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MAR - 8 2005

Federal Communications Commission
Office of Secretary

Received

March 8, 2005

MAR 10 2005

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

Policy Branch
International Bureau

Re: EchoStar Satellite L.L.C., File Nos. SAT-LOA-20030827-00186 and SAT-AMD-20031203-00345, Call Sign S2499

Dear Ms. Dortch:

EchoStar Communications Corporation and EchoStar Satellite L.L.C. ("EchoStar"), in accordance with Paragraph 187 of the Commission's order amending its space station licensing rules,¹ hereby submit a public redacted version of the contract² between EchoStar Orbital Corporation II³ and Lockheed Martin Corporation ("Lockheed") for the construction of a Ka-band satellite to be located at the 97° W.L. orbit location, and materials

¹ *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, FCC 03-102, 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. 02-54, 18 FCC Rcd 10760, at ¶ 187 (2003) ("*First Space Station Licensing Reform Order*").

² To the extent the contract and specifications reflect enhanced capabilities not included in any authorization, EchoStar is proceeding with construction of the satellite at its own risk. See 47 C.F.R. § 25.113(f).

³ EchoStar Orbital Corporation II is one hundred percent indirectly owned by EchoStar Communications Corporation, the ultimate parent of EchoStar Satellite L.L.C. (consistent with the relationship between the contracting party for the EchoStar 9 satellite and EchoStar Satellite L.L.C.).

Marlene H. Dortch
March 8, 2005
Page 2

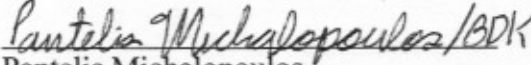
related to the contract, for association with the above-referenced authorization. The information is being submitted, as required under 47 C.F.R. §25.164(c), to demonstrate compliance with the contract execution milestone contained in EchoStar's Ka-band license for the 97° W.L. orbital location.⁴

In a separate submission, EchoStar is requesting confidential treatment for the portions of the contract and related materials that were redacted from this public version.⁵ 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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*Counsel for EchoStar Communications
Corp. and EchoStar Satellite L.L.C.*

Enclosures

cc: Thomas Tycz, International Bureau

⁴ See Stamp Grant, SAT-AMD-200311203-00345, at Condition 2 (granted March 8, 2004) (establishing a contract execution milestone of March 8, 2005). See also *First Space Station Licensing Reform Order* at ¶ 185.

⁵ See Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC, dated March 8, 2005.

Public Version -
Confidential Information
Redacted

**SATELLITE CONTRACT
(EchoStar 97)**

RECEIVED

MAR - 8 2005

Federal Communications Commission
Office of Secretary

between

LOCKHEED MARTIN CORPORATION

and

ECHOSTAR ORBITAL CORPORATION II

March 8, 2005

THIS SATELLITE CONTRACT (the "Contract"), dated and effective as of the 8th day of March 2005, is made between Lockheed Martin Corporation (hereinafter referred to as "Contractor"), a corporation organized under the laws of the State of Maryland, acting through Lockheed Martin Commercial Space Systems, having a place of business at 100 Campus Drive, Newtown, Pennsylvania, 18940, and EchoStar Orbital Corporation II (hereinafter referred to as "Buyer"), a corporation organized under the laws of the State of Colorado, having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

WHEREAS, Buyer desires to purchase and Contractor desires to provide a spot-beam Ka-Band satellite intended for use at the 97° W.L. orbital location (the "Spacecraft") and services as hereinafter specified, and Buyer and Contractor (hereinafter referred to individually as a "Party" and collectively as the "Parties") desire to define the terms and conditions under which the same shall be furnished;

NOW THEREFORE, the Parties hereto, in consideration of the mutual covenants herein expressed and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

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ARTICLE 1. SCOPE OF WORK

- A. The Contractor shall provide the necessary personnel, material, services, and facilities to perform work in accordance with the provisions of this Contract, including 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: EchoStar 97 Statement of Work (SOW) D-005590-SOW

EXHIBIT B: EchoStar 97 Spacecraft Performance Specification D-005592-PS

EXHIBIT C: EchoStar 97 Test Plan D-005593-CTP

EXHIBIT D: A2100 Program Product Assurance Plan D-005591-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 March 8, 2005
2. EchoStar 97 Statement of Work, EXHIBIT A
3. EchoStar 97 Spacecraft Performance Specification, EXHIBIT B
4. EchoStar 97 Test Plan, EXHIBIT C
5. A2100 Program Product Assurance Plan, EXHIBIT D

B. [

]

C. [

]

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 fixed 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, ECHOSTAR 97 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 | [] (i) |
| 2. | 1 Lot | Launch and mission support services for Spacecraft on an [] launch vehicle | [] |
| 3. | 1 Lot | Optional incremental cost increases to Item 1 in support of a Launch on an [] launch vehicle at their respective locations: | |
| 3a. | 1 Lot | Optional incremental cost for Launch out of [] on an [] launch vehicle | [] |
| 3b. | 1 Lot | Optional incremental cost for Launch out of [] launch vehicle | [] |
| 3c. | 1 Lot | Optional incremental cost for Launch out of [] launch vehicle | [] |
| 4. | 1 Lot | Option to Use a Foreign | [] |

Consultant

TOTAL PRICE [] (ii)

- (i) Total Price for Spacecraft, including without limitation the cost of Delivery of Spacecraft to []
- (ii) Does not include price of 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.

C. []

]

D. Option to select a Launch vehicle other than an []. Buyer, after entering into a launch services agreement with a Launch provider, may exercise this option by providing Contractor authorization to proceed with any one of the launch vehicles listed in Item 3 of ARTICLE 2(A), in lieu of an [] launch vehicle, at the applicable optional incremental cost increase to Item 1 of ARTICLE 2(A). This option must be exercised no later than [] months prior to the then anticipated Delivery Date for the Satellite in order to avoid impacting schedule. In the event that Buyer exercises this option and then later terminates such option for any reason, then Contractor []

]

- E. Option to Use a Foreign Consultant. Buyer may exercise this option at any time by providing Contractor with written authorization to proceed. Immediately following receipt of such written authorization to proceed, Contractor shall use reasonable commercial efforts to obtain the authorization of the U.S. government to allow foreign consultant personnel access to work to the same extent as delineated in paragraph A of ARTICLE 9. ACCESS TO WORK. Additionally, Contractor shall use reasonable commercial efforts to apply for and, once issued, use reasonable commercial efforts to maintain all U.S. government export licenses and approvals needed for a foreign consultant's personnel who are citizens of a country other than the U.S., to access Contractor facilities or technical data in connection with the performance of this Contract. Buyer shall cooperate with Contractor and provide the support necessary for Contractor to apply for and maintain such export licenses and approvals, and shall promptly notify Contractor of any occurrence or change in circumstances of which it becomes aware that is relevant to or affects such export license and approvals.

ARTICLE 4. PAYMENT

A. [

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B. SPACECRAFT PAYMENT PLAN

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

Milestone Payment Schedule for EchoStar 97 Spacecraft

| Milestone Description* | Months after EDC | Monthly \$ | Cumulative \$ |
|--|-------------------|------------|---------------|
| Contract Signing | 15 days after EDC | [| |
| Deliver Preliminary System Budgets | 6 | | |
| Deliver PDR Data Package | 7 | | |
| Conduct PDR | 8 | | |
| Complete and Deliver PDR Report | 9 | | |
| Complete PDR Actions | 10 | | |
| Deliver CDR Data Package | 11 | | |
| Conduct CDR | 12 | | |
| Complete and Deliver CDR Report | 13 | | |
| Deliver Monthly Report | 14 | | |
| Conduct Quarterly Management Review | 15 | | |
| Deliver Program Management Plan & Deliver Hardware Heritage/Qualification Status | 16 | | |
| Release Receiver, Mux, TWT Specification | 17 | | |
| Place Payload Subcontractor Orders** | 18 | | |
| Hold MUX Equipment PDR | 19 | | |
| Complete Payload ICD | 20 | | |
| Start Panel Design | 21 | | |
| Begin S/C Structure Fabrication | 22 | | |
| Deliver SCS Documentation | 23 | | |
| Conduct System Configuration Summary (SCS) | 24 | | |
| Start Electronics Box I&T | 25 | | |
| Conduct Launch Vehicle Kickoff Meeting | 26 | | |

| | | | |
|--|-----------|--|---|
| Start Antenna I&T | 27 | | |
| Start Solar Array I&T | 28 | | |
| Start Propulsion Subsystem I&T | 29 | | |
| Deliver CORE to PSS I&T | 30 | | |
| Start Battery Assembly | 31 | | |
| Deliver North and South Panels I&T | 32 | | |
| Thermal Mechanical Joint Completion | 33 | | |
| Deliver Receivers | 34 | | |
| Deliver OMUX's | 35 | | |
| Delivery of LTWTAs | 36 | | |
| Deliver Electronic Boxes | 37 | | |
| Deliver Solar Arrays | 38 | | |
| Ship System Module | 39 | | |
| Complete System Module Mate to Core | 40 | | |
| Complete Thermal Vacuum Test ** | 41 | | |
| Complete Vibration/Acoustic Tests** | 42 | | |
| Complete PreShip Review | 43 | | |
| Ship Spacecraft to Launch Site | 44 | | |
| Launch Spacecraft | 45 | | |
| Initiate IOT | 46 | | |
| Complete IOT Review | 47 | | |
| In Orbit Incentives paid over the number of years in the Minimum Orbital Life at 7% interest per annum | Over Life | |] |

[

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 a 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.

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) [

]

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.

ARTICLE 5. (RESERVED)

ARTICLE 6. IN-ORBIT INCENTIVE PAYMENTS

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ARTICLE 7. INSPECTION AND FINAL ACCEPTANCE

[

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ARTICLE 8. TITLE AND ASSUMPTION OF RISK

[

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, ECHOSTAR 97 STATEMENT OF WORK, to all of Buyer's 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.

**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 [] or such other locations upon which the Parties shall mutually agree.

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. Notice

All notices required or permitted 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 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:

[

If to Contractor:

[

]

All other correspondence, including reports and documentation deliverables, to be provided to Buyer or Contractor under this Contract shall be sent to Buyer or Contractor in the manner set forth in EXHIBIT A, ECHOSTAR 97 STATEMENT OF WORK.

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, ECHOSTAR 97 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 reasonable best efforts to obtain such rights for Buyer.
- 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 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.

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.

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.

[

C.

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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 []
- C. Contractor shall in no event be liable for any costs or expenses incurred without Contractor's written authorization and, except [] 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 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.

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

[

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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 Spacecraft before [] or Contractor fails to make Delivery of any other equipment within the time specified herein.

[

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. [

]

Spacecraft Termination Liability Schedule

| Months after EDC | % of Total Price of Spacecraft |
|------------------|--------------------------------|
| 0 | [|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
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| 24 | |
| 25 | |
| 26 | |
| 27 | |
| 28 | |
| 29 | |
| 30 | |
| 31+ |] |

[

ARTICLE 19. CHANGES

[
] Buyer may, from time to time between the 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. If the cost of supplies or materials made obsolete or excess as a result of a change is included in Contractor's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such supplies or materials. Nothing in this ARTICLE shall excuse Contractor from promptly proceeding with the Contract as changed. 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. Without relieving Contractor of the obligation to proceed promptly with the Contract as changed, in the event that the Parties are unable to reach agreement as to an equitable adjustment, the matter shall be determined in accordance with ARTICLE 22. ARBITRATION. During the pendency of such proceedings, Contractor shall proceed with the work required under this Contract as changed and Buyer shall pay Contractor all amounts not in dispute. 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.

ARTICLE 20. ASSIGNMENT

- A. Except as otherwise 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, provided Buyer can reasonably demonstrate that any such proposed assignee is in at least as good financial condition as the Buyer at the EDC.
- C. 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.
- D. 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.

ARTICLE 21. WARRANTY

[

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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 {within ten (10) days following such meeting (the "Agreement Deadline")}, 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 {after the Agreement Deadline}, 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.

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 and/or by facsimile, each of which shall be an original, but all of which together shall constitute one and the same instrument.

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.

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 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. 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 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 EDC;
 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.
- 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.
- 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 to either Party with respect to the EchoStar 97 program irrespective of whether such documents were provided or such disclosures were made in advance of the execution of this Contract.

ARTICLE 26. EFFECTIVE DATE

The term "EDC", as used in this Contract, shall mean the 8th day of March 2005.

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.

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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.

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.

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. [
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- 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 []

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 Spacecraft 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 Spacecraft is stored, or if the Spacecraft is stored for less than [] Should the Spacecraft be stored for a reason other than Contractor's failure to perform and the Spacecraft remains in storage beyond the [] 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 Spacecraft is stored, and except for the first [] that the Spacecraft 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. For clarification purposes, this ARTICLE shall also survive the completion, expiration or termination of this Contract.

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) 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 and ARTICLE 25. DISCLOSURE AND USE OF INFORMATION BY THE PARTIES, 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 [
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- D. Contractor shall, at its own expense, obtain and maintain insurance coverage against all risks of loss and damage to the Spacecraft and its components during the period from EDC until Launch in an amount sufficient to cover full replacement value of the then-current Spacecraft work-in-process. Contractor agrees to furnish to Buyer certificates of insurance and the underlying policies evidencing that all insurance required under this paragraph D is in full force and effect. Contractor covenants and agrees not to change any of the material terms and conditions of said policies of insurance which are relevant to this Contract without first obtaining the written consent of Buyer (which consent shall not be unreasonable withheld). The certificates of insurance and underlying policies shall contain an endorsement setting forth that the insurer cannot terminate or materially amend the provisions of the insurance without prior written notification to Buyer at least thirty (30) days before such termination or amendment. Contractor shall use reasonable commercial efforts to cause such insurance policies to contain a waiver of subrogation rights by the insurer against Buyer, its affiliates and their owners, officers, directors, employees, agents, subcontractors, and customers.

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 Spacecraft, 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 Spacecraft 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 Spacecraft 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.

ARTICLE 35. (RESERVED)

ARTICLE 36. DRY MASS PENALTY

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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 Chief Engineer
- e) the Contractor's Vehicle Manager
- f) the Contractor's Primary Payload Engineer

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.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of EDC.

**ECHOSTAR ORBITAL
CORPORATION II**

**LOCKHEED MARTIN
CORPORATION**

By: David K. Moskowitz
Name: David K. Moskowitz
Title: EVP, General Counsel & Secretary

By: _____
Name:
Title:

EchoStar Communications Corporation hereby guarantees all of the obligations and duties of EchoStar Orbital Corporation II under the Contract to which this guarantee is attached.

**ECHOSTAR COMMUNICATIONS
CORPORATION**

By: David K. Moskowitz
Name: David K. Moskowitz
Title: EVP, General Counsel & Secretary