

**Denise Berger**

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**Sent:** Friday, September 30, 2005 7:34 PM  
**To:** IBSecretary  
**Cc:** Kasper, Brendan  
**Subject:** Milestone Contract Submission for

We are attaching a public version of the satellite construction contract for S2609. We submitted a paper copy of the unredacted contract this afternoon to your office. We attempted to file this public version electronically through IBFS, but received an error message.

If you have any questions regarding this filing, please feel free to contact me.

Regards, <<121 W Public Contract.pdf>>

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**CONTRACT**

**BETWEEN**

**ECHOSTAR ORBITAL CORPORATION II**

**AND**

**SPACE SYSTEMS/LORAL, INC.**

**Echo 121W KuX / Ka Satellite Program**

This document contains data and information proprietary to Space Systems/Loral, Inc. and EchoStar Orbital Corporation II. This data and information shall not be disclosed, disseminated or reproduced, in whole or in part, without the express prior written consent of Space Systems/Loral, Inc. and EchoStar Orbital Corporation II except as otherwise provided in this Contract.

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Contract

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## PREAMBLE

This Contract is made as of September 30, 2005 ("Date of Contract" or "DC") by and between EchoStar Orbital Corporation II, a corporation organized and existing under the laws of the State of Colorado, having an office and place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112 (hereinafter referred to as "Purchaser") and Space Systems/Loral, Inc., a corporation organized and existing under the laws of the State of Delaware, having an office and place of business at 3825 Fabian Way, Palo Alto, California 94303-4604 (hereinafter referred to as "Contractor") regarding the Echo 121W KuX / Ka Satellite program.



## RECITALS

**WHEREAS**, among other things, Purchaser desires to procure one (1) Ku-Band and Ka-Band hybrid communications satellite, known as Echo 121W KuX / Ka, to be delivered to the Launch Site, certain risk management services, a Dynamic Satellite Simulator and associated support and training services, to the extent and subject to the terms and conditions set forth herein, and

**WHEREAS**, among other things, Contractor is willing to furnish such Satellite, risk management services, Dynamic Satellite Simulator and associated support and training services, to the extent and subject to the terms and conditions set forth herein, in consideration of the Firm Fixed Price and other valid consideration, the receipt and sufficiency of which is hereby acknowledged.

**NOW, THEREFORE**, the Parties hereto agree as follows:

**ARTICLE 1 – DEFINITIONS**

Capitalized terms used and not otherwise defined herein shall have the following meanings:

- 1.1 **“Acceptance”** (i) with respect to the Satellite shall be as provided in Article 10, and (ii) with respect to any Deliverable Item other than the Satellite shall be as provided in Article 11.
- 1.2 **RESERVED.**
- 1.3 **“Affiliate”** means, with respect to a Party, any person or entity directly or indirectly controlling, controlled by or under common control with such Party.
- 1.4 **“Bankruptcy Case”** means Contractor’s chapter 11 Case No. 03-41713 (RDD) filed on July 15, 2003 and pending in the Bankruptcy Court.
- 1.5 [ ]
- 1.6 [ ]
- 1.7 **RESERVED**
- 1.8 **“Candidate Launch Vehicles”** has the meaning set forth in Article 6.7.1.
- 1.9 **“Change of Control”** means [ ]



1.10 [ . ]

1.11 **“Component”** means every unit, system and subsystem of the Satellite and all other Satellite hardware and software required to be provided by Contractor hereunder.

1.12 **“Contract”** means the articles of this executed contract and all exhibits and attachments hereto, which are hereby incorporated by reference in their entirety, as any of the foregoing may be amended from time to time in accordance with the terms and conditions hereof.

1.13 **“Contractor”** has the meaning set forth in the preamble and includes any successor or assignee permitted hereunder.

1.14 **“Criteria”** has the meaning set forth in Article 13.3.

1.15 **“Date of Contract”** or **“DC”** has the meaning set forth in the preamble.

1.16 **“Deliverable Data”** means the data and documentation required to be delivered to Purchaser as specified in the Statement of Work. [

] The provisions of this Article 1.16 shall survive and remain in full force and effect, notwithstanding the expiration or termination of this Contract.

1.17 **"Deliverable Item"** means any of the items listed in Article 3.1.

1.18 **"Delivery"** (i) with respect to the Satellite shall be as provided in Article 12.1.1, and (ii) with respect to any Deliverable Item other than the Satellite shall be as provided in Article 12.2.

1.19 **"Dry Mass"** has the meaning set forth in Article 45.1.

1.20 **"Dry Mass Incentive"** has the meaning set forth in Article 45.1.

1.21 [

]

1.22 **"FCC"** means the Federal Communications Commission or any successor agency or governmental authority.

1.23 **"Firm Fixed Price"** or **"FFP"** has the meaning set forth in Article 4.1.

1.24 **"Force Majeure"** has the meaning set forth in Article 17.1.

1.25 [ ]

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- 1.26 "Indemnified Party" has the meaning set forth in Article 19.1.
- 1.27 "In-Orbit Incentives" has the meaning set forth in Article 13.1.
- 1.28 "Insurance Policy" has the meaning set forth in Article 39.1.
- 1.29 "Integration Incentive" has the meaning set forth in Article 45.1.
- 1.30 "Intellectual Property" has the meaning set forth in Article 36.1.
- 1.31 "Intellectual Property Claim" has the meaning set forth in Article 19.
- 1.32 "Intentional Ignition" means, with respect to the Satellite, the official time designated by the Launch Agency during the launch sequence when the initial motors of the Launch Vehicle are ignited for the purpose of Launch following a planned countdown. This definition shall be replaced with the definition of "Intentional Ignition" in the Launch Services Agreement.
- 1.33 "IOT" means the testing of the Satellite on-orbit in accordance with the Program Test Plan.
- 1.34 "IOT Review" has the meaning set forth in the Statement of Work.
- 1.35 "Joint Intellectual Property" has the meaning set forth in Article 36.3.
- 1.36 [ ]
- 1.37 "Key Personnel" has the meaning set forth in Article 46.1.
- 1.38 "Launch" means, with respect to the Satellite, Intentional Ignition followed by (i) Lift-Off or (ii) destruction of the Launch Vehicle. This definition shall be replaced with the definition of "Launch" in the Launch Services Agreement.

- 1.39 **“Launch Agency”** means the provider ultimately responsible for conducting the Launch Services for the Satellite.
- 1.40 **“Launch Services”** means those services provided by the Launch Agency pursuant to the Launch Services Agreement.
- 1.41 **“Launch Services Agreement”** or **“LSA”** means the contract between Purchaser and the Launch Agency, which provides for Launch Services for the Satellite, as such contract may be amended from time to time in accordance with its terms.
- 1.42 **“Launch Site”** means the location that will be used by the Launch Agency for purposes of launching the Satellite, with the sole exception that, in the event that the Launch Agency is Sea Launch, then “Launch Site” shall mean Sea Launch’s port payload processing facilities in Long Beach, California for purposes of determining when Delivery of the Satellite has occurred.
- 1.43 **“Launch Support”** or **“Launch Support Services”** means those services specified in the Statement of Work to be provided by Contractor in support of Launch.
- 1.44 **“Launch Vehicle”** means the launch vehicle selected by Purchaser and used for Launch of the Satellite.
- 1.45 **“LIBOR”** means the rate of interest per annum, at any relevant time, at which thirty (30) day U.S. dollar deposits are offered at such time in the London interbank market. LIBOR for any calendar week (through and including Sunday of such week) shall be at the applicable LIBOR rate set forth in the Wall Street Journal (and if a range the average of such range) on the first business day of such week and shall remain the rate used in this Contract as LIBOR until the first business day of the following week. In the event the Wall Street Journal does not publish such a rate, the

Party to whom an amount is owed shall select a reputable alternate source, as determined in such Party's reasonable judgment, from which LIBOR shall be ascertained and used under this Contract.

- 1.46 **"Lift-Off"** means, with respect to the Satellite, physical separation of the Launch Vehicle from the ground support equipment following Intentional Ignition due to the Launch Vehicle rising under its own power for the purpose of launching the Satellite. This definition shall be replaced with the definition of "Lift-Off" (if any) in the Launch Services Agreement.
- 1.47 **"Losses"** has the meaning set forth in Article 20.1.
- 1.48 **"Mission Operations Support Services"** means the orbit-raising, IOT and related services specified in the Statement of Work to be performed by Contractor for the Satellite.
- 1.49 **"MRP System"** means Contractor's then-current internal material requirements processing system used by Contractor in connection with the performance of satellite construction contracts for its customers generally.
- 1.50 **"Notice of Arbitration"** has the meaning set forth in Article 25.1.
- 1.51 **"NSP"** means not separately priced.
- 1.52 **"Party"** or **"Parties"** means Purchaser, Contractor or both, as the context requires.
- 1.53 **"Payment Plan"** means the payment plan attached as Attachment A, as such Attachment may be amended from time to time in accordance with the terms of this Contract.
- 1.54 **"Performance Specification"** means the Satellite performance specification attached as Exhibit B, as such Exhibit may be amended from time to time in accordance with the terms of this Contract.

- 1.55 [ ]
- 1.56 **“Plan”** means a plan of reorganization in the Bankruptcy Case that has been approved by an order of the Bankruptcy Court.
- 1.57 **“PMO”** means the Purchaser’s program management office.
- 1.58 **“Product Assurance Program Plan”** means the product assurance program plan attached as Exhibit C, as such Exhibit may be amended from time to time in accordance with the terms of this Contract.
- 1.59 **“Program Test Plan”** means the Satellite program test plan attached as Exhibit D, as such Exhibit may be amended from time to time in accordance with the terms of this Contract.
- 1.60 **“Proprietary Information”** has the meaning set forth in Article 35.1.
- 1.61 **“Purchaser”** has the meaning set forth in the preamble and includes any successor or assignee permitted hereunder.
- 1.62 [ ]

1.63 [

]

1.64 **"Satellite"** means the communications satellite that is to be manufactured by Contractor pursuant to this Contract.

1.65 **"Satellite Pre-Shipment Review"** or **"SPSR"** has the meaning set forth in Article 9.1.

1.66 **"Satellite Stated Life"** or **"Mission Life"** means fifteen (15) years from completion of the IOT Review.

1.67 **"SCF"** means satellite control facility.

1.68 **"Sea Launch"** means Sea Launch Limited Partnership (or any successor thereto).

1.69 [

]

1.70 [ ]

1.71 RESERVED.

1.72 **“Statement of Work”** or **“SOW”** means the statement of work attached as Exhibit A, as such Exhibit may be amended from time to time in accordance with the terms of this Contract.

1.73 **“Target Dry Mass”** shall mean the mass limit, including mass margin, to be determined in good faith by the Parties after the CDR has been conducted.

1.74 **“Technical Data and Information”** has the meaning set forth in Article 36.1.

1.75 **“Termination Default”** has the meaning set forth in Article 24.7.

1.76 **“Transaction Document”** has the meaning set forth in Article 41.13.

1.77 **“Transponder”** means, individually, those sets of equipment within the communications subsystem of the Satellite that provide a discrete path to receive communications signals from earth, translate and amplify such signals and transmit them to earth, with each individual signal constituting a nominal bandwidth channel in accordance with the Performance Specification.

1.78 **“Transponder Failure”** means, at any time at or after Intentional Ignition the physical loss of a Transponder, damage to a Transponder, or permanent failure (including permanently intermittent failures) of a Transponder to meet the requirements of the Performance Specification; provided that, after all reasonable technical alternatives for correcting such loss, damage or failure are examined: (i) the relevant Transponder cannot be used for its intended commercial communications purposes; or (ii) consistent with telemetry data, IOT or other evidence that manifests itself at or after Intentional Ignition, it is expected (based upon generally recognized industry standards) that the relevant Transponder will cease to be able to be used for its intended commercial communications purposes before the end of Satellite Stated Life. All available redundant and/or spare components on the Satellite applicable to the Transponder must be used or cease to be available before a Transponder is considered to have experienced a Transponder Failure. For clarification purposes, a Transponder shall be deemed a Transponder Failure if: (a) it cannot be used for its intended commercial communications purposes, or (b) consistent with telemetry data, IOT or other evidence that manifests itself at or after Intentional Ignition, it is expected (based upon generally recognized industry standards) that the relevant Transponder will cease to be able to be used for its intended commercial communications purposes before the end of Satellite Stated Life, in either case due to the failure of the Satellite to meet the requirements of the Performance Specification, including without limitation loss of power or on-board propellant, even if the relevant Transponder itself meets the requirements of the Performance Specification.

1.79 **“TT&C”** means telemetry, tracking and control.

1.80 [

1.81 [

]

]

## ARTICLE 2 – SCOPE OF WORK

### 2.1 Provision of Services and Materials

Contractor shall provide the necessary personnel, material, services, and facilities to: design, manufacture, test, deliver to the Launch Site, provide Launch Support Services for, and deliver to Purchaser, the Satellite, together with all other Deliverable Items referred to in Article 3.1 in accordance with the following Exhibits, which are attached hereto and incorporated by reference in their entirety:

- 2.1.1 Exhibit A, Statement of Work, dated 30 September 2005;
- 2.1.2 Exhibit B, Satellite Performance Specification, dated 30 September 2005;
- 2.1.3 Exhibit C, Commercial Programs Product Assurance Plan, Document Number E038152, Rev. 6, dated 5 April 2004;
- 2.1.4 Exhibit D, Spacecraft Test Plan, dated 30 September 2005; and
- 2.1.5 Exhibit E, Dynamic Satellite Simulator Performance Specification, , dated 30 September 2005.

**ARTICLE 3 – DELIVERABLE ITEMS AND DELIVERY SCHEDULE**

**3.1 Deliverable Items**

Subject to the other terms and conditions of this Contract, the items to be delivered under this Contract are specified in the table below and the corresponding delivery schedules and locations are as follows:

<u>Item</u>	<u>Description</u>	<u>Delivery Schedule</u>	<u>Delivery Location</u>
1.	Satellite (Echo 121W KuX / Ka)	[	[
2.	Deliverable Data		
3.	Support and Training		
4.	Risk Management Services		
5.	Dynamic Satellite Simulator (DSS)	]	]

3.2 Contractor shall, [ ] use its reasonable best efforts to obtain all U.S. and foreign Government approvals necessary to export and import the Satellite and all Deliverable Items (including without limitation Deliverable Data) required hereunder, and the individual components of the Satellite and such Deliverable Items and Deliverable Data.



**ARTICLE 4 – PRICE**

**4.1 Firm Fixed Price**

[



## ARTICLE 5 – PAYMENTS

### 5.1 Payment Plan

Absent a *bona fide* dispute, payments by Purchaser to Contractor of the Firm Fixed Price set forth in Article 4 and of the amounts for options, if any, exercised by Purchaser pursuant to this Contract, shall be in accordance with the Payment Plan.

[



## 5.2 Payment Conditions

5.2.1 Payments. Absent a *bona fide* dispute and subject to Article 5.2.2, all payments due from Purchaser shall be paid no later than the date specified therefor as set forth in the Payment Plan, provided that: (i) Contractor submits to Purchaser an invoice with respect to each such payment no later than thirty (30) days prior to such due date; and (ii) no later than five (5) business days prior to such due date, Contractor completes the applicable milestone set forth in Attachment A and provides Purchaser with (a) a certification from an authorized representative of Contractor attesting to the completion of the applicable milestone, and (b) all supporting documentation reasonably requested by Purchaser to verify that the applicable milestone has been completed. Notwithstanding the foregoing, in the event that Contractor does not (1) deliver an invoice to Purchaser at least thirty (30) days prior to such due date; or (2) does not achieve the relevant milestone, or provide a work-around that does not affect schedule and is otherwise acceptable to Purchaser, and/or provide the required certification and supporting documentation, at least five (5) business days prior to such due date, Purchaser may suspend all payments until such time as the relevant invoice is received, the milestone is completed and the required certification and supporting documentation is provided. Within thirty (30) days following Purchaser's receipt of the relevant invoice or five (5) business days following Contractor's completion of the relevant milestone and provision of the required certification and supporting documentation, whichever occurs later, Purchaser shall pay Contractor for all payments that were required to have been made but were not as a result of the suspension.

5.2.2 Milestones. [

]

5.2.3 Non-Warranty Payments. Absent a *bona fide* dispute, all amounts payable to Contractor with respect to non-warranty work performed pursuant to Article 15.3 shall be paid no later than thirty (30) days after submission of an invoice by Contractor certifying that such non-warranty work has been completed.

5.3 Late Payment

Except in the case of a *bona fide* dispute, in the event that any payment owed by one Party to the other Party is not made when due hereunder, without prejudice to the second Party's other rights and remedies under this Contract, at law or in equity, the first Party shall pay the other Party interest at the rate [ ] compounded annually, on the unpaid balance thereof from the date such payment is due hereunder until such time as payment is made. [

]

5.4 Invoices

Invoices required to be delivered by Contractor hereunder shall be submitted to Purchaser (original plus two (2) copies) at the following address:

EchoStar Orbital Corporation II

P.O. Box 6655 (for regular mail)  
Englewood, Colorado 80155

9601 S. Meridian Blvd. (for overnight courier)  
Englewood, Colorado 80112

[

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With copies (sent via separate mailings) to:

[

]

or to such other address as Purchaser may specify in writing to Contractor.

5.5 Payment Bank

All payments made to Contractor hereunder shall be in U.S. currency and shall be made by electronic funds transfer to the following account:

[

]

or by check to:

Space Systems/Loral, Inc  
3825 Fabian Way  
Palo Alto, CA 94303-4604

[ ]

or to such other account or address as Contractor may specify in writing to Purchaser.



## ARTICLE 6 – PURCHASER-FURNISHED ITEMS

### 6.1 Purchaser-Furnished Support

To enable Contractor to perform Launch Support and Mission Operations Support Services, Purchaser shall timely make available to Contractor the Purchaser-furnished equipment, facilities and services described in the Statement of Work. Such equipment, facilities and services shall be in good working condition and adequate for the required purpose and shall be made available free of charge for Contractor's use (including without limitation Acceptance inspection pursuant to Article 11) during the period commencing sixty (60) days prior to Launch and continuing through completion of the IOT Review. Purchaser and Contractor will conduct an interface meeting approximately one hundred eighty (180) days prior to Launch to confirm the availability and adequacy of Purchaser-furnished equipment, facilities and services.

### 6.2 Communications Authorizations

Purchaser shall be responsible, at its cost and expense, for preparing, coordinating and filing all applications for licenses with the FCC, if required to do so, for the Launch and in orbit operation of the Satellite. Contractor shall timely provide Purchaser with all reasonable assistance, at no additional cost to Purchaser, requested by Purchaser in connection with Purchaser's performance of the above-specified tasks, and in connection with the filing of any technical filings required to be made by Purchaser with the FCC.

### 6.3 Radio Frequency Coordination

Purchaser shall be responsible for the timely preparation and submission of all filings required by the International Telecommunication Union (or any successor agency thereto) regarding radio frequency and orbital

position coordination. Such filings shall be made in accordance with the Radio Regulations of the International Telecommunication Union (or any successor agency). Contractor shall timely provide Purchaser with all reasonable assistance, at no additional cost to Purchaser, requested by Purchaser in connection with Purchaser's performance of the above-specified tasks.

6.4 Licenses and Permits

Except as set forth in Articles 6.2 and 6.3, Contractor shall be responsible, [ ] for securing any and all permits and licenses for the construction and transportation to the Launch Site of the Satellite (other than FCC construction permits for the Satellite). [ ]

6.5 Satellite Performance Data

In the event of an anomaly that occurs during the life of the Satellite, Purchaser shall timely provide Contractor with or give Contractor access to any data Contractor may reasonably require to investigate or correct (if Contractor is able to do so) such anomaly.

6.6 Late Delivery of Purchaser-Furnished Support

The late delivery of Purchaser-furnished equipment, facilities and services, individually or combined, shall be considered an event beyond the reasonable control of Contractor, [

]

6.7 Selection of Launch Vehicle

6.7.1 Purchaser shall be responsible for the provision of Launch Services for the Satellite. Contractor shall provide engineering and other customary services to maintain compatibility of the Satellite for Launch with the list of candidate Launch Vehicles [

](the "Candidate Launch Vehicles"). On or before [ ] months prior to the then-currently scheduled Delivery date set forth in Article 3.1, Purchaser shall notify Contractor in writing of its down-selection to two (2) final Candidate Launch Vehicles. Contractor shall continue to maintain Satellite compatibility with Launch on both of the two (2) final Candidate Launch Vehicles and shall provide customary launch vehicle integration activities for both of the two (2) final Candidate Launch Vehicles in support of the then-currently scheduled Launch date. [

]

6.7.2 On or before [ ] prior to the then-currently scheduled Delivery date set forth in Article 3.1, Purchaser shall notify Contractor in writing of its final selection of a Launch Vehicle for the Launch of the Satellite from the two (2) final Candidate Launch Vehicles, and shall use reasonable commercial efforts to select a Launch Date compatible with Contractor's then-currently scheduled Delivery date set forth in Article 3.1; provided that in no event shall Purchaser select a Launch Date that is earlier than Contractor's then-currently scheduled Delivery date set forth in Article 3.1. In the event Purchaser does not notify Contractor of its final selection of a Launch Vehicle for the Launch of the Satellite on or before nine (9) months prior to the then-currently scheduled Delivery date set forth in Article 3.1 or changes its final selection of a Launch Vehicle after nine (9) months prior to the then-currently scheduled Delivery date set forth in Article 3.1. [



6.7.3 [

]

]

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6.7.4 All communications between Contractor and the Launch Agency related to the Launch of the Satellite shall be conducted through or at the direction of Purchaser and, subject to Purchaser's approval of such communications (which approval shall not be unreasonably withheld or delayed), shall include communications requested by Contractor.

6.8 Consignment

All Purchaser-furnished equipment and facilities provided to Contractor hereunder as specified in the Statement of Work shall remain the property of Purchaser, and Contractor shall not sell, assign or otherwise encumber such Purchaser-furnished equipment and facilities. Contractor shall be responsible for, and shall indemnify Purchaser against any loss of or damage to or destruction of, such Purchaser-furnished equipment and facilities while in Contractor's possession or control. Contractor shall comply with all laws that might in any way affect Purchaser's ownership of such Purchaser-furnished equipment and facilities. To record Purchaser's ownership of such Purchaser-furnished equipment and facilities, Contractor authorizes Purchaser to file such UCC financing statements, and to give such notices to third parties, as Purchaser determines are necessary or prudent. Contractor hereby irrevocably appoints Purchaser as Contractor's attorney-in-fact to execute, file and deliver any such UCC financing statements or notices on Contractor's behalf as regards such Purchaser-furnished equipment and facilities. [

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## ARTICLE 7 – COMPLIANCE WITH U.S. EXPORT LAWS AND DIRECTIVES

### 7.1 Technical Information, Deliverable Data and Technical Services

7.1.1 Any obligation of either Party hereunder to provide technical information, Deliverable Data or technical services to the other Party or its representatives shall be subject to applicable U.S. Government export control and security laws, regulations, policies and license conditions. The Parties shall work cooperatively and in good faith to implement this Contract consistent with such laws, regulations, policies and license conditions.

7.1.2 If and to the extent required by U.S. law, the Parties and/or their representatives shall enter into U.S. Government-approved agreement(s), separate from this Contract, governing the Party's provision of technical information, Deliverable Data or technical services in connection with this Contract.

### 7.2 No Retransfer

The Parties shall not transfer to any "foreign person", as defined in the International Traffic in Arms Regulations (22 C.F.R. §120.1) technical information, Deliverable Data or technical services furnished hereunder, except as expressly authorized by the U.S. Government in accordance with U.S. export control laws. THE PARTIES UNDERSTAND AND WARRANT THAT THEY SHALL NOT RE-EXPORT, TRANSFER OR DIVERT ANY ITEM EXPORTED UNDER OR IN CONNECTION WITH THIS CONTRACT TO ANY "FOREIGN PERSON" WITH A NATIONALITY OTHER THAN CONTRACTOR'S OR PURCHASER'S, RESPECTIVELY, WITHOUT THE PRIOR WRITTEN APPROVAL OF THE U.S. GOVERNMENT.

## ARTICLE 8 – ACCESS TO WORK IN PROGRESS

### 8.1 Work in Progress at Contractor's Plant

Subject to Article 7 and Article 8.5 and in compliance with Contractor's reasonable safety and security regulations, Purchaser's employees (and representatives, consultants and agents, [

]

shall be allowed access to work being performed at Contractor's facility for the Satellite and other Deliverable Items, for the purpose of observing the progress of such work and otherwise confirming Contractor's compliance with this Contract. Notwithstanding anything to the contrary set forth herein, the fact that Purchaser has observed work performed hereunder shall not be deemed Purchaser's acceptance or approval of such work.

### 8.2 Work in Progress at Subcontractors' Plants

Subject to Article 7 and Article 8.5, [

] subject to each such subcontractors'

reasonable safety and security regulations, Contractor shall allow Purchaser's employees (and representatives, consultants and agents, [

]) access to work being performed with respect to the Satellite and other Deliverable Items in each such subcontractor's plants for the purpose of observing the progress of such work and otherwise confirming Contractor's compliance with this Contract, subject to the right of Contractor to accompany Purchaser on any such visit to a subcontractor's plant; provided, however, that Purchaser may conduct an unaccompanied observation in the event that Contractor fails to furnish a representative after reasonable written notice of Purchaser's

observation request. [ ]

8.3 Remedy for Non-Compliance

Purchaser may inform Contractor in writing of any particulars in which Purchaser observes that work being performed under this Contract is non-compliant, and Contractor shall remedy such non-compliance at Contractor's expense, promptly upon receipt of notice thereof.

8.4 On-Site Facilities for Purchaser's Personnel

Subject to Article 7 and Article 8.5, for the purpose of monitoring the progress of the work to be performed by Contractor hereunder and otherwise confirming Contractor's compliance with this Contract, Contractor shall provide private office facilities at or proximate to Contractor's plant (which private office facilities shall in all cases at least be co-located with Contractor's program management office) for [ ] resident employees of Purchaser (or Purchaser's duly appointed representatives, consultants and agents, [

]) through a reasonable period of time after the completion of the IOT Review for the last Satellite ordered hereunder. The office facilities to be provided shall include a reasonable amount of private office space, office furniture, local and [ ] long distance telephone service, broadband Internet access, access to copy machines and access to facsimile machines, to the extent necessary to enable such personnel to monitor the progress of work and otherwise confirm Contractor's compliance with this Contract.

8.5 Competition/ Foreign Persons as Purchaser Representatives

[

] Purchaser shall notify Contractor in writing of the name, title or function, business relationship, employer and such other information as may be reasonably requested by Contractor, with respect to each of its intended representatives, consultants and agents, and cause each such representative, consultant and agent to execute a confidentiality agreement directly with Contractor in form and substance reasonably satisfactory to Contractor and containing terms substantially the same as those set forth in Article 35. [

]

Contractor shall apply for and, once issued, maintain all U.S. Government export licenses and approvals needed for Purchaser's employees and representatives, agents and consultants who are citizens of a country other than the U.S., to access Contractor's and its subcontractors' facilities and technical information, Deliverable Data and technical services in connection with the performance of this Contract. Purchaser 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. IN NO EVENT SHALL CONTRACTOR BE OBLIGATED UNDER THIS CONTRACT TO PROVIDE ACCESS TO CONTRACTOR FACILITIES, TO TRANSFER ANY TECHNICAL INFORMATION OR DELIVERABLE DATA OR TO

PROVIDE ANY TECHNICAL SERVICES, TO ANY PERSON EXCEPT IN COMPLIANCE WITH APPLICABLE U.S. EXPORT CONTROL LAWS, REGULATIONS, POLICIES AND LICENSE CONDITIONS, AS REASONABLY CONSTRUED BY CONTRACTOR.

8.6 Interference with Operations

Purchaser shall exercise its rights under this Article 8 in a manner that does not unreasonably interfere with Contractor's or its subcontractors' normal business operations or Contractor's performance of its obligations under this Contract or any agreement between Contractor and its subcontractors.

8.7 Notification

Notwithstanding any other provision of this Contract, Contractor shall advise Purchaser immediately by telephone and confirm in writing any event, circumstance or development which materially threatens the quality of, or the delivery schedule for, the Satellite or any component part thereof, as well as any other Deliverable Items to be provided hereunder.

**ARTICLE 9 – SATELLITE PRE-SHIPMENT REVIEW (SPSR)**

[





**ARTICLE 10 – SATELLITE ACCEPTANCE**

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**ARTICLE 11 – ACCEPTANCE INSPECTION FOR DELIVERABLE ITEMS  
OTHER THAN SATELLITES**

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**ARTICLE 12 – DELIVERY, TITLE AND RISK OF LOSS**

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**ARTICLE 13 – IN ORBIT INCENTIVES**

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**ARTICLE 14 – RESERVED**

**ARTICLE 15 – WARRANTY**

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**ARTICLE 16 – CHANGES**

16.1 Right to Adjustment

[  
] Purchaser  
may from time to time, in writing, request a change within the general  
scope of this Contract to:

- (i) Order work in addition to the work provided for herein; or
- (ii) Modify the whole or any part of the work provided for herein.

If such change request or other triggering event pursuant to Section 5.3,  
Section 6.6, Section 6.7.1, Section 6.7.2, Section 17.1, Section 18.1,  
Section 22.1 or Section 22A.1 causes an increase or decrease in the cost  
of, or the time required for the performance of this Contract, [

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

]

16.2 Cost Adjustments

If Contractor or Purchaser claims a right to adjustment pursuant to Article 16.1 above, Contractor shall prepare and furnish to Purchaser the evidence reasonably necessary to establish the amount of any increase or decrease in the cost of, or the time required for, the performance of this Contract caused by the relevant change order. [

]

[

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## ARTICLE 17 – FORCE MAJEURE

17.1 Contractor and Purchaser shall not be responsible for late Delivery, delay of the final completion date or nonperformance of its contractual obligations due to Force Majeure. "Force Majeure" shall mean any event beyond the reasonable control of a Party or its suppliers and subcontractors and shall include, but not be limited to: (1) acts of God; (2) acts of a public enemy; (3) acts of a government in its sovereign capacity (including without limitation any action or inaction affecting the import or export of items); (4) war and warlike events; (5) catastrophic weather conditions such as hurricanes, tornadoes and typhoons; (6) fire, earthquakes, floods, epidemics, quarantine restrictions, strikes, lockouts and other industrial disputes, sabotage, riot and embargoes; (7) non-availability of a Launch Vehicle or Launch Site; (8) [

] and (9) other unforeseen and extraordinary events, which in every case listed in items (1) through (9) above are beyond the reasonable control and without fault or negligence of the Party whose performance is affected or its suppliers and subcontractors. [

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**ARTICLE 18 – PURCHASER DELAY OF WORK**

18.1 Except in the case of a Force Majeure event, if the performance of all or any part of the work required of Contractor under this Contract is delayed or interrupted by Purchaser's failure to perform its contractual obligations within the time specified in this Contract or within a reasonable time if no time is specified, or an act by Purchaser that unreasonably interferes with Contractor's performance of its obligations under this Contract, Contractor shall give notice to Purchaser of the failure or act causing such delay or interruption. [

]

## ARTICLE 19 – PATENT INDEMNITY

### 19.1 Indemnification

Purchaser agrees that Contractor has the right to defend and, at Contractor's sole option to settle, and Contractor, at its own expense, hereby agrees to defend or, at Contractor's sole option to settle, and to indemnify and hold harmless Purchaser, and its Affiliates, and its and their respective officers, directors, employees, shareholders, agents and representatives from and against any and all claims, actions, suits or proceedings based on an allegation that the design or manufacture of any Deliverable Item or part thereof or the normal intended use, lease, sale or other disposition of any Deliverable Item or part thereof infringes any patent or other Intellectual Property right ("Intellectual Property Claim"), and shall pay any royalties and other liabilities adjudicated to be owing to the claimant (or, in Contractor's sole discretion, provided in settlement of the matter) as well as costs incurred in defending (including without limitation court costs and reasonable attorneys' fees) such Intellectual Property Claim; provided that Purchaser promptly notifies Contractor in writing of any such Intellectual Property Claim and gives Contractor the authority and all such assistance and information as may be reasonably requested from time to time by Contractor for the defense of such Intellectual Property Claim. Any such assistance or information which is furnished by Purchaser at the request of Contractor shall be at Contractor's expense.

In any proceeding relating to an Intellectual Property Claim, any person or entity entitled to indemnification hereunder (an "Indemnified Party") shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, Contractor shall pay the fees and expenses of counsel retained by an Indemnified Party in the event that: (i) Contractor and such Indemnified Party shall have mutually agreed to

retention of such other counsel; or (ii) the named parties to any proceeding (including without limitation any impleaded parties) include both Contractor and such Indemnified Party and representation of both Contractor and such Indemnified Party by the same counsel would be inappropriate due to an actual or potential conflict of interest between them.

#### 19.2 Infringing Equipment

If the design or manufacture of any Deliverable Item or the normal intended use, lease, sale or other disposition of any Deliverable Item under this Contract is enjoined as a result of an Intellectual Property Claim or is otherwise prohibited, Contractor shall (i) resolve the matter so that the injunction or prohibition no longer pertains, (ii) procure for Purchaser the right to use, lease, sell and otherwise dispose of the infringing item, or (iii) modify the infringing item so that it becomes non-infringing while remaining in compliance with the Performance Specification (as may be waived pursuant to Article 9.4 or 11.3, as applicable) in all respects. [

]

#### 19.3 Combinations and Modifications

Contractor shall have no liability under this Article 19 for any Intellectual Property Claim arising solely from (i) use of any Deliverable Item in combination with other items, unless Contractor sold them as a combination intended to be so used or (ii) modifications of Deliverable Items after Acceptance, unless Contractor or one of its subcontractors

(with the knowledge and consent of Contractor) made or specifically recommended such modifications.

19.4 Sole Remedies

Except in the case of [ ] by Contractor, the remedies set forth in this Article 19 are Purchaser's sole and exclusive remedies for or related to any Intellectual Property Claim, and Contractor's liability under this Article 19 for any Intellectual Property Claim with respect to a Deliverable Item shall [

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**ARTICLE 20 – INDEMNIFICATION**

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## ARTICLE 21 – TERMINATION FOR CONVENIENCE

### 21.1 Reimbursement of Contractor

Purchaser may terminate this Contract without cause, in whole or in part, by giving Contractor written notice thirty (30) days prior to the date of such termination. In the event of such termination, Contractor will immediately cease work as directed in the termination notice [









**ARTICLE 22 – LIQUIDATED DAMAGES FOR LATE DELIVERY AND LAUNCH DELAYS**

22.1 In the event that (i) Delivery of the Satellite does not occur on or before the delivery date specified therefor in Article 3.1, other than as a result of (a) a Force Majeure event, or (b) any cause or causes attributable to Purchaser [

] and/or (ii)

following Delivery of the Satellite, Contractor and/or its subcontractors, agents or representatives at any tier, or any of them, is the sole or a substantial cause of a delay in the Launch of the Satellite, then Contractor shall pay Purchaser liquidated damages [



**ARTICLE 22A – EARLY DELIVERY INCENTIVES**

22A.1 If Delivery of the Satellite occurs on or before the date specified therefor in Article 3.1, as such date may be extended by (i) a Force Majeure event, or (ii) any cause or causes attributable to Purchaser [

] and Contractor notifies Purchaser of such early delivery at least ninety (90) days prior to the earlier delivery date, then Purchaser shall pay Contractor an early delivery incentive not to exceed [

---

] Any payments due hereunder shall be paid within thirty (30) days after Purchaser's receipt of an invoice from Contractor.

[

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**ARTICLE 23 – DEFAULT**









**ARTICLE 24 – SECURITY INTEREST**

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## ARTICLE 25 – ARBITRATION

### 25.1 Arbitration

Any dispute (except as set forth in Article 25.2 and 25.3) arising between the Parties with respect to the performance of obligations under, or interpretation of, this Contract that cannot be settled by negotiation between the Parties within thirty (30) days of written notice from one Party to the other stating such first Party's intent to resort to arbitration ("Notice of Arbitration"), shall be determined by submission to binding arbitration in accordance with the provisions of the "Uniform Arbitration Act of 1975", part 2 of article 22 of title 13, Colorado Revised Statutes, as amended from time to time, and not by a lawsuit or resort to court process except as Colorado law provides for judicial review of arbitration proceedings. Any such arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected within sixty (60) days of such Notice of Arbitration, as follows: (i) one arbitrator shall be selected by each Party; and (ii) the third arbitrator shall be selected by the arbitrators chosen by the Parties. In resolving any dispute, the arbitrators shall apply the substantive laws of the State of New York (without regard to its conflict of law rules), but shall apply the Colorado Rules of Civil Procedure and the Colorado Rules of Evidence, and shall take into account usages, customs and practices in the performance of contracts for the purchase and sale of commercial communications satellites. Proceedings and documents provided and generated in connection with any arbitration hereunder shall be in the English language. Each Party shall bear its own costs and expenses (including without limitation the costs and expenses of the arbitrator it selected) and one-half of the costs and expenses of the third arbitrator, unless otherwise determined in the arbitral award. The parties agree that, in no event, shall the arbitrators' decision include a recovery under any theory of liability, or

award in any amount, not expressly allowed under this Contract. In furtherance and without limitation of the foregoing, any award made by the arbitrators shall be within the limitations set forth in Article 34.

25.2 [

]

25.3 Exception

Notwithstanding the foregoing, the request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Colorado or in the appropriate state court of competent jurisdiction located in Arapahoe County, Colorado pursuant to Article 25.4 below.

25.4 Choice of Law; Exclusive Jurisdiction

In the event a lawsuit is brought for injunctive relief pursuant to Article 25.3 above or that a proceeding is commenced to confirm an arbitration award, such lawsuit or proceeding shall be litigated solely and exclusively before the United States District Court for the District of Colorado. In the event the United States District Court for the District of Colorado does not have subject matter jurisdiction over any such matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado.

The parties and their present and future Affiliates consent to the *in personam* jurisdiction of the United States District Court for the District of Colorado and the appropriate State Court located in Arapahoe County, State of Colorado for the purposes set forth in this Article 25 and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Sections 1404 or 1406 (or any successor statute). In the event a lawsuit is brought for injunctive relief pursuant to Article 25.3 above or that a proceeding is commenced to confirm an arbitration award, the relationship between the parties and their present and future Affiliates, including without limitation all disputes, controversies or claims, whether arising in contract, tort, or under statute, shall be governed by and construed in accordance with the laws of the State of New York, without giving any effect to its conflict of law provisions.

25.5 Service of Process

Each Party consents and agrees that service of a complaint or any other process in connection with any arbitration or litigation provided for in this Article 25 can be made by sending the same to any Party in the same manner as provided for the giving of notices to such Party in Article 38 and that service so made shall be as effective as if the Party being served were personally served in the jurisdiction in which the arbitration or lawsuit is proceeding.

## ARTICLE 26 – INTER-PARTY WAIVER OF LIABILITY FOR A LAUNCH

### 26.1 Launch Services Agreement Inter-Party 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 with respect to the Launch of the Satellite and to use reasonable commercial efforts to cause their respective contractors and subcontractors at any tier (including without limitation 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 without limitation customers of Purchaser), as required by the Launch Services Agreement and as specified by Purchaser, to accede to such waiver. The Parties shall execute and deliver any instrument that may be required by the Launch Agency to evidence their agreement to be bound by such waiver. Purchaser and Contractor also shall use reasonable commercial efforts to obtain, from their insurers, and shall use reasonable commercial efforts to cause their respective contractors and subcontractors at any tier (including without limitation 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 without limitation customers of Purchaser) to obtain from their insurers, as required by the Launches Services Agreement and as specified by Purchaser, 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 26.

26.2 Indemnity Related to the Inter-Party Waiver of Liability

Each Party shall indemnify against and hold the other Party harmless from any claim against the other Party, its contractors and subcontractors at any tier (including without limitation suppliers of any kind) that are involved in the performance of this Contract, made by the Launch Agency or any of its contractors and subcontractors (including without limitation suppliers of any kind) that are involved in the performance of the Launch Services Agreement, resulting from the failure of the first Party to waive any liability against, or to use reasonable commercial efforts to cause any other person to do the same with respect to whom such Party is obligated to use reasonable commercial efforts to cause to waive any liability against, the Launch Agency or its contractors and subcontractors at any tier (including without limitation suppliers of any kind).

26.3 Survival of Obligations

The indemnification and hold harmless obligations provided in this Article 26 shall survive and remain in full force and effect, notwithstanding the expiration or termination of this Contract.

26.4 Launch Liability Insurance

Upon Contractor's request, Purchaser shall use reasonable commercial efforts to cause the Launch Agency to name Contractor (and any other person identified by Contractor in writing to Purchaser no later than one hundred eighty (180) days before the then-current Launch date) as an additional insured under any third party liability insurance procured by the Launch Agency under the Launch Services Agreement for the Launch of the Satellite.

**ARTICLE 27 – CORRECTIVE MEASURES**

**ARTICLE 28 – RESERVED**

**ARTICLE 29 –RESERVED**

**ARTICLE 30 – MOST FAVORED NATION**

**ARTICLE 31 – RESERVED**

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**ARTICLE 32 – RESERVED**

## ARTICLE 33 – GROUND STORAGE

### 33.1 Notification

Purchaser may direct Contractor to store the Satellite after completion of SPSR.

### 33.2 Storage Location

Ground Storage shall be performed at a Contractor controlled facility and shall be conducted in accordance with the satellite storage plan Section(s) of the Statement of Work.

### 33.3 Storage Prices

[

]

33.4 Payments

Payments shall be made on the thirtieth day of each month for the prior month's storage, provided an invoice is received at least thirty days prior to the payment date.

33.5 Title and Risk of Loss

[

]

33.6 Notification of Intention to Launch a Previously Stored Satellite

Purchaser shall notify Contractor in writing that the Satellite in Ground Storage should be removed from Ground Storage and delivered to the Launch Site. This notification must be received by Contractor not less than three (3) months prior to the scheduled date for Delivery to the Launch Site of the Satellite. [

]

**ARTICLE 34 – LIMITATION OF LIABILITY**

34.1 NEITHER PARTY SHALL BE LIABLE DIRECTLY OR INDIRECTLY TO THE OTHER PARTY OR ITS AFFILIATES, OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS AT ANY TIER (INCLUDING WITHOUT LIMITATION SUPPLIERS OF ANY KIND), AGENTS OR CUSTOMERS, TO ITS PERMITTED ASSIGNEES OR SUCCESSOR OWNERS OF ANY SATELLITE OR OTHER DELIVERABLE ITEM OR TO ANY OTHER PERSON CLAIMING BY OR THROUGH SUCH PARTY FOR ANY AMOUNTS REPRESENTING LOST PROFITS, LOSS OF BUSINESS, OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES OR COSTS OF RECOVERING THE SATELLITE (EXCEPT WITH RESPECT TO A THIRD PARTY'S DAMAGES FOR WHICH A PARTY HAS AN INDEMNIFICATION OBLIGATION UNDER ARTICLE 4.1 (SOLELY WITH RESPECT TO CONTRACTOR'S INDEMNIFICATION OBLIGATIONS), 6.8, 19, 20 OR 26.2), ARISING FROM OR RELATING TO THE PERFORMANCE OR NONPERFORMANCE OF THIS CONTRACT OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATED TO THE USE OF ANY ITEMS DELIVERED OR SERVICES FURNISHED HEREUNDER, WHETHER THE BASIS OF SUCH LIABILITY IS BREACH OF CONTRACT, TORT, STATUTE OR OTHER LEGAL OR EQUITABLE THEORY, EXCEPT THAT IN THE EVENT OF [ ] BY CONTRACTOR OR PURCHASER SUCH PARTY MAY BE LIABLE AND RESPONSIBLE FOR AMOUNTS REPRESENTING LOST PROFITS, LOSS OF BUSINESS AND THE OTHER ABOVE-DESCRIBED DAMAGES IN AN AMOUNT NOT TO EXCEED [ ]

IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY UNDER OR IN CONNECTION WITH THIS CONTRACT EXCEED THE AMOUNT OF [

] (PROVIDED REFUNDS UNDER ARTICLE 23.2 WILL NOT COUNT AGAINST THIS FIGURE) EXCEPT FOR LIABILITY ARISING FROM [ ] BY A PARTY, IN WHICH CASE THE TOTAL LIABILITY OF A PARTY MAY NOT EXCEED THE AMOUNT OF [ ]

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE LIMITATIONS ON CONTRACTOR'S LIABILITY SET FORTH IN THIS ARTICLE 34 AND ELSEWHERE IN THIS CONTRACT SHALL NOT APPLY (1) TO DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS AND OTHER CONSEQUENTIAL DAMAGES) ARISING OUT OF OR RELATING TO SUCH TERMINATION IF (A) PRIOR TO LAUNCH, THE BANKRUPTCY COURT ISSUES A FINAL ORDER APPROVING OR AUTHORIZING THE SALE, ASSIGNMENT OR TRANSFER OF THIS CONTRACT, CONTRACTOR OR A CONTROLLING INTEREST IN CONTRACTOR AND/OR ALL OR SUBSTANTIALLY ALL OF CONTRACTOR'S ASSETS, OR THERE OCCURS A CHANGE OF CONTROL OF CONTRACTOR ON OR AFTER THE EMERGENCE DATE AS A DIRECT CONSEQUENCE OF DISTRIBUTIONS MADE UNDER THE PLAN, TO AN UNQUALIFIED TRANSFEREE, AND (B) PURCHASER TERMINATES THIS CONTRACT FOR DEFAULT PURSUANT TO ARTICLE 23; (2) TO DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS AND OTHER CONSEQUENTIAL DAMAGES) ARISING OUT OR RELATING TO SUCH TERMINATION IF (A) PRIOR TO LAUNCH, THIS CONTRACT IS ASSIGNED TO AN UNQUALIFIED TRANSFEREE, AND (B)

PURCHASER TERMINATES THIS CONTRACT FOR DEFAULT PURSUANT TO ARTICLE 23; OR (3) IF, FOLLOWING THE EMERGENCE DATE BUT PRIOR TO LAUNCH, THIS CONTRACT IS NOT ASSUMED BY CONTRACTOR OR A QUALIFIED TRANSFEREE IN ANY SUBSEQUENT BANKRUPTCY OR INSOLVENCY PROCEEDINGS INVOLVING CONTRACTOR OR ANY SUCCESSOR IN INTEREST TO CONTRACTOR.

THE PROVISIONS OF THIS ARTICLE 34.1 SHALL SURVIVE AND REMAIN IN FULL FORCE AND EFFECT, NOTWITHSTANDING THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## ARTICLE 35 – DISCLOSURE AND HANDLING OF PROPRIETARY INFORMATION

### 35.1 Definition of Proprietary Information

For the purpose of this Contract, "Proprietary Information" means all information (other than Deliverable Data, which is subject to the provisions of Article 36), in whatever form transmitted, that is disclosed by one Party (hereinafter referred to as the "disclosing party") to the other Party hereto (hereinafter referred to as the "receiving party") relating to the performance by the disclosing party of this Contract and: (i) is identified as proprietary by means of a written legend thereon, or (ii) if disclosed orally, is identified as proprietary at the time of initial disclosure. Proprietary Information shall not include any information disclosed by a Party that (i) is already known to the receiving party at the time of its disclosure, as evidenced by written records of the receiving party, without an obligation of confidentiality at the time of disclosure; (ii) is or becomes publicly known through no wrongful act of the receiving party; (iii) is independently developed by the receiving party as evidenced by written records of the receiving party; (iv) such Party is legally compelled to disclose; or (v) is obtained from a third party without restriction and without breach of this Contract.

### 35.2 Terms for Handling and Use of Proprietary Information

For a period of five (5) years after receipt of any Proprietary Information (or until such time as such Proprietary Information becomes publicly known as provided in Article 35.1), the receiving party shall not disclose Proprietary Information that it obtains from the disclosing party to any person or entity except its employees and agents who have a need to know in order to perform under this Contract and who have been informed of and have agreed to abide by the receiving party's obligations under this

Article 35. The receiving party shall use not less than the same degree of care to avoid disclosure of such Proprietary Information as it uses for its own Proprietary Information of like importance; but in no event less than a reasonable degree of care. Proprietary Information shall be used only for the purpose of performing the obligations under this Contract, or as the disclosing party otherwise authorizes in writing.

IN NO EVENT SHALL EITHER PARTY DISCLOSE OR TRANSFER TECHNICAL INFORMATION OR PROVIDE TECHNICAL SERVICES TO INSURANCE BROKERS, UNDERWRITERS OR OTHER THIRD PERSONS OR ENTITIES WITHOUT THE OTHER PARTY'S PRIOR WRITTEN APPROVAL (WHICH SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED) AND, WHERE REQUIRED, PRIOR APPROVAL OF THE U.S. DEPARTMENT OF STATE.

### 35.3 Legally Required Disclosures

Notwithstanding the foregoing, in the event that the receiving party becomes legally compelled to disclose Proprietary Information of the disclosing party, including without limitation this Contract or other supporting document(s), the receiving party shall, to the extent practicable under the circumstances, provide the disclosing party with written notice thereof so that the disclosing party may seek a protective order or other appropriate remedy, or to allow the disclosing party to redact such portions of the Proprietary Information as the disclosing party deems appropriate. In any such event, the receiving party will disclose only such information as is legally required, and will cooperate with the disclosing party (at the disclosing party's expense) to obtain confidential and proprietary treatment for any Proprietary Information being disclosed.

35.4 Title; Return

All Proprietary Information disclosed under this Contract in tangible form (including without limitation information incorporated in computer software or held in electronic storage means) shall be and remain the property of the disclosing party. All notes, memoranda or other materials created or fabricated by the receiving party, including without limitation evaluations, based upon Proprietary information or prepared by the receiving party which include Proprietary Information shall be considered Proprietary Information for all purposes under this Contract. Subject to Purchaser's rights under Article 36, upon request of the disclosing party, all such Proprietary Information shall be returned to the disclosing party or shall be destroyed by the receiving party and shall not thereafter be retained in any form by the receiving party. Upon request of the disclosing party, the receiving party shall certify in writing that such party has either returned or destroyed all Proprietary Information previously received from the disclosing party. The rights and obligations of the parties under this Article 35 shall survive any such return or destruction of Proprietary Information.

35.5 Disclosure of Contract Terms

Notwithstanding anything to the contrary in this Article 35, and subject to applicable export restrictions, the terms and conditions of this Contract may not be disclosed by either Party to any person except with the prior written consent of the other Party, provided, in each case, that the recipient of such information agrees to treat such information as confidential and executes and delivers a confidentiality agreement reasonably acceptable to both Parties or is otherwise subject to confidentiality obligations reasonably satisfactory to both Parties; provided, further, that either Party shall have the right to disclose such information as is required under applicable law or the binding order of a court or government agency; and provided further that Purchaser shall

have the right to disclose any or all of the terms and conditions of this Contract to its insurance brokers and underwriters as Purchaser deems necessary in its sole judgment; provided that (i) the disclosure of such information shall be made in compliance with all applicable export control laws, and (ii) the recipient of such information agrees to treat such information as confidential and executes and delivers a confidentiality agreement reasonably acceptable to both Parties or is otherwise subject to confidentiality obligations reasonably satisfactory to both Parties.

## ARTICLE 36 – INTELLECTUAL PROPERTY RIGHTS - RIGHTS IN DATA

### 36.1 Intellectual Property Rights

“Intellectual Property” shall mean: (i) trademarks, logos, trade dress, trade names, (ii) all inventions (whether or not patentable), discoveries, improvements, ideas, know-how, formula methodology, research and development, processes and technology and software; (ii) all rights in Technical Data and Information; (iii) all common law, statutory and intangible proprietary rights and interests in and to the all of the foregoing, including without limitation, patents, copyrights, trade secrets, mask work registration and similar legally protected ownership interests. “Technical Data and Information” means documented information that is directly related to the design, development, manufacture, testing, launch, use, operation and maintenance of the Satellite. This term includes, for example, information in the form of drawings, photographs, technical writings, pictorial reproductions and specifications. [



]

36.2 Rights in Data

Except as otherwise provided in Article 36.3, Contractor shall retain title to all Deliverable Data utilized or developed by Contractor during the performance of this Contract. Subject to U.S. export regulations and applicable export restrictions, Purchaser and any successor owner of the Satellite, and their respective officers, directors, employees, consultants, contractors and representatives, shall have the non-exclusive right to obtain and use the Deliverable Data for any and all purposes related to the testing, operation, use and maintenance of the Satellite, [

] Purchaser's or any such successor's officers, directors, employees, consultants, contractors and representatives shall not disclose Deliverable Data to other companies, organizations or persons without the express prior written consent of Contractor, which consent shall not be unreasonably withheld or delayed; [

] Except as otherwise provided in Article 36.3, Purchaser shall have no rights in Deliverable Data other than as expressly stated in this Contract, and title to Deliverable

Data shall not pass to Purchaser or any other entity pursuant to the terms hereof. The provisions of this paragraph shall survive and remain in full force and effect, notwithstanding the expiration or termination of this Contract.

### 36.3 Purchaser and Joint Intellectual Property

Purchaser owns all rights, title and interest in: (i) all Intellectual Property developed by, or on behalf of, Purchaser prior to this Contract; and (ii) all Intellectual Property developed during this Contract by, or on behalf of, Purchaser (excluding, with respect to both (i) and (ii), any Intellectual Property developed by Contractor or its subcontractors).

With respect to Intellectual Property that is created during this Contract jointly by material contributions of employees and/or agents of both Parties ("Joint Intellectual Property"), Contractor and Purchaser shall each have an equal, undivided one-half interest in and to such Joint Intellectual Property, as well as in and to patent applications and patents thereon in all jurisdictions. Contractor shall have the first right of election to file patent applications in any country, and Purchaser shall have a second right of election. Each Party in turn shall make its election at the earliest practicable time, and shall notify the other Party of its decision. The expenses for preparing, filing and securing each Joint Intellectual Property patent application, and for issuance of the respective patent shall be borne equally by the Parties. The other Party shall furnish the filing Party with all documents or other assistance that may be necessary for the filing and prosecution of each application. The Party which files the application shall, prior to filing, request the other Party to indicate whether it will agree to pay one-half of all taxes, annuities, maintenance fees or other charges as may be required by or due to the applicable jurisdiction with respect to a pending application or an issued patent. If either (i) within sixty (60) days of receiving such request, the non-filing Party fails to assume in

writing the obligation to pay its proportionate share of either (a) the expenses for preparing, filing and securing a Joint Intellectual Property patent application or (b) such taxes, annuities, maintenance fees or other charges as stated above, or (ii) either Party subsequently fails to continue such payments within sixty (60) days of demand, the non-paying Party shall forthwith relinquish to the paying Party the non-paying Party's rights and interest in such application and patent and any patent granted pursuant thereto, subject, however, to the paying Party's grant to the non-paying Party and any successor owner of the Satellite, and their respective Affiliates and contractors, of a royalty free, worldwide, non-exclusive license with respect to such application and patent and the Joint Intellectual Property covered thereby, for the applicable purpose set forth in Article 36.1 or 36.2, which shall be deemed to include such Joint Intellectual Property (and for the purpose of granting sublicenses by the Party to whom such license is granted).

The foregoing shall not prevent Contractor from offering or manufacturing any products or technology that it currently offers or manufactures.

#### 36.4 Purchaser Intellectual Property

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36.5 Survival of Intellectual Property Rights

The licenses to Intellectual Property and Deliverable Data and the grant of rights to obtain the same as herein provided shall survive any termination of this Contract by Purchaser under Article 23 and any termination by Contractor under Article 23.5 that is determined to have been wrongful until the end of life of the Satellite, and shall not be affected by any disposition of assets by Contractor, whether pursuant to the Plan, pursuant to Section 363 of the Bankruptcy Code or otherwise.

## ARTICLE 37 – PUBLIC RELEASE OF INFORMATION

37.1 Either Party intending to disclose publicly whether through the issuance of news releases, articles, brochures, advertisements, prepared speeches or other information releases concerning this Contract or the transactions contemplated herein shall obtain the prior written approval of the other Party with respect to the content and timing of such issuance. A Party's approval under this Article 37 shall not be unreasonably delayed or denied. Notwithstanding the above, either Party may release information described herein as required by securities laws or other applicable laws.

**ARTICLE 38 – NOTICES**

**38.1 Written Notification**

Each notice or correspondence required or permitted to be given hereunder shall be given in writing (except where oral notice is specifically authorized) to the respective addresses or facsimile numbers and to the attention of the individuals set forth below by facsimile transmission, overnight courier, charges prepaid, or first class registered or certified mail, return receipt requested, postage prepaid. The sending of such notice with confirmation of successful receipt of the complete transmission (in the case of facsimile transmissions) or receipt of such notice (in the case of delivery by first class registered or certified mail or by overnight courier service) shall constitute the giving thereof.

In the case of Purchaser:

EchoStar Orbital Corporation II

P.O. Box 6655 (for registered and certified mail)  
Englewood, Colorado 80155

9601 S. Meridian Blvd. (for overnight courier)  
Englewood, Colorado 80112

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With copies (sent via separate mailings) to:

[

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In the case of Contractor:

Space Systems/Loral, Inc.  
3825 Fabian Way, Mailstop G 44  
Palo Alto, CA 94303-4604

[

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38.2 Change of Address

Either Party may from time to time change its notice address and/or fax number or the persons to be notified by giving the other Party written notice (as provided above) of such new information and the date upon which such change shall become effective.

**ARTICLE 39 – RISK MANAGEMENT**





## ARTICLE 40 – ORDER OF PRECEDENCE

40.1 In the event of any conflict or inconsistency among the terms of the Preamble, Articles 1 to 46 and Attachment A to this Contract and the Exhibits, the following order of decreasing precedence shall apply:

- This Contract (Preamble, Articles 1 through 46 and Attachment A)
- Exhibit A                      Statement of Work
- Exhibit B                      Satellite Performance Specification
- Exhibit C                      Commercial Programs Product Assurance Plan
- Exhibit D                      Spacecraft Test Plan
- Exhibit E                      Dynamic Satellite Simulator Performance Specification

## ARTICLE 41 – GENERAL

### 41.1 Binding Effect; Assignment

This Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns as permitted hereunder. Except as otherwise expressly set forth to the contrary herein, this Contract, and the Parties' respective rights and obligations hereunder, may not be assigned, either in whole or in part, by either Party without the express written approval of the other Party (such approval not to be unreasonably withheld or delayed); [

] Contractor may require, as a condition of approving an assignment by Purchaser, that the proposed assignee establish irrevocable letters of credit, guarantees or other comparable assurances satisfactory to Contractor prior to such assignment becoming effective and that Purchaser remain primarily or secondarily liable hereunder. Either Party, upon prior written notice to the other Party, may grant security interests in its rights hereunder to lenders that provide financing for the performance by such Party of its obligations under this Contract or for the subject matter hereof; [

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Notwithstanding anything to the contrary herein, Purchaser may assign this Contract, in whole or in part without Contractor's approval and without regard to the conditions set forth in the fourth sentence of this Article 41.1, to an Affiliate.

41.2 Severability

If any provision of this Contract is declared or found to be illegal, unenforceable or void, the Parties shall negotiate in good faith to agree upon a substitute provision that is legal and enforceable and is as nearly as possible consistent with the intentions underlying the original provision. If the remainder of this Contract is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

41.3 Captions

The captions contained herein are for purposes of convenience only and shall not affect the construction of this Contract.

41.4 Relationships of the Parties

It is expressly understood that Contractor and Purchaser intend by this Contract to establish the relationship of independent contractors only, and do not intend to undertake the relationship of principal and agent or to create a joint venture or partnership or any other relationship, other than that of independent contractors, between them or their respective successors in interests. Except as expressly set forth to the contrary herein, neither Contractor nor Purchaser shall have any authority to create or assume, in the name or on behalf of the other Party, any obligation,

expressed or implied, or to act or purport to act as the agent or the legally empowered representative of the other Party, for any purpose whatsoever.

41.5 Entire Agreement

This Contract, including all Exhibits and the Attachments hereto, represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations and agreements with respect to the subject matter hereof. This Contract may not be modified or amended, and the Parties' rights and obligations may not be waived, except by the written agreement of both Parties.

41.6 Standard of Conduct

Both Parties agree that all their actions in carrying out the provisions of this Contract shall be in compliance with applicable laws and regulations and neither Party will pay or accept bribes, kickbacks or other illegal payments, or engage in unlawful conduct.

41.7 Construction

This Contract, the Exhibits and the Attachments hereto have been drafted jointly by the Parties and in the event of any ambiguities in the language hereof, there shall be no inference drawn in favor of or against either Party.

41.8 Counterparts

This Contract may be signed by facsimile and in any number of counterparts with the same effect as if the signature(s) on each counterpart were upon the same instrument.

41.9 Applicable Law

Except as expressly set forth to the contrary In Article 25, Contract shall be interpreted, construed and governed, and the rights of the Parties shall be determined, in all respects, according to the laws of the State of New York without regard to its conflict of law rules.

41.10 Survival

Termination or expiration of this Contract for any reason shall not release either Party from any liabilities or obligations set forth in this Contract that (i) the Parties have expressly agreed shall survive any such termination or expiration or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

41.11 U.N. Convention on the International Sales of Goods

The U.N. Convention on the International Sales of Goods shall not apply or otherwise have any legal effect with respect to this Contract.

41.12 Waiver

No delay or omission by either party to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. No payment of money by any person or entity shall be construed as a waiver of any right or power under this Contract. A waiver by any party of any of the covenants, conditions or contracts to be performed by the other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or contract herein contained. No change, waiver or discharge hereof shall be valid unless in writing and signed by a duly authorized representative of the party against which such change, waiver or discharge is sought to be enforced.

41.13 Set Off and Recoupment

If either party (the "first" party) has a payment obligation then-currently due to the other under this Contract or any other document entered into in connection with this Contract (each a "Transaction Document") at a time when the other party has a payment obligation then-currently due to the first party under any Transaction Document, the first party may offset or recoup the amount due to it against its payment obligation and pay only any remaining balance due to the other party (if any). [

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41.14 RESERVED.

41.15 Third Party Beneficiaries

Except with respect to Affiliates of Purchaser, who are intended to be and shall be deemed to be third party beneficiaries of Contractor's obligations under this Contract, the provisions of this Contract are for the exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended, or shall be deemed or construed, to confer upon any third party (other than as expressly set forth for Affiliates of Purchaser) any rights, benefits, duties, obligations, remedies or interests of any nature or kind whatsoever under or by reason of this Contract.

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**ARTICLE 42 – ATTACHMENTS**

42.1 The following Attachments are incorporated by reference in their entirety:

Attachment A Payment Plan

**ARTICLE 43 – RESERVED**

**ARTICLE 44 - RESERVED**

**ARTICLE 45 – MASS INCENTIVE**

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## ARTICLE 46 - KEY PERSONNEL

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

- (i) Contractor's Program Manager;
- (ii) Contractor's Contracts Manager;
- (iii) Contractor's Product Assurance Manager;
- (iv) Contractor's Systems Engineering Manager; and
- (v) Contractor's Vehicle Manager.

Purchaser 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 Contractor giving prior written notice to and consulting with the Purchaser. Contractor shall provide a chart to Purchaser of the program Key Personnel and shall keep such chart current.

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