen (15) days after receipt of such written notice, the other Party to this agreement shall, in writing, choose and nominate a competent arbitrator. The two arbitrators so chosen shall meet and endeavor to resolve the question in dispute, and, if they agree upon such determination, the determination so made shall be in writing and signed by both arbitrators. If such two arbitrators fail to agree, they shall forthwith select a third arbitrator, giving written notice to both Parties of the choice so made and fixing a time and place at which both Parties may appear and be heard with respect to such controversy. In case the two arbitrators shall fail to agree upon a third arbitrator within a period of seven (7) days, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators, or in the filling of a vacancy, or in the event of failure or refusal of any arbitrator or arbitrators to attend or fulfill his or their duties, then upon application by either Party to the controversy, an arbitrator or arbitrators shall be named by the American Arbitration Association.
- C. The arbitration award made shall be final and binding upon the Parties and judgment may be entered thereon, upon the application of either Party by any court having jurisdiction. Subject to any other limitation of damages set forth herein, the relief that may be awarded by the arbitrators under any arbitration arising from this Contract may not exceed actual compensatory damages, except in the case of gross negligence or willful misconduct. In no event may the arbitrators award punitive damages, except in the case of gross negligence or willful misconduct.
- D. Each Party shall bear the cost of preparing and presenting its case, and the cost of arbitration, including the fees and expenses of the arbitrator or arbitrators, will be shared equally by the Parties unless the award otherwise provides.

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ARTICLE 23. APPLICABLE LAW

- A. This Contract shall be interpreted and enforced in accordance with the substantive laws of the [], exclusive of its conflict rules.
- B. This Contract is subject to all applicable laws and regulations and each Party agrees to comply with all such applicable laws and regulations.
- C. This Contract may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

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ARTICLE 24. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the Parties and supersedes all prior understandings, commitments, and representations with respect to the subject matter hereof. It may not be amended, modified, or terminated (other than as specifically provided in the ARTICLES hereof), and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against which the amendment, modification, termination or waiver is sought to be enforced. The paragraph headings herein shall not be considered in interpreting the text of this Contract.

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ARTICLE 25. DISCLOSURE AND USE OF INFORMATION BY THE PARTIES

- A. If documents supplied by one Party to the other are marked with a proprietary legend, the receiving Party shall take all necessary steps to ensure that the documents and contents of such documents are not disclosed to any person other than: (1) a person employed or engaged by the receiving Party, whether under subcontract or otherwise, who has a bona fide need to know the information contained thereon in order to perform this Contract; or (2) Affiliates of Buyer for the sole purpose of such shareholders designing and/or manufacturing satellites with Contractor. Any such document supplied hereunder shall be returned to the disclosing Party together with any copies thereof promptly upon written request of the disclosing Party, except for one copy to be retained for legal purposes. Whenever the receiving Party makes copies of such proprietary documents for performance of work covered by this Contract, the receiving Party shall mark each such copy as proprietary to the disclosing Party.
- B. Any disclosure to any person permitted under paragraph A of this ARTICLE shall be made under the same conditions that apply to the initial disclosure and shall extend only so far as may be necessary for the purposes set forth in paragraph A of this ARTICLE. Any such disclosure to a person other than an employee of the receiving Party (or an affiliate of Buyer) shall be made pursuant to a written confidential disclosure agreement or with prior written approval of the disclosing Party.
- C. Except with the written consent of the disclosing Party, the receiving Party shall not make use of any document mentioned in paragraph A of this ARTICLE other than for the purposes set forth in paragraph A of this ARTICLE.
- D. The obligations and restrictions imposed by this ARTICLE shall not apply to the following:
1. information that is or becomes available to the public from a source other than the receiving Party, before or after the effective date of this Contract;
 2. information that is authorized for release in writing by the disclosing Party;
 3. information that is lawfully obtained by the receiving Party from a third party;
 4. information that is known by the receiving Party prior to such disclosure; and
 5. information that is, at any time, developed by the receiving Party completely independently of any disclosure or disclosures from the disclosing Party.
- E. Neither Party shall be liable for inadvertent or accidental disclosure of such information marked as proprietary if such disclosure occurs despite both Parties exercising reasonable efforts to preserve and safeguard such information.

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- F. Neither Party shall be liable for the disclosure of any proprietary information of the other Party pursuant to any legally enforceable requirement of the U.S. Government or any State or local government, or any agency, or department of any of the above, or any binding court order.
- G. No license, under any patents or any other intellectual property, is granted or implied by merely conveying data or information under this Contract.
- H. Any proprietary disclosure to either Party, if made orally, or visually, shall be identified as confidential or proprietary at the time of disclosure, in order for such information to be treated as proprietary and subject to the restrictions of this ARTICLE 25.
- I. The obligations of this ARTICLE shall be effective for a period of three (3) years from the date of termination or expiration of this Contract, whichever comes first.
- J. The provisions of this ARTICLE shall apply to all documents supplied and other proprietary disclosures made between and including August 9, 2000 (the date that discussions commenced between the Parties regarding the Spacecraft Flight #4 program) and the date of termination or expiration of this Contract, whichever comes first.

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ARTICLE 26. EFFECTIVE DATE

The term Effective Date of the Contract ("EDC"), as used in this Contract, shall mean January 25, 2003.

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ARTICLE 27. PERMITS AND LICENSES

- A. This Contract is subject to all applicable U.S. laws and regulations relating to the export of Spacecraft, technical data and other equipment and services being furnished pursuant to, or to be utilized in connection with, this Contract (hereinafter in this ARTICLE referred to as "Licensed Items") and to all applicable laws and regulations of the country or countries to which Spacecraft, technical data, and other equipment and services are exported or are sought to be exported.
- B. Contractor shall use its best efforts to obtain such U.S. Government approvals and licenses for export of the "Licensed Items." Buyer shall not be liable for any additional cost associated with Contractor processing any export license application for Delivery of any Spacecraft.

C. [

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D. [

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ARTICLE 28. LIMITATION OF LIABILITY

ABSENT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, FOR LOST PROFIT OR REVENUES TO THE OTHER PARTY.

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ARTICLE 29. SPACECRAFT TEST AND HANDLING EQUIPMENT

Contractor shall provide Spacecraft unique test and handling equipment at the Launch Site, during the period between Delivery of the Spacecraft to the Launch Site, and final acceptance for use in connection with the inspection and final acceptance of the Spacecraft pursuant to ARTICLE 7. INSPECTION AND FINAL ACCEPTANCE. Title to such equipment shall remain with Contractor.

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ARTICLE 30. LIQUIDATED DAMAGES

- A. Contractor acknowledges that its failure to Deliver the Spacecraft to the Launch site on or before the applicable Delivery date set forth in ARTICLE 3. DELIVERY SCHEDULE, may cause serious damage to Buyer, the amount of which may be difficult or impossible to prove.
1. The amount of Liquidated Damages applicable to the Spacecraft shall be [] per day for days [] though [] (commencing the day after the applicable Delivery date set forth in ARTICLE 3. DELIVERY SCHEDULE) and [] for each day thereafter, but shall not, absent gross negligence or willful misconduct, exceed a total of [].
- B. Contractor and Buyer agree that such liquidated damages, without further proof of same, shall be deemed to represent the damages actually sustained by reason of such delay.
- C. The liquidated damages are intended to be compensatory and do not constitute a penalty.
- D. These amounts are firm, fixed and not subject to adjustment due to changes in economic conditions. The Contractor's total liability for late Delivery of the Spacecraft shall not exceed the specified liquidated damages, absent gross negligence or willful misconduct.
- E. Any interval of excusable delays, as defined in ARTICLE 16. EXCUSABLE DELAYS, shall be excluded from the period for which liquidated damages accrue. However, such time period shall continue at the conclusion of the excluded interval as if no such interruption had occurred.
- F. In the event that liquidated damages are owed by Contractor to Buyer, Contractor shall make payment of same to Buyer [] and in the event the Spacecraft is placed into Storage, Contractor shall make payment of same to Buyer []

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ARTICLE 31. SPACECRAFT STORAGE

- A. If as a result of a delay or failure to launch, through no fault of Contractor, Buyer requests Contractor to store the Spacecraft within sixty (60) days of completion of in-plant acceptance testing, the Contractor shall store, at a site designated by Buyer and such site shall be subject to the approval of Contractor, or if no site is designated by Buyer, at a site designated by Contractor, the Spacecraft delivered under this Contract. Title and risk of loss to the Spacecraft to be stored shall remain with Contractor at the storage site. Contractor shall assume full responsibility for any loss or damage to the Satellite during ground storage. There shall be no charge for storage or reverification work if the Contractor's failure to perform is the reason that the Satellite is stored, or if the Satellite is stored for less than [] Should the Satellite be stored for a reason other than Contractor's failure to perform and the Spacecraft remains in storage beyond the [] period, Buyer shall be responsible for all storage costs (in excess of []) and shall be responsible for paying directly or reimbursing Contractor for all direct costs actually incurred by Contractor to re-verify system flight assurance and reverification testing (in excess of []) Contractor shall be responsible, except in the event of negligence or willful misconduct by the Buyer, for all transportation cost and insurance to cover the risk and expense of loss or damage of the Spacecraft in transit, (i) from Contractor's facility to storage, (ii) from Buyer's facility to the storage site, (iii) from the storage site to the launch site or (iv) if necessary, from the storage site to the refurbishment site and then to the launch site.
- B. Upon the request of Buyer, the Contractor shall provide periodic testing, necessary equipment, and environmental maintenance suitable for prevention of deterioration to the Spacecraft during the period of storage. Unless the Contractor's failure to perform is the reason that the Satellite is stored, and except for the first [] that the Satellite is stored, the cost for such service shall be subject to ARTICLE 19. CHANGES, and shall be negotiated upon the request of such services by Buyer. Any deterioration to a Spacecraft while in storage shall be at Contractor's risk and shall be corrected at Contractor's expense.
- C. If at any time after storage begins, Buyer elects to launch the stored Spacecraft, the Contractor shall inspect, test and refurbish as necessary such Spacecraft to a launch-ready condition and arrange for transit to the launch site as directed by Buyer. The cost for such services shall be subject to ARTICLE 19. CHANGES, and shall be negotiated in good faith by the Contractor and Buyer at the time such services are required.

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ARTICLE 32. SURVIVAL

The following ARTICLES shall survive the completion, expiration or termination of this Contract: ARTICLE 11. RIGHTS IN DATA; ARTICLE 12. PUBLIC RELEASE OF INFORMATION; ARTICLE 13. INDEMNIFICATION; ARTICLE 14. PATENT INDEMNITY; ARTICLE 15. INDEMNIFICATION FOR TAXES; ARTICLE 21. WARRANTY; ARTICLE 22. ARBITRATION; ARTICLE 23. APPLICABLE LAW; ARTICLE 25. DISCLOSURE AND USE OF INFORMATION BY THE PARTIES; ARTICLE 27. PERMITS AND LICENSES; ARTICLE 28. LIMITATION OF LIABILITY; and ARTICLE 34. INTERPARTY WAIVER OF LIABILITY.

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ARTICLE 33. INSURANCE

- A. If the Buyer applies for and/or places insurance regarding risks relating to the Launch and/or in-orbit operation of the Spacecraft, then (i) the Contractor shall furnish Buyer with such information regarding the Spacecraft as is requested by the insurers and will cooperate in any insurance reviews, and (ii) notwithstanding ARTICLE 12. PUBLIC RELEASE OF INFORMATION, Buyer may disclose this Contract to the insurers.
- B. If Buyer obtains such insurance, Buyer agrees to cause its insurer(s) to waive all rights of subrogation against Contractor and its officer, agents, servants, subsidiaries and employees, subject to terms and conditions as are then customarily available regarding such waivers.
- C. In addition, Contractor will offer to Buyer, on a pass-through basis, all excess launch and in-orbit insurance capacity available to Contractor for the Satellite that is not used by Contractor.

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ARTICLE 34. INTERPARTY WAIVER OF LIABILITY

The Parties hereby agree to be bound by the no-fault, no-subrogation inter-party waiver of liability and related indemnity provisions provided in the launch services agreement that Buyer enters into with the Launch provider who actually launches the Satellite, with respect to the Launch and to use reasonable commercial efforts to cause their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this Contract and any other person having an interest in the Satellite or any transponder thereon (including customers of Buyer), as required by the launch services agreement and as specified by Buyer, to accede to such waiver. The Parties shall execute and deliver any instrument that may be required by the Launch provider to evidence their agreement to be bound by such waiver. Buyer and Contractor also shall obtain, from their insurers, and shall use reasonable commercial efforts to cause their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this Contract and any other person having an interest in any Satellite or any transponder thereon (including customers of Buyer), as required by the launch services agreement and as specified by Buyer, to obtain from their insurers, an express waiver of such insurers' rights of subrogation, subject to terms and conditions as are then customarily available regarding such waivers, with respect to any and all claims that have been waived pursuant to this ARTICLE.

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ARTICLE 35. (RESERVED)

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ARTICLE 36. DRY MASS PENALTY

If, at the time of final acceptance pursuant to ARTICLE 7. INSPECTION AND FINAL ACCEPTANCE, the mass of the Spacecraft without propellant or pressurant (the "Dry Mass") exceeds the mass limit to be determined by the Parties after the second Milestone has been completed (the "Mass Limit"), Contractor shall pay to Buyer an amount calculated as [] per each Kg by which such Dry Mass exceeds the Mass Limit (the "Dry Mass Penalty") and, if Buyer elects to launch the Satellite using a launch vehicle other than the Baseline Launch Vehicle, then, in addition to paying the Dry Mass Penalty, Contractor will perform all necessary integration activities in connection with the new launch vehicle on an expedited basis, at no additional cost or expense to Buyer (the "Integration Penalty").

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Contractor hereby represents and warrants to Buyer that, to the best of its knowledge and belief on the date hereof, after the exercise of reasonable diligence, if the Satellite has a Dry Mass equal to or less than the Mass Limit, at the time of final acceptance pursuant to ARTICLE 7. INSPECTION AND FINAL ACCEPTANCE, and is launched using the Baseline Launch Vehicle, with a nominal mission, the Satellite will have an orbital life at least equal to the Minimum Orbital Life after completion of the IOT review, with industry standard margins.

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ARTICLE 37. KEY PERSONNEL

The Contractor will assign properly qualified and experienced personnel to the program contemplated under the Contract. Personnel assigned to the following positions shall be considered "Key Personnel":

- a) the Contractor's Program Manager
 - b) the Contractor's Contracts Manager
 - c) the Contractor's PA Manager
 - d) the Contractor's Vehicle Systems Engineering Manager
 - e) the Contractor's Vehicle Manager
- 1) The Buyer shall have the right to approve the Contractor's Program Manager which approval shall not be unreasonably withheld or delayed. Key Personnel shall not be assigned to other duties without the Contractor giving prior written notice to and consulting with the Buyer. The Contractor shall provide a chart to the Buyer of the program Key Personnel and shall keep such chart current.

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[Handwritten initials]

Attachment A

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INSURING AGREEMENTS

In consideration of payment of the Premium and in reliance upon the statements in the Declarations and in the Underwriting Information provided to Insurers and subject to all of the terms, conditions, limitations and exclusions of this Policy, the Insurers agree with the Insured as follows:

- (a) In the event of a Total Loss or Constructive Total Loss arising out of an occurrence between Attachment of Risk and Termination of Risk, to pay the Insured the applicable Sum Insured.

In the event a Spacecraft meets the criteria for Constructive Total Loss, the Insured shall have the right to declare a Partial Loss, in which case payment of the claim hereunder shall be in accordance with Insuring Agreement (b). If the Insured has exercised the right to declare a Partial Loss in accordance with the preceding sentence, the Insured shall be entitled to make a claim for any subsequent Partial Loss or Constructive Total Loss that may arise out of a further occurrence between Attachment of Risk and Termination of Risk, provided the total amount paid for claims with respect to the Spacecraft hereunder shall not exceed the maximum Amount of Insurance therefor.

- (b) In the event of a Partial Loss arising out of an occurrence between Attachment of Risk and Termination of Risk, to pay the Insured as provided in Definition 12, subject to the deductible set forth in Declaration 7.
- (c) In the event of physical loss or damage to a Spacecraft arising out of an occurrence at or after Intentional Ignition but prior to Launch Termination, to pay the Insured up to the applicable Sum Insured in respect of any damage, extra costs and expenses incurred which are directly required to repair and test the Spacecraft for the purpose of a Restored Launch.
- (d) If there is a loss payable under this Policy which, within reasonable time, could be satisfactorily corrected or compensated for by additional ground installation, procedural changes, software development and/or any other means, the Insurers shall, at their choice; either
- (i) pay the Insured as set forth above, or
 - (ii) bear all necessary costs and expenses incurred by the Insured as a result of the corrective measures.

The total amount paid for all claims under this Policy for each Spacecraft shall not exceed the applicable Sum Insured. However, in the event that the Insurers opt for

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taking corrective measures as provided for under Insuring Agreement (d) above which fail to achieve satisfactory correction of, or compensation for the loss, Insurers will bear all costs and expenses incurred related to the corrective measures under Insuring Agreement (d) (ii) above, in addition to the Sum Insured or, in the event of Partial Loss, in addition to the amount of payment.

In the event of loss, a Transponder shall be determined to be in Low Power Mode or in High Power Mode based on its mode of operation at the time of the occurrence giving rise to the claim for loss. Transponders may be operated prior to Transponder Failure either in Low Power Mode or High Power Mode as determined by the Insured in its sole discretion.

A loss shall not be covered under this Policy unless such loss can be demonstrated by engineering reports, and/or unless such loss has manifested itself by telemetry data or lack thereof, or by any other ground measurement, recorded between Attachment of Risk and Termination of Risk, and the Insured has filed a proof of loss with Insurers in accordance with Condition 3 of the Policy.

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DEFINITIONS

1. CONSTRUCTION CONTRACT

"Construction Contract" shall mean the Satellite Contract between MCI Telecommunications Corporation and Space Systems/Loral, Inc. for a Direct Broadcast Satellite Program dated February 26, 1996 and any amendments thereto notified to Insurers prior to Attachment of Risk for the affected Spacecraft pursuant to Condition 20.

2. SPACECRAFT

"Spacecraft" shall mean the Echostar V and/or Echostar VI direct broadcast satellites intended to be located at the geostationary orbit position at 110 degrees West longitude or such other geostationary positions as may be authorized by the Federal Communications Commission and as may be agreed by Insurers prior to movement (plus or minus 0.10 degrees), manufactured by Space Systems/Loral, Inc. pursuant to the terms of the Construction Contract.

3. LAUNCH VEHICLE

"Launch Vehicle" shall mean the following vehicle chosen to achieve the launch mission pursuant to the Construction Contract:

- | | | |
|----|-------------|--------------------------------------|
| 1) | Echostar V | Atlas IIAS, Proton D-1-e or Ariane 4 |
| 2) | Echostar VI | Atlas IIAS, Proton D-1-e or Ariane 4 |

4. LAUNCH

"Launch" shall mean Intentional Ignition followed by lift-off of the Launch Vehicle.

5. INTENTIONAL IGNITION

"Intentional Ignition" shall mean the time when the automatic sequence control equipment indicates that ignition of the first stage main engines of the Launch Vehicle carrying the Spacecraft has occurred.

6. TRANSPONDER

"Transponder" shall mean individually that combination of connected elements within the overall communications subsystem of the Spacecraft that, taken together, provides a transmission capability as defined in the Spacecraft Performance Specifications.

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7. STATED SPACECRAFT LIFE (SSL)

"Stated Spacecraft Life" shall mean twelve (12) years from Launch for each Spacecraft, subject to the Deductible if applicable.

8. AVAILABLE TRANSPONDER YEARS (ATY)

"Available Transponder Years" shall mean the cumulative sum of the Available Transponder Life for all Insured Transponders.

9. AVAILABLE TRANSPONDER LIFE (ATL)

"Available Transponder Life" shall mean, for each Transponder, the number of years or partial years, measured from Launch, during which such Transponder is expected to be available to operate without experiencing Transponder Failure provided that, for any pair of Transponder operating in High Power Mode, if either Transponder experiences Transponder Failure, both Transponders in High Power Mode shall be deemed to experience Transponder Failure unless the Transponder that has not suffered Transponder Failure can reasonably be used for the Insured's intended commercial communications purposes, in which case only one transponder shall be considered to have experienced Transponder Failure.

If because of power, fuel, communications or other deficiencies, it can be reasonably demonstrated through engineering reports, telemetry data or in-orbit tests that a Transponder, even though functioning correctly at the end of Termination of Risk, is likely to experience Transponder Failure as the result of an event occurring between Attachment of Risk and Termination of Risk, then the date of predicted Transponder Failure after said Termination of Risk shall be the date at which the Insured demonstrates the Transponder cannot be used for its intended commercial communications purposes.

When the Available Transponder Life of a Transponder extends beyond the end of the Stated Spacecraft Life, then, for purposes of this Policy, the Available Transponder Life of that Transponder shall be considered to expire at the end of the Stated Spacecraft Life.

10. STATED TRANSPONDER YEARS (STY)

"Stated Transponder Years" shall mean the cumulative number of years during which the Insured Transponders are stated to operate in accordance with the Spacecraft Performance Specifications at the geostationary orbit position of 110 degrees West longitude (plus or minus 0.10 degrees) or such other geostationary orbit positions (plus or minus 0.10 degrees) as may be authorized by the Federal

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Communications Commission, and shall be calculated based on twelve (12) years from the date of Launch.

As of commencement of this policy period, Stated Transponder Years is equal to 29 Insured Transponders used in Low Power Mode times 12 years, i.e. 348 transponder years.

In the event of any change in the number of Insured Transponders, the Stated Transponder Years value shall be revised accordingly.

11. TRANSPONDER FAILURE

"Transponder Failure" shall mean physical loss of, damage to, or failure of a Transponder to meet the requirements of the Spacecraft Performance Specifications throughout all periods including eclipse, including loss of on-board propellant, such that the Insured, using reasonable judgment and after examining all reasonable technical alternatives for correcting the failure, reasonably demonstrates that the Transponder cannot be used for its intended commercial communications purposes. The Insured must use all available redundancy before any Transponder is considered to be a Transponder Failure.

12. PARTIAL LOSS

"Partial Loss" shall mean for each Spacecraft, Available Transponder Years is less than Stated Transponder Years but the Spacecraft is not a Total Loss or Constructive Total Loss.

The payment afforded under this Policy for a Partial Loss shall be determined by multiplying the Sum Insured by the Partial Loss Factor (PLF) and subtracting therefrom the amounts of all previously paid Partial Losses, if any.

The PLF is calculated by using the following formula:

$$PLF = 1 - \frac{\text{Available Transponder Years}}{\text{Stated Transponder Years}}$$

The ratio of the Available Transponder Years to the Stated Transponder Years shall not exceed one (1).

In the event the Insured claims a Partial Loss for which the foregoing calculation does not apply, the Insured will clearly state the alternative basis for such Partial Loss.

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13. TOTAL LOSS

"Total Loss" shall mean physical loss or destruction of the Spacecraft.

14. CONSTRUCTIVE TOTAL LOSS

"Constructive Total Loss" shall mean failure of the Spacecraft to meet the Spacecraft Performance Specifications such that the resulting Available Transponder Years of all of the then Insured Transponders on a Spacecraft are equal to or less than fifty percent (50%) of the Stated Transponder Years of all such Insured Transponders on such Spacecraft.

15. LAUNCH-TERMINATION

"Launch Termination" shall mean that point in time when, following Intentional Ignition, the first stage main engines of the Launch Vehicle are shut down before Launch and the launch pad is officially declared safe by the launching agency.

16. RESTORED LAUNCH

"Restored Launch" shall mean the Launch of the applicable Spacecraft following Launch Termination using the same or another Launch Vehicle.

17. SPACECRAFT PERFORMANCE SPECIFICATIONS

"Spacecraft Performance Specifications" shall mean the relevant satellite performance specifications for the Spacecraft contained in the Construction Contract, and any amendments notified to Insurers prior to Attachment of Risk, pursuant to Condition 20.

18. UNDERWRITING INFORMATION

"Underwriting Information" shall mean the written information provided to Insurers by the Insured prior to Attachment of Risk for each Spacecraft.

19. LOW POWER MODE

"Low Power Mode" shall mean the availability for operation of a Transponder singly.

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20. HIGH POWER MODE

"High Power Mode" shall mean the availability for operation of two Transponders on a Spacecraft as designated by the Insured, combined in a specific pair to operate in parallel.

21. INSURED TRANSPONDERS

"Insured Transponders" shall mean: (a) those Transponders operating in frequencies that are licensed by the Federal Communications Commission to the Insured from time to time to operate at 110 degrees West longitude or such other geostationary orbit positions as may be authorized by the Federal Communications Commission; and (b) any other Transponders, as declared by the Insured to the Insurers, whether or not such Transponders are at the time of the declaration being used or in operation. Insured Transponders may be used in two different modes of operation: Low Power Mode or High Power Mode. In High Power Mode, an Insured Transponder uses two Transponders.

As of the commencement of the Policy Period, the following Transponders shall constitute Insured Transponders on each Spacecraft: Numbers 1 through 27 inclusive, 29 and 31 giving a total of 29 Insured Transponders.

Any change in the number of Insured Transponders on each Spacecraft under (a) above or any declaration by the Insured under (b) above shall be made in writing by the Insured to the Insurers, provided such declaration is made before any occurrence giving rise to a claim for loss hereunder with respect to such Insured Transponders.

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