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January 30, 2006

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BY HAND DELIVERY

Federal Communications Commission
Office of Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Received

JAN 30 2006

Fed. Bureau
of Investigation

Re: ***The DIRECTV Group, Inc. Milestone Completion***¹
SAT-LOA-20040909-00168 (S2640)
SAT-LOA-20040909000169 (S2641)

Dear Mr. Nelson:

The DIRECTV Group, Inc. ("DIRECTV") hereby submits documentation to demonstrate compliance with the first three milestones established for the DIRECTV 10 and DIRECTV 11 satellites to be located at the nominal 103° W.L. and 99° W.L. orbital locations, respectively. DIRECTV requests that the Commission make a determination that the contract execution, Critical Design Review ("CDR"), and commencement of physical construction milestones for these satellites have been satisfied, and that accordingly DIRECTV may reduce the performance bond applicable to each satellite to \$750,000.¹

The DIRECTV 10 and DIRECTV 11 authorizations require DIRECTV to execute a binding construction contract for each spacecraft by March 8, 2006, complete the CDR for each spacecraft by March 8, 2007, and commence physical construction of each spacecraft by March 8, 2008. As the attached materials show, DIRECTV has completed all three of these milestones well in advance of the deadlines established in these authorizations.

¹ See 47 C.F.R. § 25.165(d) (a GSO-like licensee is permitted to reduce the amount of the bond by 25% of the original bond amount upon successfully meeting each milestone).

Marlene H. Dortch
January 30, 2006
Page 2 of 2

Specifically, attached hereto are:

- A redacted copy of the contract for construction of the DIRECTV 10 and DIRECTV 11 satellites by Boeing Satellite Systems, Inc. ("Boeing"), dated March 17, 2004. This non-contingent contract calls for the construction and shipment of two Ka-band satellites in May 2007 and August 2007, as well as a back-up satellite in November 2007.
- A redacted copy of the invoice submitted by Boeing for CDR, dated June 16, 2005.
- The Declaration of David G. Klemes, Boeing's DIRECTV 10 and 11 Program Manager, confirming that the construction contract remains in effect, CDR has been completed, and physical construction of both satellites has commenced.

Collectively, these materials demonstrate that DIRECTV has met its milestone obligations with respect to contracting, CDR, and commencement of physical construction for both DIRECTV 10 and DIRECTV 11. DIRECTV respectfully requests that the Commission review the attached materials and enter a finding that the first three milestones of the DIRECTV 10 and DIRECTV 11 authorizations have been satisfied, and accordingly authorize DIRECTV to reduce the amount of the performance bond maintained for each satellite to \$750,000 pending launch.

If you have any questions, please do not hesitate to contact undersigned counsel.

Sincerely yours,



William M. Wiltshire
Counsel for The DIRECTV Group, Inc.

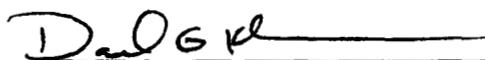
Enclosures

cc: Robert Nelson
Andrea Kelly

DECLARATION

I, David G. Klemes, Boeing Satellite Systems DIRECTV 10 and 11 Program Manager, certify on behalf of Boeing Satellite Systems, Inc. ("BSS"), as follows:

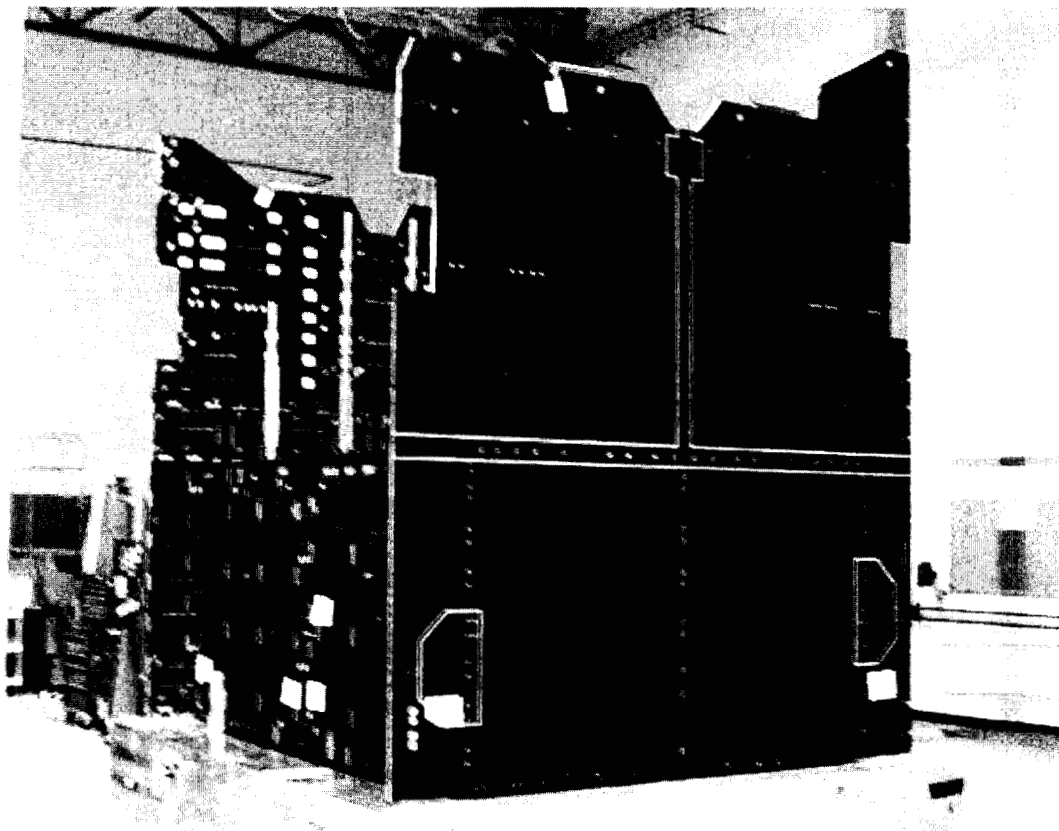
1. The DIRECTV 10 and 11 spacecraft Critical Design Review ("CDR") was successfully completed in May, 2005.
2. The contract between BSS and DIRECTV Operations, LLC for the P904 Program (which includes construction of DIRECTV 10 and DIRECTV 11) dated March 17, 2004, remains in effect with no amendments or modifications.
3. BSS has received payment for construction of DIRECTV 10 and DIRECTV 11 for all amounts due through December 31, 2005, and these payments cumulatively represent approximately 60% of the total price for the construction of the DIRECTV 10, 11 and 12 satellites.
4. The DIRECTV 10 and 11 spacecraft design is 100% complete. The qualification of the spacecraft equipment for DIRECTV 10 and DIRECTV 11 is approximately 65% and 60% complete, respectively, and about 35% of the flight equipment for both satellites has been received at BSS's facility in El Segundo, CA.
5. The attached photograph shows the DIRECTV 10 spacecraft currently under construction.



David G. Klemes
Boeing Satellite Systems, Inc.
DIRECTV 10/11 Satellite Program Manager

Date: January 26, 2006

Photograph of Payload Module under Construction



16 June 2005

DIRECTV Operations, LLC
2230 E. Imperial Highway
El Segundo, CA 90245

Attention: Phil Goswitz
DIRECTV 10/11 Program Director

cc: Brian Regan, Legal Counsel

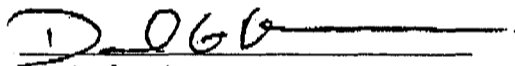
Subject: Performance Certification

Dear Phil:


Pursuant to Article 5 of the Fixed Price Contract for the DIRECTV 10/11 Program between Boeing Satellite Systems, Inc. and DIRECTV Operations, LLC (the "Contract"), the undersigned, to the best of their knowledge and belief after completing such due diligence as required to support this certification, hereby certify that the Conduct System Critical Design Review and the work related thereto comply with the relevant requirements of this Contract and have been Successfully Completed, including all specifications embodied in the SOW or in the Spacecraft Technical Specification or referenced in such documents or other exhibits to the Contract or as otherwise agreed between the Parties.

[Executive Officer Name/Title]*

*to be signed by General Manager for Launch Readiness Review and Ready for Shipment reviews



David G. Klemes
BSS DIRECTV 10/11 Program Manager



Robert E. Cadeau
BSS Product Assurance Manager



INVOICE

Remit Check Payments to:
Boeing Satellite Systems
File # 8765
Los Angeles, CA 90074

SOLD TO:

DIRECTV Operations, LLC
2230 E. Imperial Hwy
El Segundo, Ca 90245
ATTN: Accounts Payable
(310) 728-4715

Remit Electronic Payments to:
Bank of America
Concord, CA
ABA # 121-000-358
Boeing Satellite Systems
Account # 12334-14041

For Credit To:

Invoice No.	AH10-00020
Date:	17-Jun-05
Payment Due:	17-Jul-05
Contract No.	DTV03172004
Div/GLA/Ci:	T3D/AH10

Description	Amount
Payment Milestone # 18a Conduct System Critical Design Review For DTV 10, 11 and 12 Purchase Order # 4500028708 Payment Due Date - 30 days from receipt of Invoice Finance Point of Contact: Jessica Eams, Contract Manager Phone (310) 416-6690	[REDACTED]

Line item # 130

PAYMENT APPROVAL
DIRECTV ACCOUNTS PAYABLE

Document No. _____
 Center _____
 Signature _____ Date _____
 Print Name _____

I CERTIFY THAT THIS INVOICE IS CORRECT AS SUBMITTED.

[Signature]
 Gary Lawler
 Accounting Manager
 Boeing Satellite Development Center

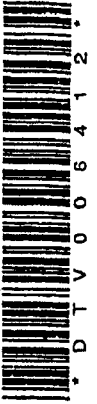
PAYMENT APPROVAL
DIRECTV ACCOUNTS PAYABLE

Document No. _____
 Verified by P.O. by _____
 Verified 2-Way Match or 3-Way Match
 2-Way Match
 APPROVED TO PAY:
 Signature _____ Date _____
 Print Name _____

TOTAL DUE USD

RECEIVED
 JUN 20 2005
 DIRECTV
 ACCOUNTS PAYABLE - DE

Boeing Satellite Systems
 P.O. Box 82919
 Los Angeles, CA 90009



**FIXED PRICE CONTRACT FOR
THE P904 PROGRAM**

BETWEEN

BOEING SATELLITE SYSTEMS, INC.

AND

DIRECTV OPERATIONS, LLC.

Contract Number: DTV03172004

*Redacted
Version*

This document contains Boeing Proprietary Information.
This document contains DIRECTV Proprietary Information.

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THIS CONTRACT is effective as of the 17th day of March, 2004,

BETWEEN:

BOEING SATELLITE SYSTEMS, INC., a corporation organized and existing under the laws of the State of Delaware, U.S.A., with its principal offices located in El Segundo, California, U.S.A. (hereinafter referred to as "Boeing" or "Contractor") and

DIRECTV OPERATIONS, LLC., a limited liability company organized and existing under the laws of the State of California, with a place of business in El Segundo, California, U.S.A (hereinafter referred to as "DIRECTV" or "Customer").

WHEREAS, Customer desires to procure three (3) Boeing 702 Satellites, and related services, all designated the "P904 Satellite Program," subject to the terms and conditions hereof;

WHEREAS, Contractor desires to supply such Satellites and services in accordance with the terms and conditions hereof; and

WHEREAS, 


NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

In this Contract, unless the context otherwise requires, the following terms shall have the meaning stated hereunder:

- 1.1 "Acceptance" with respect to each Satellite, shall have the meaning set forth in Article 5. With respect to all other Deliverables, Acceptance shall occur upon Delivery.

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- 1.2 "Acceptance Test Plan" means the test plan set forth in Exhibit D to this Contract, which is incorporated herein and made a part of this Contract.
- 1.3 "Affiliate" means, (1) with respect to Boeing, any direct or indirect subsidiaries or parent company of Boeing or another subsidiary of any such parent company (not to include the Sea Launch Limited Partnership or Sea Launch Company, L.L.C.); (2) with respect to DIRECTV, any direct or indirect subsidiaries, or any parent company of DIRECTV or such parent company (including The DIRECTV Group, Inc.), or another subsidiary of any such parent company.
- 1.4 "Apogee Altitude" means the first passage at apogee on the actual transfer orbit after ~~Spacecraft separation from the Launch Vehicle, unless otherwise explicitly stated.~~
- 1.5 
- 1.6 "Available Communications Capacity" means, with respect to a Satellite, the sum of the Predicted Life Remaining of each Successfully Operating Transponder on such Satellite. The unit of measure for Available Communications Capacity is "Channel-Days."
- 1.7 "Business Day" means every Day, but excluding Saturdays, Sundays and days when commercial banks in the State of California are required or permitted to be closed.
- 1.8 "Certain Documentation" means those items of documentation listed in Exhibit F, the late delivery of which may constitute an event of default under Article 17.
- 1.9 "Certain Documentation Termination Value" means that termination value apportionable to the Certain Documentation as defined in Paragraph 17.2.
- 1.10 "Certified Invoice" means an invoice meeting the requirements of Paragraph 4.2.
- 1.11 "Channel-Day" is a time measure of performance for the operation of a Transponder on a Satellite equivalent to the number of high definition video channels it is capable of carrying without interruption for one (1) Day.


- 1.12 "Communications Channel" shall have the same meaning as "Transponder."
- 1.13 "Component" means every unit, system, subsystem, and piece of equipment or hardware or software to be employed on the Satellite.
- 1.14 "Constructive Total Loss" shall mean a reduction of the Available Communications Capacity such that the Available Communications Capacity is less than [REDACTED] of the Stated Communications Capacity.
- 1.15 "Consultant(s)" means a person or organization retained by Customer to provide Customer with technical advice and identified by Customer to Boeing as such in accordance with Article 12.
-
- 1.16 "Contract" means this written instrument embodying the agreement between Boeing and Customer and including the Exhibits annexed hereto and made a part of this Contract.
- 1.17 "Contract Deliverable Data" means any Technical Data and Information generated in the performance of the Work under this Contract and specifically listed in Exhibit A hereto, Statement of Work, as being deliverable under this Contract.
- 1.18 "Contract Price" means the total amount expressed in this Contract Article 4, Contract Price, Payment and Adjustment.
- 1.19 "Coverage Area Percentage" means the ratio of the Actual Coverage Area divided by the Specified Coverage Area.
- 1.20 "Day" means a continuous 24-hour period commencing at Midnight (Pacific Time).
- 1.21 "Delinquent Payment" means any payment not received within [REDACTED] of the date due as defined in Paragraph 4.2.
- 1.22 "Deliverables" or "Deliverable" means all data, items and services to be delivered by Contractor to Customer under this Contract per Paragraph 3.1.
- 1.23 "Delivery" means, (a) for each Satellite, that the Satellite has been completed and delivered to the applicable Designated Launch Site to be used by the Launch Provider for Launch of the particular Satellite, and that all pre-Launch testing of the Satellite has

been Successfully Completed; and (b) for items or services other than the Satellites, that such item has arrived, carriage and insurance paid ("CIP"), at Contractor's expense, at the place of delivery or upon Successful Completion of the service or review as the case may be, in each case in conformance with the item or service or review meeting all applicable Contract requirements. In the case of rejection due to a defect in the item or services, Delivery shall be deemed not to have occurred until the defect has been remedied. Delivery of Documentation may be achieved by hard copy or electronic means.

1.24 "Delivery Schedule" means the timetable for delivery of the Satellites and other items and services set forth in Article 3 and the Statement of Work.

1.25 "Designated Launch Site" means the launch facility provided by the Launch Provider for Launch of the particular Satellite, as applicable.

1.26 "DIRECTV Companies" means The DIRECTV Group, Inc., DIRECTV Holdings, LLC., DIRECTV Enterprises, LLC., DIRECTV, Inc., DIRECTV Merchandising, Inc., DIRECTV Customer Services, Inc., and DIRECTV Operations, LLC., and such other wholly-owned companies as may be created in the future.


1.27 "Discount/Interest Rate" means the six month LIBOR rate published on the last Business Day of the quarter, plus  basis points.

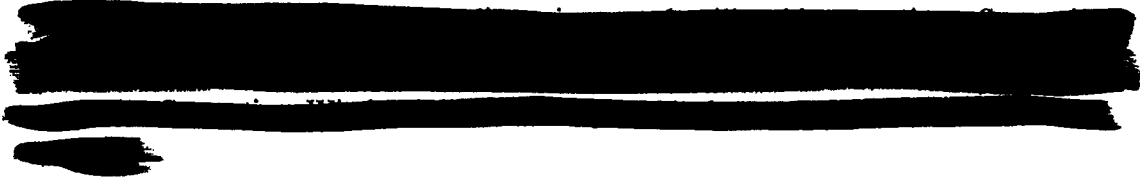
1.28 "Documentation" means the documentation to be delivered by Boeing to Customer under this Contract, as more fully described in Exhibit A, Statement of Work.

1.29 

1.30 "Ground Segment Software" means the proprietary computer software programs and related documentation provided by Boeing under this Contract in accordance with the Exhibit A, Statement of Work. For the avoidance of doubt, the Ground Segment Software Deliverables pursuant to this Contract include: the SCP Database, Telemetry Database, Command Database and Dynamic Satellite Simulator. The ROPs and MOPs documentation shall be ground segment Deliverables under this Contract.

- 1.31 "Guaranty" or "Performance Guaranty" shall mean the separate Guaranties of The Boeing Company to DIRECTV and The DIRECTV Group, Inc. to Boeing, a sample of each shall be attached hereto as Exhibit G and Exhibit H, respectively.
- 1.32 "Hand Over" shall mean, for each Satellite, that the Satellite has Successfully Completed In-Orbit Testing, has been placed in its Specified Orbital Location and has been released to Customer for commercial operations.
- 1.33 "In-Orbit Testing" or "IOT" means the in orbit testing to be performed by Contractor as part of the Mission Operations in accordance with the Exhibit D, Spacecraft Integrated Test Plan.
-
- 1.34 "IOT Complete Date" shall mean, for each Satellite, the date upon which IOT is Successfully Completed and the Parties have executed the IOT Complete certification.
- 1.35 "Intellectual Property" has the meaning set forth in Article 20.
- 1.36 "Intentional Ignition" shall have the same meaning ascribed to such term in the applicable Launch Services Contract for Launch of the particular Satellite, if any.
- 1.37 "Key Personnel" means Contractor's employees in each of the specialties identified in Paragraph 2.1.3.1 of the SOW who are dedicated to perform the Work hereunder.
- 1.38 "Launch" shall have the same meaning ascribed to such term in the applicable Launch Services Contract for Launch of the particular Satellite.
- 1.39 "Launch Date" or "Launch Dates" shall mean the date scheduled for the Launch of a Satellite or the Satellites in accordance with the Launch Services Contract.
- 1.40 "Launch Failure" means that, after Launch of a Satellite, the Satellite is neither a Successfully Launched Satellite nor a Partial Launch Failure.
- 1.41 "Launch Insurance" shall mean the Satellite Launch Insurance Policy or Policies described in Article 8.
- 1.42 "Launch Period" means the period of time in which a Launch Slot and Launch Date is to be scheduled and a Launch attempt is scheduled to occur, as specified by the Launch Services Contract.

- 1.43 "Launch Provider" means Sea Launch, Arianespace, ILS or such other vendor as Customer shall select and enter into a Launch Services Contract for the Launch of one or more of the Satellites, as applicable.
- 1.44 "Launch Readiness Review" ("LRR") shall mean the review by Boeing and Customer that verifies that the Designated Launch Site Satellite testing and checkout as described in the Spacecraft Technical Specification (Exhibit B) and Spacecraft Product Assurance Plan (Exhibit C) has been completed, for each Satellite, and that such Satellite is deemed by the Parties ready to be turned over to the Launch Provider for integration with the Launch Vehicle and Launch.
-
- ~~1.45 "Launch Services" shall mean those services provided by the Launch Provider (including, without limitation, the provision of the Launch Vehicle) pursuant to the Launch Services Contract for the Launch of the applicable Satellite into Transfer Orbit.~~
- 1.46 "Launch Services Contract" or "Launch Services Contracts" means the contract with the Launch Provider for Launch Services for a particular Satellite.
- 1.47 "Launch Site" means the launch facility provided by the Launch Provider for Launch of the particular Satellite.
- 1.48 "Launch Site Operations" means the Work to be performed by Contractor in support of the Launch, per the SOW, for each Satellite, as applicable, from the time such Satellite is Ready for Shipment, until Launch.
- 1.49 "Launch Slot" means a period of time within the Launch Period with daily Launch Window opportunities.
- 1.50 "Launch Vehicle" means the launch vehicle provided by the Launch Provider, as applicable, for the purpose of launching each Satellite.
- 1.51 "Launch Vehicle Trajectory" means the flight path taken by the Launch Vehicle from Launch until Spacecraft separation and completion of collision avoidance maneuvers. The Launch Vehicle Trajectory shall be the responsibility of the Launch Provider.
- 1.52 



- 1.53 "Loss" means, with respect to any Satellite, that the Available Communications Capacity is less than the Stated Communications Capacity whether caused by a Transponder Failure or otherwise.
- 1.54 "Loss Amount" means the amount calculated in accordance with Loss Formula for each Satellite after Launch as a reduction in the Performance Payments, if any.
-
- 1.55 "Loss Formula" has the meaning set forth in Paragraph 6.3.
- 1.56 "Milestone Payments" means the progress payments on the Satellite and other items to be provided hereunder, scheduled to be made in accordance with the Exhibit E, Payment Plan.
- 1.57 "Mission Operations" means the services to be performed by Contractor for each Satellite post-Launch and prior to Hand Over in connection with the Transfer Orbit and In-Orbit Testing, as more fully described in the Statement of Work.
- 1.58 "Month" means a calendar month except for schedule purposes. For schedule purposes, "Month" shall mean a month long period beginning with the Day after EDC. As an example, "Month 1" is defined as the period beginning on 18 March 2004 and ending on 17 April 2004, "Month 2" is defined as the period beginning on 18 April 2004 and ending on 17 May 2004, and so on.
- 1.59 "Orbit" means all points along the orbital path for one complete revolution around the earth.
- 1.60 "P904 Satellite Program" or "P904 Program" means the program to provide three (3) Boeing 702 Class Satellites for direct to home television broadcasting, of which the Work under this Contract is a part.

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- 1.61 "Partial Launch Failure" means the Launch of a Satellite that does not yield a Successfully Launched Satellite, but the Satellite is not a Total Loss and has not been declared a Constructive Total Loss by Customer.
- 1.62 "Partial Payload Failure" shall have the meaning accorded to it in the Launch Insurance Policy or Policies procured by Customer for one or more Satellites, as applicable.
- 1.63 "Party" means a Person or Persons which has or have signed this Contract as a party; and "Parties" means all such Persons.
- 1.64 "Payment Plan" means the Milestone Payments to be made by Customer in respect of the items to be provided by Contractor under this Contract as set forth in Exhibit E.
-
- 1.65 "Performance Payments" means the "Initial Successful Operations Payment" and the "In Orbit Performance Payments," as set forth in Paragraph 6.1, and Exhibit E.
- 1.66 "Performance Specification(s)" means the technical and performance specification for the Satellites that are set forth in Exhibit B to this Contract. The term "Spacecraft Technical Specification" as used in this Contract means the Performance Specification for the Satellite.
- 1.67 "Perigee Altitude" means the first passage at perigee on the actual transfer orbit after Spacecraft separation from the Launch Vehicle, unless otherwise explicitly stated.
- 1.68 "Permanently Intermittent" means a Loss or failure with respect to a Satellite, that is intermittent in nature, and, due to the performance pattern of the Satellite or other factors relating to the Loss or failure, is reasonably expected to continue to occur.
- 1.69 "Person" or "Persons" means any individual, partnership, limited liability company, corporation, association, trust or other entity, including any government or political subdivision or any agency, department or instrumentality thereof.
- 1.70 "Predicted Life Remaining" means, with respect to any Transponder on a particular Satellite, the predicted amount of operational life remaining taking into account life limiting parameters on the Satellite, degradation in satellite subsystem performance, and any other factor(s) that might affect the life of the Satellite. The Predicted Life Remaining shall never exceed the Stated Satellite Life Remaining.

- 1.71 "Product Assurance Plan" means the Spacecraft Product Assurance Plan set forth in Exhibit C to this Contract.
- 1.72 "Ready for Launch" means, for each Satellite, that the Satellite has successfully completed the Launch Readiness Review as defined in Article 2.2.10 of the Exhibit A, Statement of Work, signifying that the Satellite is ready for Launch, and the Launch Readiness certification has been signed by the Parties. Final Acceptance for each Satellite shall occur when the Satellite is Ready for Launch as specified in Paragraph 5.3.
- 1.73 "Ready for Shipment" means, for each Satellite, that the Satellite has successfully ~~completed the Consent to Ship review as defined in Article 2.2.7 of the Exhibit A,~~ Statement of Work, signifying that the Satellite is ready for Shipment from Contractor's satellite manufacturing facility. Upon Ready for Shipment of each Satellite, and execution of the Ready for Shipment certification by both Parties, the relevant Satellite shall be preliminarily accepted by Customer, as described in Paragraph 5.2.
- 1.74 "Related Third Parties" means (a) employees of Boeing or Customer, as applicable, (b) customers of Boeing and Customer, and the employees of those customers, as applicable, except with respect to Customer as a customer of Boeing for the purposes of Article 13, Inter-Party Waiver of Liability, (c) contractors and subcontractors of Boeing and/or Customer and the employees of those contractor and subcontractors, as applicable, (d) Affiliates, and (e) consultants of any of the aforementioned persons.
- 1.75 "Satellite" or "Satellites" means one or more of the Boeing 702 Class Satellites to be delivered to Customer as part of the Work (as defined herein). The Satellites are also referred to herein as "Satellite 1," "Satellite 2," and "Satellite 3." The Satellites are interchangeable, and shall be designated as Satellite 1, Satellite 2 or Satellite 3 based upon the order of actual Delivery. The terms "Spacecraft" or "Spacecrafts" shall be interchangeable with the terms "Satellite" or "Satellites" and have the same meaning.
- 1.76 "Satellite Control Equipment" or "SCE" means the equipment used for tracking, command and monitoring and up-link and traffic monitoring.

1.77 "Satellite Specification" or "Spacecraft Technical Specification" means the technical and performance specifications for the Satellites that are set forth in Exhibit B to this Contract.

1.78 [REDACTED]
[REDACTED]
[REDACTED]

1.79 "Space Segment Software" means the computer software programs and related documentation used by Boeing in the Satellite and provided under this Contract, including any modifications or subsequent releases as required by this Contract.

1.80 "Spacecraft Product Assurance Plan" means the Spacecraft Product Assurance Plan set forth in Exhibit C to this Contract, which is incorporated herein and made a part of this Contract.

1.81 "Specified Coverage Area" means each geographic coverage area defined in and required by the Spacecraft Technical Specification, including both national and spot beam geographic areas, within each of which the Satellite is designed to transmit a certain number of television channels at a specified signal strength.

1.82 "Specified Operational Lifetime" or "Mission Life" means, for each Satellite, [REDACTED] years of Satellite performance commencing at the earlier of Hand Over or Final Acceptance. All Spacecraft hardware shall be designed for with a minimum design life as required by the Spacecraft Technical Specification, Exhibit B, in order to meet the Specified Operational Lifetime.

1.83 "Stated Communications Capacity" means, with respect to each Satellite, the sum of the Stated Satellite Life Remaining for each Transponder, at both the [REDACTED] and [REDACTED] orbital locations, on such Satellite, which shall not exceed [REDACTED] Channel-Days, in each case when the Stated Satellite Life Remaining equals [REDACTED] years.

1.84 "Stated Satellite Life" means, with respect to each Satellite, the Specified Operational Lifetime for such Satellite as set forth in the Spacecraft Technical Specification, Exhibit B measured in years (and any portion thereof) less [REDACTED] and less the time between Launch and Hand Over, based on the worst case pre-Launch [REDACTED]

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fuel budget for the applicable Launch Vehicle and the Satellite, for which the Satellite is expected to be operated in accordance with the applicable provisions of the Satellite Performance Specification. Notwithstanding the foregoing, in no event shall the Stated Satellite Life exceed [REDACTED]

- 1.85 "Stated Satellite Life Remaining" means Stated Satellite Life less the days in orbit since Hand Over for each Satellite.
- 1.86 "Statement of Work" or "SOW" means the Statement of Work attached as Exhibit A to this Contract, which is incorporated herein and made a part of this Contract.
- 1.87 "Subcontractor" means a Person which has been awarded a subcontract by Boeing to provide a portion of the Work covered by this Contract.
- 1.88 "Successful Completion" or "Successfully Completed" as to any test or milestone related to a particular Satellite shall mean that the relevant task(s) and test(s) have been completed and the corresponding test report(s) and test data, if applicable, have been delivered to Customer (if required hereunder) and the item has been demonstrated, through all required tests and as shown in test data, to conform to the applicable requirements of the Contract and Performance Specifications without any unresolved defects or anomalies which require a waiver in accordance with the Product Assurance Plan, Exhibit C. If, prior to Launch, a defect is discovered after the associated milestone is closed or the applicable review has taken place and has been approved by Customer, the associated milestone shall be deemed reopened, and no further milestones may be completed unless or until the prior milestone is again Successfully Completed. Successful Completion shall require the certification of Contractor and the concurrence of Customer, not to be unreasonably withheld, conditioned or delayed. Contractor's certifications that all criteria have been met for the Satellite to be "Ready for Shipment" and "Ready to Launch", including as to the completion and accuracy of all associated tests and test data, shall be accompanied by a single certification in the form attached as Exhibit I hereto duly executed by the Program Manager and the President of Contractor, each to this effect.
- 1.89 "Successfully Launched Satellite" means a Satellite that has been launched and meets both of the following conditions as mutually determined by the Parties in their respective reasonable judgment:

- (a) The elements of the Satellite's Transfer Orbit established by the Launch Vehicle and the spin axis orientation and time of separation are each within [REDACTED] limits of the Launch Vehicle performance as established in the interface control document or equivalent relating to the specific Satellite; and
- (b) The relevant Satellite has not suffered damage caused by (i) the Launch Vehicle, or any action or inaction of the Launch Provider, or (ii) the Launch of the Satellite into an inappropriate Transfer Orbit.
- 1.90 "Successfully Operating Satellite" means, for each Satellite, that the Satellite meets all of the Performance Specifications in Exhibit B, taking into account the margins stated therein, ~~including without limitation that all Transponders are Successfully Operating~~ Transponders, and the Satellite has sufficient fuel, power, and other bus Components to be reasonably predicted to operate in said condition for the Specified Operational Lifetime of the Satellite, and the Satellite has not suffered a Loss. A defect in the Satellite that can be satisfactorily corrected by operating via a redundant Component on the Satellite will not be deemed to affect the successful operation of the Satellite if there is no reasonable basis to conclude that the Satellite will not meet the Specified Operational Lifetime.
- 1.91 "Successfully Operating Transponder" means a Transponder that (i) meets the performance requirements set forth in the Spacecraft Technical Specification in sunlight and eclipse environments, and operates in a manner consistent with its intended communications purpose, and (ii) is not adversely impacted by some other failure on the Satellite (i.e., a loss of power). A Successfully Operating Transponder shall not have a Transponder Failure. A Successfully Operating Transponder that becomes a Transponder Failure, but later is restored, shall again be deemed to be a Successfully Operating Transponder if the nature of the failure and restoration makes it reasonably predictable that such a failure will not reoccur.
- 1.92 "Taxes" means all taxes, duties, fees, levies, bonds, duties, charges, contributions, or any other such fiscal burden.
- 1.93 "Technical Data and Information" means documented information that is directly related to the design, development, use, operation, and maintenance of the Satellite. This includes, for example, information in the form of drawings, photographs, technical

writings, pictorial reproductions and specifications. This term does not include ground computer software, financial reports, cost analysis and information incidental to Contract administration.

- 1.94 "Terminated Ignition" shall have the same meaning ascribed to such term in the applicable Launch Services Contract for Launch of the particular Satellite.
- 1.95 "Total Loss" means, with respect to a Satellite, the complete loss, destruction or failure of such Satellite.
- 1.96 "Total Payload Failure" shall have the meaning accorded to it in the Launch Insurance Policy or Policies procured by Customer for the Satellite or Satellites.
-
- 1.97 "Total Satellite Failure" shall have the meaning accorded to it in the Launch Insurance Policy or Policies procured by Customer for the Satellite or Satellites.
- 1.98 "Transfer Orbit" shall mean the specified Transfer Orbit consistent with the interface control document or equivalent document created by the Launch Provider, Contractor and Customer, relating to the planned Launch of the specific Satellite, and corresponding to the period of time that would start at separation from the Launch Vehicle and end when the Satellite performs its first planned maneuver that would result in a change of Orbit.
- 1.99 "Transponder" means individually those sets of equipment within the communications subsystem of each Satellite that provide a discrete path to receive communications signals from earth, translate and amplify such signals, and transmit them back to earth. A transponder shall mean any one of those designated Ka Band RF carrier downlink frequencies modulated to carry the high definition digital video programming (as realized by the single use or multiple spot-beam reuse of the allocated Ka-Band downlink frequencies of the frequency plan defined in Exhibit B), at the Satellite Orbital Location specifically defined in Exhibit B, Spacecraft Technical Specification. The term "Communications Channel" shall have the same meaning as "Transponder."
- 1.100 "Transponder Failure" means, at any time after Launch, the permanent failure (including Permanently Intermittent failures) of a Transponder to meet the requirements of the Spacecraft Technical Specification, Exhibit B, provided that after all reasonable

technical alternatives for correcting such failure are examined (i) the Transponder cannot be used, as determined by DIRECTV in its sole discretion, for its intended commercial communications purpose, or (ii) consistent with telemetry data, IOT or other evidence that manifests itself after Launch, the Transponder is expected to fail before the end of Stated Satellite Life. In determining whether a Transponder is a Transponder Failure, all available redundant and/or spare components on the Satellite applicable to the Transponder must be used or cease to be available. Failure of a Transponder to meet one or more of the requirements of the Spacecraft Technical Specification in the manner in which Customer is using it (consistent with the intended communications use) shall not be deemed to be a Transponder Failure if that same Transponder is able to satisfy the end-to-end requirements of the Spacecraft Technical Specification using redundant Components on the Satellite.

- 1.101 "Underwriting Information" shall mean the information provided to the insurance underwriters (or potential underwriters) for the Launch Risk Insurance Policy with respect to the applicable Satellite (or other similar satellites of the same class).
- 1.102 "United States Government" means the government of the United States, including any agencies, commissions, branches, instrumentalities and departments thereof.
- 1.103 "Vendor Software" means the proprietary computer software programs, in object code form, and related documentation developed by Contractor's vendors or Subcontractors and delivered under the Contract.
- 1.104 "Waiver Payment" has the meaning set forth in Paragraph 6.16.
- 1.105 "Work" means all labor, services, acts (including tests to be performed), items, materials, articles, data, documentation, equipment, matters and things to be furnished, and rights to be transferred, by Boeing to Customer in the performance of this Contract.

ARTICLE 2 SCOPE OF WORK

2.1 In accordance with the terms and conditions of this Contract, Boeing shall manufacture and sell, and Customer shall purchase, the Satellites and other items referred to in Article 3, Delivery Schedule. Boeing shall furnish and perform the Work in accordance with the provisions of this Contract and in the manner specified in the following documents, which are attached hereto and made a part of this Contract:

<u>Document</u>	<u>Dated</u>
Exhibit A - Statement of Work	August 6, 2004
Exhibit B - Spacecraft Technical Specification	July 16, 2004
Exhibit C - Spacecraft Product Assurance Plan	July 16, 2004
Exhibit D - Spacecraft Integrated Test Plan	July 16, 2004
Exhibit E - Payment Plan	July 28, 2004
Exhibit F - Certain Documentation	August 6, 2004
Exhibit G - Form of Performance Guaranty (Boeing)	August 6, 2004
Exhibit H - Form of Performance Guaranty (DIRECTV)	August 6, 2004
Exhibit I - Form of Contractor Certification	August 6, 2004

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

- A. Contract Articles
- B. Payment Plan (Exhibit E)
- C. Statement of Work (Exhibit A)
- D. Spacecraft Technical Specification (Exhibit B)
- E. Spacecraft Product Assurance Plan (Exhibit C)
- F. Spacecraft Integrated Test Plan (Exhibit D)
- G. Certain Documentation (Exhibit F)
- H. Form of Performance Guaranty (Exhibit G)
- I. Form of Performance Guaranty (Exhibit H)
- J. Form of Contractor Certification (Exhibit I)

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ARTICLE 3 DELIVERY SCHEDULE

3.1 The following goods (including Satellites) and services to be provided under this Contract shall be delivered on or before the dates specified below. [REDACTED]

Item	Date of Delivery or Performance	Place of Performance
1. Satellite 1 Ready for Shipment	[REDACTED] May 2007)	El Segundo, CA
2. Satellite 2 Ready for Shipment	[REDACTED] August 2007)	El Segundo, CA
3. Satellite 3 Ready for Shipment	[REDACTED] November 2007)	El Segundo, CA
4. Ground Segment Software	Per Exhibit A	El Segundo, CA
5. Space Segment Software	Per Exhibit A	El Segundo, CA
6. Launch Site Operations	Per Exhibit A	El Segundo, CA
7. Mission Operations (including Transfer Orbit, pre-operation services and IOT)	Per Exhibit A	El Segundo, CA
8. Training and other Services	Per Exhibit A	El Segundo, CA
9. Contract Deliverable Data and other Deliverables	Per Exhibit A	El Segundo, CA
10. Documentation and Certain Documentation	Per Exhibit A	El Segundo, CA

3.2 Contractor shall be responsible for the packaging and shipping: (a) of the Satellites to the Launch Site, and (b) of all other Deliverables.

3.3 [REDACTED]

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- 3.4 Contractor's Key Personnel assigned to the P904 Program shall be designated in writing within thirty (30) Days of Contract execution and shall include employees in each major subsystem of satellite manufacturing, in accordance with SOW Article 2.1.3.1. Contractor shall not reassign the Key Personnel initially assigned to the P904 Program until program completion unless Customer reasonably requests a change in Key Personnel or unless a prudent and necessary business reason dictates otherwise. To the extent any Key Personnel are removed from the program, Customer shall be immediately notified and replacement personnel in the same specialty with at least the same or substantially the same qualifications and experience as the departing personnel shall be promptly assigned. Any changes in Key Personnel shall be discussed with Customer before the change is implemented. Contractor shall reconsider such change if Customer has a reasonable and good faith reason for objecting to such change.
- 3.5 The Parties acknowledge the critical importance to Customer of completion of the work on schedule, and, in order to protect the P904 Program schedule, agree to the following:
- 3.5.1 Monthly Senior Management Reviews shall be held to discuss, analyze and monitor the P904 Program status and schedule;
- 3.5.2 Within thirty (30) days of EDC, Contractor shall perform a Staffing Review demonstrating how the schedule will be supported by Contractor's personnel;
- 3.5.3 Within thirty (30) days of EDC Contractor shall perform a Schedule Review. At the Schedule Review, Contractor shall present a nominal, zero contingency milestone schedule that will support a [REDACTED] schedule for Satellite 1 and a [REDACTED] delivery for Satellite 2.
- 3.5.4 Throughout Contract performance, Contractor shall commit to taking appropriate actions (which may include, but not be limited to, adding resources or assigning alternate personnel to the P904 Program) as coordinated with Customer in the event that the Delivery schedule is not being met;

- 3.5.5 Within [REDACTED], Contractor shall perform a Preliminary System Requirements Review presenting the detailed service availability model and transponder distortion simulation model;
- 3.5.6 Within [REDACTED], Contractor shall perform a System Requirements Review presenting complete satellite requirements (payload and bus) as derived from the contractual availability specification;
- 3.5.7 Within [REDACTED] Program Preliminary Design Review, Contractor shall present a test capability review (system level ground and in-orbit testing) demonstrating the adequacy of the design to accomplish system level verification; and
-
- 3.5.8 Within [REDACTED] after the P904 Program Critical Design Review, Contractor shall perform a Test Phase Readiness Review, during which an Independent Review Team shall be formed to perform detailed planning for the test phase of the P904 Program.

ARTICLE 4 CONTRACT PRICE AND PAYMENT

4.1 Contract Price and Payment

4.1.1 The Contract Price is [REDACTED]. This amount is the total price for Boeing's performance of the Contract. The Contract Price includes, the design, construction and pre-Launch testing of the Satellites, delivery of the Satellites to the Launch Site, the Ground Segment Software and Space Segment Software, Launch Site Operations, Mission Operations, (including the use of any ground stations or other services necessary for such operations), IOT, Contractor personnel costs (including transportation, traveling, lodging and meals, if any), Training and all other Deliverables, Documentation and services required pursuant to the terms of this Contract. Customer shall pay the Contract Price to Boeing in accordance with the terms set forth herein and in Exhibit E, Payment Plan. Line item prices are set forth below.

<u>Item</u>	<u>Price</u> <u>(US\$M)</u>
1. Satellite 1, Satellite 2 and Satellite 3	[REDACTED]
2. Launch Site Operations	[REDACTED]
3. Mission Operations	[REDACTED]
4. Ground Segment Software	[REDACTED]
5. Space Segment Software	[REDACTED]
6. In-Orbit Testing	[REDACTED]
7. Training	[REDACTED]
Total	[REDACTED]

* This price includes approximately [REDACTED] of non-recurring costs for the design and development of the Satellites.
[REDACTED]

4.1.2 In accordance with Article 16, the Contract Price also includes all Taxes (other than foreign (non-United States – either federal or state) Taxes), duties, transportation, insurance and all other similar costs and charges associated with

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Contractor's performance of the Work. Contractor shall be responsible for payment of all such Taxes and duties and other similar charges, and shall indemnify and hold Customer harmless therefrom.

4.1.3 The Contract Price does not include the cost of Launch Services or Launch Insurance.

4.2 Invoices

4.2.1 Invoices submitted to Customer for payment shall contain a cross-reference to the Contract number and the information specified in Exhibit E, Payment Plan.

All invoices shall include a reference to the payment milestone completed along with a certification from the P904 program manager that such milestone has been successfully completed (a "Certified Invoice"). Boeing shall submit one (1) original Certified Invoice in each instance to:

DIRECTV Operations, LLC.
2230 E. Imperial Highway
El Segundo, CA 90245
Attention: Accounts Payable
Telephone: (310) 726-4715

With copies to:

Mr. Philip Goswitz (Facsimile: (310) 964-1266)
Mr. Larry Eckert (Facsimile: (310) 964-3627)
Mr. Brian Regan (Facsimile: (310) 964-4883)

or as Customer may otherwise direct pursuant to Article 24.

4.2.2 Certified Invoices for milestone billings (in accordance with Exhibit E) are to be submitted after completion of the applicable milestone event(s). The dates shown in Exhibit E are for planning purposes only and all milestones will be invoiced upon Successful Completion of the applicable milestone. Milestones that are Successfully Completed early may be invoiced and paid prior to the date listed in Exhibit E, provided that the inception-to-date cumulative total of the invoiced amounts does not exceed the cumulative yearly total as of the date of the invoice. In any event, Customer shall not be required to pay

invoiced amounts in excess of the then current yearly cumulative total, unless agreed by Customer. Within [REDACTED] receipt of a milestone-billing invoice, Customer shall either approve the Certified Invoice for payment or provide notice to Boeing of its disapproval of the invoice and written justification for the disapproval. If Customer has not given notice of disapproval within [REDACTED], then the Certified Invoice shall be deemed approved.

4.2.3 For all approved Certified Invoices, Customer shall make payments to Contractor for all amounts due no later than [REDACTED] after receipt of such invoice.

4.3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.4 Contractor shall not be obligated to deliver a Spacecraft to the Launch Site if there are any outstanding Delinquent Payments related to the specific Satellite owed by Customer to Contractor under this Contract [REDACTED] prior to shipment of such Spacecraft from the Boeing facility. Once Customer has paid Contractor for any Delinquent Payments and any interest accrued in accordance with Paragraph 4.3 above, Contractor shall use its best reasonable efforts to ship the applicable Spacecraft to the Launch Site so as to enable Launch on the scheduled Launch Date and in any event to make shipment as soon as practicable. Customer will be responsible for and will pay Contractor any actual and reasonable costs and [REDACTED] on such costs that Contractor may incur as a result of a delay in Delivery due to Customer's Delinquent Payments. This Paragraph 4.4 shall not relieve Contractor of its obligation to deliver the Satellites, and no Delinquent Payment shall be deemed to have occurred, due to any non-payment by Customer on account of an alleged breach by Contractor or other dispute as to such payment.

4.5 In the event that a Satellite is not a Successfully Launched Satellite due to failure or malfunction of the Launch Vehicle, action or inaction of the Launch Provider, or

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Launch of the Satellite into an inappropriate Transfer Orbit, Contractor will be entitled to receive any payments remaining under the Contract associated with such Satellite, less [REDACTED] for Mission Operations and other services which will not be performed. CONTRACTOR'S LIABILITY AND THE RIGHTS AND REMEDIES OF CUSTOMER UNDER THIS ARTICLE 4.5 AND ARTICLE 8 ARE IN LIEU OF ALL OTHER RIGHTS AND REMEDIES FOR A SATELLITE THAT IS NOT A SUCCESSFULLY LAUNCHED SATELLITE WHETHER SUCH LIABILITY, RIGHTS AND REMEDIES ARISE UNDER CONTRACT, TORT, STATUTORY WARRANTIES, LAW OR EQUITY.

4.6 All payments to Contractor shall be in U.S. currency and shall be made by electronic funds transfer (EFT) to the following bank and account:

BOEING SATELLITE SYSTEMS, INC.
ACCOUNT No. 123341404
BANK OF AMERICA
CHICAGO, ILLINOIS
[REDACTED]

or such other account or accounts as Contractor may specify in writing to Customer.

ARTICLE 5 CERTIFICATIONS, APPROVALS, ACCEPTANCE

5.1 Consistent with the provisions of Article 12, Access to Work in Progress and Data, Contractor agrees that Customer shall be entitled to review and approve the Work as part of the Pre-Shipment Review (as defined in the Statement of Work) ("Preliminary Approval") and the Launch Readiness Review ("Final Approval"), and Customer's written approval is required before Contractor may ship the particular Satellite or declare it Ready for Launch. Contractor's duties prior to Preliminary Approval and Final Approval are as set forth in this Article 5 and the SOW.

5.1.1 Contractor is responsible for testing, demonstrating, and [REDACTED] (on the form set forth in Exhibit I) that each Satellite and all other Deliverables and Work performed hereunder meet all of the applicable requirements of this Contract or as otherwise agreed between the Parties. Customer's right of inspection or approval shall not be deemed a waiver of any defect, except as may be expressly agreed in writing by Customer in accordance with Sections 6.16 and 6.17. [REDACTED]

5.1.2 [REDACTED]

5.1.3 Waivers (if any) of strict compliance to the Spacecraft Technical Specification required by Contractor shall be presented promptly when any circumstance that would require a waiver becomes known to it, and Customer shall consider all such waiver requests in good faith. Waivers shall be submitted and processed pursuant to Sections 5.1.3, 6.16 and 6.17. Customer shall be required to respond in writing to approve or deny a waiver request [REDACTED] of receipt of such waiver request. Nothing herein shall be deemed to

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require Customer to grant a waiver, but, if it is willing to consider doing so, the Contract Price may be adjusted by an amount negotiated in accordance with Sections 6.16 or 6.17. A waiver will only become effective if all of the terms of such waiver are mutually agreed to by the Parties (subject, if applicable, to a dispute resolution as to the Waiver Payment or mass penalty in accordance with Sections 6.16 or 6.17 for such waiver), and Contractor may, at any time, withdraw a request for a waiver. Customer's refusal, [REDACTED] to grant a waiver of a material non-conformance from the terms of this Contract shall not excuse Contractor's performance of the Work hereunder by the dates specified in Article 3.

5.1.4 Approved waivers to the Spacecraft Technical Specification amend the performance and operational requirements for Acceptance of the applicable Satellite and the determination of In-Orbit Performance Payments.

5.2 The procedure for effecting a Pre-Shipment Review shall be as follows:

5.2.1 Contractor shall conduct a Pre-Shipment Review for each Satellite to obtain Customer's Preliminary Approval of the work, at Contractor's premises prior to shipping of the Satellite from its premises to the Launch Site or into storage.

5.2.2 The Pre-Shipment Review shall verify that:

- i. The Satellite testing has been Successfully Completed in accordance with Exhibit D, Test Plan, and the Satellite has successfully met or exceeded the Performance Specifications;
- ii. Subject to Section 5.3.1 below, all material discrepancies or non-conformances with the Performance Specifications have been corrected or dispositioned; and
- iii. The Satellite is Ready for Shipment and all Documentation as specified in Exhibits A, B, and F have been provided.

5.2.3 At least [REDACTED] or less if agreed by Customer, such Agreement not to be unreasonably withheld) prior written notice of the date of the Pre-Shipment Review shall be given by Contractor to Customer.

5.3 Preliminary Approval shall arise upon the occurrence of any of the following:

- i. The Pre-Shipment Review complies in all respects with the provisions of Section 5.2.2, and Customer notifies Contractor of its approval of the Pre-Shipment Review within [REDACTED] following Successful Completion thereof; or
- ii. The Pre-Shipment Review complies in all respects with Section 5.2.2 save for minor non-conformances that have not been corrected or dispositioned of which Contractor has notified Customer and as to which Contractor demonstrates at the review to the reasonable satisfaction of Customer have no adverse affect upon the capability of the Satellite to perform its on-orbit mission throughout its Specified Operational Lifetime, and Customer notifies Contractor of its approval of the Pre-Shipment Review within [REDACTED] following completion; or
- iii. Neither 5.3 (i) nor (ii) is met but Customer agrees in writing to grant a waiver of the non-conformance subject to: (A) payment by Contractor of a Waiver Payment or mass penalty pursuant to Sections 6.16 or 6.17; or (B) Customer's grant of "Conditional Preliminary Approval" and submission of the matter of the Satellite Price adjustment for Dispute Resolution under Article 30, in which case Contractor is authorized to, and shall, ship the Satellite to the Launch Site.

5.3.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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5.3.2 [REDACTED]

5.3.3 Upon Preliminary Approval of the Satellite, the Satellite shall be "Ready for Shipment" by Contractor to the Launch Site.

5.4 The procedure for effecting the Launch Readiness Review shall be as follows:

5.4.1 Prior to integration of each Satellite with its Launch Vehicle at the Launch Site, a Launch Readiness Review (LRR) shall be jointly conducted by Contractor and the Launch Provider, with Customer's participation, in accordance with the SOW and the Test Plan.

5.4.2 The purpose of the LRR shall be to confirm that:

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- i. Contractor has Successfully Completed all Launch Site Operations that Contractor is required to provide and the Satellite is Ready for Launch via the Launch Vehicle; and
- ii. Any defects or non-conformances as may remain from the Pre-Shipment Review (which Customer has specifically agreed in advance may be corrected at the Launch Site), or resulting from shipment or otherwise discovered during Satellite Launch preparations shall have been corrected or dispositioned by Contractor [REDACTED]

5.4.3 Upon Successful Completion of the LRR, the Satellite shall be "Ready for Launch" and released by Customer for Launch Vehicle integration by Contractor and the Launch Provider.

5.5 Once Contractor has Successfully Completed all activities necessary to support the Launch and the Satellite has been fueled, properly integrated in its launch configuration, and is ready for Intentional Ignition, "Final Approval" of the relevant Spacecraft shall occur, and thereafter the Parties shall proceed with the Launch of the Satellite; [REDACTED]

[REDACTED] "Final Approval" of the Satellite shall arise following the occurrence of each of the following events:

- i. Preliminary Approval (following Successful Completion of the Pre-Shipment Review as set forth in Section 5.3);
- ii. Successful Completion of the Launch Readiness Review, following shipment of the Satellite to the applicable Launch Site;
- iii. Agreement of the Parties that Contractor has performed those activities necessary to support the Launch, such agreement not to be unreasonably withheld, delayed or conditioned; and
- iv. The Satellite has been fueled, properly integrated in its launch configuration, and is ready for Intentional Ignition.

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5.9 Upon arrival of a Satellite at its Specified Orbital Location (or at its orbital test location if tests cannot be performed at the Specified Orbital Location) in accordance with the

[REDACTED]

5.8

[REDACTED]

5.7

Nothing in this Article 5 shall be construed to relieve Contractor of its duty to Deliver conforming products within the time periods originally specified in this Contract or to waive Customer's remedies if such items are not, or will not be, timely Delivered. In no event shall any "plan" proposed by Contractor to remedy any non-conformity be made contingent upon Customer's agreement to the waiver of any such late delivery remedy.

5.6

SOW, Contractor shall perform IOT as required by the SOW and the Test Plan to determine the status of operational performance of the Satellite. When IOT has been Successfully Completed for a Satellite, Contractor shall conduct an IOT Data Review Meeting (in accordance with the SOW), during which Contractor shall submit the IOT results to Customer. Within [REDACTED] after the completion of such IOT Data Review Meeting, Customer shall notify Contractor of its acceptance of the IOT results, and promptly authorize Contractor to move the Satellite to its Specified Orbital Location no later than [REDACTED] thereafter ("IOT Complete Date"). Notwithstanding any of the foregoing, Customer may direct Contractor to perform additional testing, beyond what is specified in the IOT Test Review, at any time during IOT or after receipt of the IOT results, and Contractor agrees to undertake such additional tests and commence work upon agreement of any financial and schedule considerations.

- 5.10 Final Acceptance of a Satellite shall occur at the earlier of (a) Hand Over, or (b) immediately prior to a Total Loss or Constructive Total Loss of the Satellite, or (c) the date which is the [REDACTED] after Launch. Acceptance of a Satellite is final and irrevocable.
- 5.11 The purpose of "Acceptance" and "Hand Over" of the Satellite under this Article 5 is to designate the commencement of the Performance Payments.
- 5.12 If, a Satellite is determined to be a Partial Payload Failure, Total Payload Failure, Total Satellite Failure, Total Loss or Constructive Total Loss, Customer shall be entitled to receive refunds to the extent provided by Launch Insurance Policy, if any, and a reduction of the amount of Performance Incentives owed as specified in Article 6, if any. Customer acknowledges that it is responsible for obtaining any necessary export licenses incident to providing Satellite information to insurers following any of the foregoing failures. In such circumstances, Boeing shall cooperate fully and promptly with Customer to enable Customer to file claims and collect under any Launch Insurance, including, without limitation, promptly provide Customer with all necessary or appropriate data required by Customer's insurers to analyze and process Customer's claim(s) and obtaining any necessary export licenses. CONTRACTOR'S LIABILITY AND THE RIGHTS AND REMEDIES OF CUSTOMER UNDER ARTICLE 5.12,

ARTICLE 6, AND ARTICLE 8 ARE IN LIEU OF ALL OTHER RIGHTS AND REMEDIES FOR A SATELLITE THAT IS NOT A SUCCESSFULLY OPERATING SATELLITE OR A TRANSPONDER THAT IS NOT A SUCCESSFULLY OPERATING TRANSPONDER WHETHER SUCH LIABILITY, RIGHTS AND REMEDIES ARISE UNDER CONTRACT, TORT, STATUTORY WARRANTIES, LAW OR EQUITY.

5.13

[REDACTED]

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ARTICLE 6 CONTRACT PRICE ADJUSTMENTS, INCENTIVES AND LATE FEES

6.1 In-Orbit Performance Incentives: Customer has requested to pay, and Contractor has agreed to accept, a portion of the Contract Price over the [REDACTED] of in orbit operation of each Satellite based on the performance of the respective Satellite according to the Performance Specifications. Contractor may assign the receipt of In Orbit Performance Payments to an Affiliate. The Performance Payments for each Satellite shall consist of (i) the Initial Successful Operations Payment, in the amount of [REDACTED] to be earned and invoiced at Hand Over, payable within [REDACTED] of receipt of such invoice, provided that the Satellite is a Successfully Operating Satellite; and (ii) the In Orbit Performance Payments, in an aggregate principal amount of [REDACTED] payable according to Section 6.2 below. In the event that the Satellite has suffered a Loss, but is not a Total Loss or Constructive Total Loss, and such Loss has not been caused by the Launch Vehicle, the Initial Successful Operations Payment shall be recalculated using the following formula:

$$\text{Loss Amount} = \text{Initial Successful Operation Payments} \times \left[1 - \frac{\text{Available Communications Capacity}}{\text{Stated Communications Capacity}} \right]$$

6.2 In Orbit Performance Payments shall be paid [REDACTED] in arrears over the [REDACTED] year period commencing at Hand Over (the "In Orbit Performance Payment Period") or at any time after Hand Over [REDACTED] In Orbit Performance Payments. [REDACTED]

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- 6.3 If during the In Orbit Performance Payment Period the Satellite ceases to be a Successfully Operating Satellite, Customer shall pay Contractor reduced In Orbit Performance Payments (at the times otherwise due) to reflect the relative loss of

performance of the Satellite. Customer shall promptly provide notice of any loss in the Satellite performance, along with technical data, reports, and/or analyses, and the Contractor shall be given an opportunity to verify such data. Should the Contractor disagree with such claim and present evidence to the contrary (including supporting technical data, reports, and/or analyses), then the Customer shall consider such evidence and the Parties shall attempt to resolve any disagreement in good faith. In the event that any disagreement cannot be resolved, then it shall be decided in accordance with ARTICLE 30, APPLICABLE LAW AND DISPUTE RESOLUTION. The reduction in remaining payments and previously paid but unearned incentives shall be calculated according to the Loss Formula set forth below, subject to the provisions of this Article 6.

$$\text{Loss Amount} = \text{Performance Payments Amount} \times \left[1 - \frac{\text{Available Communications Capacity}}{\text{Stated Communications Capacity}} \right]$$

For calculation purposes, the Loss Formula is expressed mathematically below:

$$LA = PPA_{sat} \times \left[1 - \frac{\left(\sum_{i=1}^T (LRp)_i * (A)_i * (Na)_i \right)}{\left(LR_s * \sum_{i=1}^T (Ns)_i \right)} \right]$$

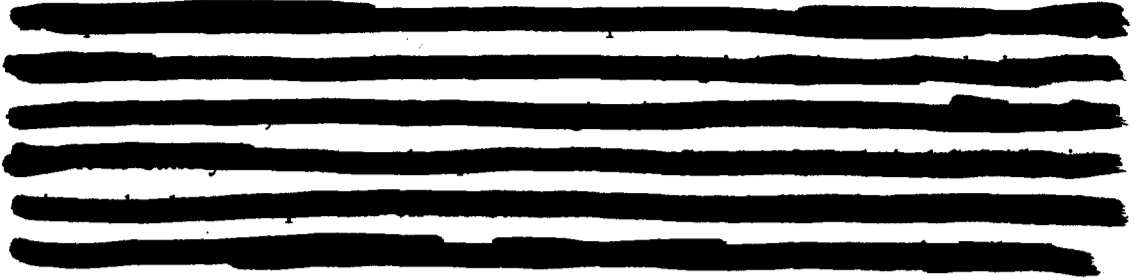


Table 6-2 provides the Stated Transponder Capacity for all of the Transponders for each Satellite.

Table 6-2 - Stated Transponder Capacity (S.T.C.)

*Table 6.2
Redacted*

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- 0.4 Except as set forth in Section 6.5 and Section 6.6 below, from and after the date that the Satellite suffers a Total Loss or Constructive Total Loss, no further Performance Payments shall be due.

6.5 If (i) the Satellite suffers a Partial Launch Failure due to a failure or malfunction of the Launch Vehicle; or (ii) after Hand Over, the Satellite ceases to be a Successfully Operating Satellite because of a failure of Customer (or Customer's contractors, other than Contractor) properly to operate the Satellite, Contractor shall be entitled to receive Performance Payments the same as and when such payments would have been due to it had such failure due to such causes not occurred; provided that the Performance Payments shall remain at risk as to any other failure of performance of the Satellite that is not due to such events. Without limitation, in any circumstances in which (i) Customer (or Customer's contractors) properly follows written operational procedures recommended by Contractor, or (ii) Contractor is operating the Satellite, either under this Contract or the Long-Term Operations & Services Agreement, then in either case, the Satellite shall be deemed to have been properly operated under the preceding sentence. If, prior to Launch, Customer decides to offload propellant from the Satellite, and such decision results in a reduction of the Specified Orbital Lifetime, then the Performance Payments shall be calculated against the reduced Specified Orbital Lifetime.

6.6 In the event that a Satellite is a Total Loss or Constructive Total Loss due to failure or malfunction of the Launch Vehicle, the entire amount of the Performance Payments associated with such Satellite shall become immediately due and payable, less [REDACTED] for Mission Operations and other services which will not be performed, (provided such services are not actually performed), as referenced in Section 4.5.

6.7 [REDACTED]
[REDACTED]
[REDACTED] Any dispute with respect to the timing and amount of Performance Payments may be referred by either Party for resolution under Article 30, Applicable Law and Dispute Resolution.

6.8 If through no failure, in whole or in substantial part, of Contractor to perform, and not as a result of an Excusable Delay under Article 13, the Satellite is not Launched within [REDACTED] Months of the date that the Satellite was Ready for Shipment, then Customer shall commence making Performance Payments as if Hand Over occurred on that [REDACTED]

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[REDACTED] date; provided that if the Satellite is subsequently Launched and fails to perform according to the Performance Specifications such that Contractor would not be entitled to said Performance Payments, such unearned Performance Payments or portion thereof shall be repaid by Contractor to Customer plus interest (from the date of Customer's payment to the date of Contractor's refund) at the Discount/Interest Rate.

6.9 Neither Contractor nor its Affiliates shall procure an insurance policy, nor shall it be named a beneficiary of an insurance policy procured by a third party, with the intent to pay Contractor for Performance Payments in the event that one or more of the Satellites ceases to be a Successfully Operating Satellite.

6.10 Schedule Incentives: As an incentive to Contractor to comply with the Delivery Schedule for Satellite 1, Customer agrees to pay Contractor up to [REDACTED] in the event that Contractor completes the milestone event, as agreed by the Parties, by the required completion date, as allocated below:

Milestone Event	Required Completion Date	Incentive Amount
Completion Of Antenna Range Testing	[REDACTED]	[REDACTED]
Communications Panel Integration Complete	[REDACTED]	[REDACTED]
Single Line Assembly Flow Start (Bus/Payload Mate complete)	[REDACTED]	[REDACTED]

If Contractor fails to earn a schedule incentive associated with one milestone, but then meets a subsequent milestone to which an incentive is attached, the previous incentive will be deemed earned and paid as well. Should Contractor deliver Satellite 1 within [REDACTED] months after EDC, the entire [REDACTED] schedule incentive shall be deemed earned and paid, regardless of whether Contractor met the milestone events described above. If a portion of the schedule incentive is unearned as of the date that is [REDACTED] months after EDC, that remaining portion shall be added to the early delivery incentive amount for Satellite 1.

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6.11 Early Delivery Incentives: As an incentive to Contractor to have Satellite 1 and Satellite 2 "Ready for Shipment" by a date that is earlier than the applicable Date of Delivery specified in Article 3, as such date may be adjusted pursuant to Article 22, Changes (and not taking into consideration any excusable delays, as described in Article 11, other than those caused by Customer), Customer agrees to pay Contractor up to [REDACTED] ([REDACTED] allocated to Satellite 1 and [REDACTED] allocated to Satellite 2) for reductions of up to [REDACTED] Months in the Delivery Schedule for each Satellite.

6.11.1 The Satellite 1 early delivery incentive amount of [REDACTED] ([REDACTED] plus any remaining schedule incentive amount pursuant to Paragraph 6.10 above) shall be allocated evenly (on a straight line basis) over the [REDACTED] month period prior to the Satellite 1 Date of Delivery.

6.11.2 The Satellite 2 early delivery incentive amount of [REDACTED] shall be allocated evenly (on a straight line basis) over the [REDACTED] month period prior to the Satellite 2 Date of Delivery.

6.12 Liquidated Damages: In the event Satellite 1 and/or Satellite 2 is not completed and Ready for Shipment by the date set forth in Article 3, then commencing on the [REDACTED] day after the applicable Ready for Shipment Date, and continuing for [REDACTED] Days thereafter that the specific Satellite is not Ready for Shipment, (such period referred to herein as the "Damages Period"), the Contract Price shall be reduced by:

6.12.1 For Satellite [REDACTED] per Day; and/or

6.12.2 For Satellite [REDACTED] per Day,

provided, however, that no Liquidated Damages shall be paid to the extent Boeing's failure to deliver the applicable Satellite by the Ready for Shipment date is solely the result of an Excusable Delay under Article 11 or an adjustment to the delivery and/or Launch schedule(s) caused by mutually agreed upon Changes under Article 22.

6.13 The Contract Price reductions specified in Paragraph 6.12 shall be the sole remedy of Customer in the event of a delay in the delivery of Satellite 1 or 2 by the Ready For

Shipment date as specified in Article 3, until the Damages Period is over, and shall be in lieu of all damages of any kind or any right to terminate this Contract for default, except to the extent provided in Paragraph 17.1 hereof. The Contract Price reduction specified in Paragraph 6.12 shall constitute liquidated damages for any such late delivery (and shall not constitute a penalty), the Parties acknowledging that such liquidated damages are believed to represent a genuine estimate of losses that would be suffered by Customer by reason of any such delay (which losses would be difficult or impossible to calculate with certainty). In the event the Damages Period has expired and the Contract Price has been reduced by the maximum amount specified in Paragraph 6.15, then, at any time thereafter but prior to actual Delivery of Satellite 1 or Satellite 2, as applicable, Customer may exercise its right to terminate this Contract for Boeing's default pursuant to Paragraphs 17.1, in which case Customer's rights and remedies shall be governed by the provisions of that Article. Except for as specified in Article 17, Customer shall have no other rights or remedies for late Delivery of an item to be delivered under this Contract. The liquidated damages specified in Paragraph 6.12 shall not be applicable to a Satellite which is delivered for purposes of storage, unless such storage was required due to Boeing's unexcused delay.

- 6.14 In the event of a late delivery requiring a reduction in Contract Price pursuant to the foregoing, the Parties shall equitably adjust the payment plan set forth in Exhibit E hereto, if appropriate.
- 6.15 The maximum price reduction for late delivery under this Contract shall never exceed an aggregate amount [REDACTED] for late delivery of Satellite 1 plus [REDACTED] for late delivery of Satellite 2)).
- 6.16 Waiver Payments: Except as stated in Section 6.17, if it is determined by the Parties pursuant to Section 5.1.3 that a waiver of a Performance Specification is required, the Parties shall negotiate in good faith a Waiver Payment for each Satellite. Provided, however, that if the non-compliance has no material impact on the performance of the Deliverable, [REDACTED] no Waiver Payment shall be due. Any required Waiver Payment shall be paid by Contractor to Customer, and shall result in an adjustment to the Satellite Price. For the avoidance of doubt, any payment of a mass penalty pursuant to Section 6.17 below shall preclude any

Waiver Payment attributable to the same nonconformance caused by mass growth (i.e., reduction of Specified Operational Lifetime).

6.17 Satellite Mass Penalties: The stated dry mass for each Satellite shall be [REDACTED] (the "Stated Mass").

6.17.1 In the event the Stated Mass is exceeded such that any Satellite cannot be Launched on any one of the Launch Vehicles specified in Article 7 capable of achieving the Specified Operational Lifetime, Customer may, at its sole discretion, impose a mass penalty upon Contractor equal to the lesser of (a) the Loss Amount calculated against the price of the Satellite (not including non-recurring costs) using the Loss Formula associated with the loss of Specified Operational Lifetime; or (b) [REDACTED] and/or

6.17.2 In the event the actual Satellite mass exceeds the Stated Mass, such that Customer is responsible for mass penalties in accordance with the Launch Services Contract, Contractor shall be responsible for such penalties that are actually incurred, provided, however, that Contractor shall not be responsible for mass penalties that exceed [REDACTED] per each kilogram. Upon procurement of Launch Services, Customer shall notify Contractor of any potential mass penalties included in the relevant Launch Services Contract.

6.17.3 Contractor's total mass penalties pursuant to this Section 6.17 shall not exceed [REDACTED] per Satellite, and the total mass penalties pursuant to Section 6.17.2 shall not exceed [REDACTED] per Satellite.

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ARTICLE 7 LAUNCH SERVICES / MISSION INTEGRATION

- 7.1 Contractor shall perform engineering and coordination efforts necessary to ensure that each Satellite will meet the Launch requirements set forth in Paragraph 3.2 of Exhibit B, and will ensure that the Satellites will be technically compatible for Launch on each of the following potential launch vehicles: Sea Launch (6100), Arianespace 5 ECA, Atlas 5 (521) and/or ProtonM/BreezeM Long Fairing Phase 1 (the "Candidate Launch Vehicles"). Contractor shall not take any action during the construction of the Satellites that would preclude Launch by any of the Candidate Launch Vehicles. Contractor agrees to provide Customer with technical and other information that is reasonably available to it in connection with the selection of a Launch Service.
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- 7.2 Customer shall contract directly with the Launch Provider for the Launch Services for each Satellite and shall pay the Launch Provider directly the required payments for the Launch Services. Promptly after procuring the Launch Vehicle, but in no event less than [REDACTED] (the "Launch Service Selection Date") prior to the relevant scheduled Ready for Shipment date in Article 3, Customer shall notify Contractor of the selected Launch Vehicle for each Satellite. In the event Customer subsequently switches to another Launch Service or does not notify Contractor of the selected Launch Vehicle as provided above by the Launch Service Selection Date for the particular Satellite, a change shall be made in accordance with Article 22, Changes. Contractor shall then perform any necessary manufacturing, engineering and coordination efforts to make the applicable Spacecraft compatible with the newly designated Launch Service. Such efforts will be undertaken as promptly as reasonably practicable taking into account any newly scheduled Launch Date. Notwithstanding the foregoing notice requirement, Contractor acknowledges that Customer must retain flexibility to change Launch Vehicles after the Launch Service Selection Date as a result of Launch Vehicle delays or failures. Accordingly, Contractor agrees to continue to perform such analyses and other Launch Vehicle compatibility Work, as directed by Customer in accordance with Article 22, Changes, as may be necessary or desirable to ensure Customer's ability to change Launch Vehicles.
- 7.3 All communications between Contractor and the Launch Provider related to the Launch of the Satellite shall be conducted through or at the direction of Customer's representative.

7.4 Boeing agrees to use best reasonable efforts to support the Launch of each Satellite within the Launch Period, Launch Slot or on the Launch date, as applicable, including, without limitation, making all arrangements for the Launch Readiness Review and IOT necessary to support such Launch Date. If for any reason Boeing anticipates any potential delay in the Launch of the Satellite, caused by Boeing (or any of its Subcontractors) in delivery of Satellite, Boeing shall promptly notify Customer of such potential delay. For purposes of its mission planning and assisting in the development of the Launch Vehicle interface control document (or equivalent document), Contractor shall proceed with the understanding that the terms Apogee Altitude, Perogee Altitude, and Launch Vehicle Trajectory will have the meanings defined herein, unless otherwise agreed in writing. Contractor is responsible for ~~determining the Separation Window based upon applicable user guide information and~~ supplemental orbital elements provided by the Launch Provider. In addition, Contractor shall review the Launch Window and Launch Vehicle Trajectory analyses to ensure that such Launch Window and trajectory is consistent with the Satellite technical requirements stated in the Exhibit A, Statement of Work, and Exhibit B, Spacecraft Technical Specification.

ARTICLE 8 INSURANCE

8.1 Customer may, at its sole discretion, purchase a Launch Insurance Policy (or Launch Insurance Policies) covering one or more of the P904 Program Satellites. Customer's Launch Insurance insurers shall waive rights of subrogation against Contractor as specified in Article 15.2.

8.2 Except as otherwise set forth in Paragraphs 4.5, and 6.1 through 6.9, the Parties agree that the Launch Insurance Policy shall be Customer's sole remedy in the event of a Launch Failure, Partial Payload Failure, Total Payload Failure or Total Satellite Failure as defined in the relevant Launch Insurance Policy for each Satellite.

8.3 Contractor shall provide reasonable assistance to Customer, upon request, for (a) the procurement of a Launch Insurance Policy or Policies, and/or (b) the filing of any claims or pursuit of any proceeds pursuant to such Policy or Policies, and/or (c) the provision of Underwriting Information. Such assistance shall include attendance and participation in insurance briefings and responses to the requests of the insurance underwriters, all subject to the compliance with United States' export laws and regulations.

8.4 [REDACTED]

8.4.1 [REDACTED]

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[REDACTED]

8.4.2 [REDACTED]

8.5 [REDACTED]

8.6 Contractor's insurance policies required by this Article 8 shall waive rights of subrogation against Customer. Contractor shall provide to Customer evidence of insurance required by this Article 8 upon Customer's request.

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ARTICLE 9 PERMITS AND LICENSES; GOVERNMENT APPROVALS

- 9.1 Boeing shall, at its own expense, obtain (1) all United States Government export licenses to enable export of each Satellite, related test and support equipment to the Launch Site and disclosure of information reasonably requested by Customer's foreign insurers and (2) all authorizations required for Boeing to perform this Contract. Boeing shall obtain, and shall cause its Subcontractors to obtain, the foregoing licenses and permits as soon as commercially practicable prior to the Ready for Shipment Dates of Delivery (set forth in Paragraph 3.1 hereof), and shall notify Customer when such licenses and permits have been requested and granted. Contractor shall provide to Customer copies of any and all applications to the U.S. Department of State for export licenses or Technical Assistance Agreements that Contractor seeks to obtain in connection with the P904 Program. Notwithstanding the foregoing, (i) the failure or refusal of the United States Government to issue a required export license, or (ii) the United States Government's withdrawal or revocation of a previously issued export license, in either case not resulting from any failure on the part of Boeing to undertake reasonable and appropriate steps to obtain and maintain such required licenses or permits in a timely manner, or (iii) the authorization by the United States Government of the export (a) of less than all of the information requested by Customer's foreign insurers or (b) to fewer than all of Customer's foreign insurers (provided in the case of both (a) and (b) that Boeing has used commercially reasonable efforts to obtain such export license) shall be deemed to be an act beyond the control of Boeing and therefore shall constitute a Force Majeure Event under Article 11, Excusable Delays.
- 9.2 Boeing shall perform the Work in accordance with all applicable laws, government rules, regulations and ordinances of the United States Government, including, without limitation, the International Traffic in Arms Regulations ("ITAR") and the conditions of all such applicable United States Government permits and licenses. After Hand Over, Customer shall have the sole responsibility to obtain reapproval or reissuance of permits and licenses, if required, and to comply with the conditions of all such applicable United States Government permits and licenses and Boeing shall cooperate with Customer to the extent reasonably necessary to obtain such permits and licensing, including, without limitation, providing data and information about the Satellites.

- 9.3 Notwithstanding this or any other Article in this Contract, the Parties understand and agree that certain restrictions are placed on access to Boeing's plant and the use of Technical Data and Information and hardware delivered under this Contract with respect to the approvals, permits and licenses Boeing must obtain from the United States Government. Customer further agrees that all Customer's Consultants and employees used to monitor the performance of this Contract will be non-foreign nationals working for U.S. companies unless permission is otherwise granted by Boeing.
- 9.4 The documentation and hardware ("products") furnished under this Contract will be authorized by the United States Government for export only to the Designated Launch Site for Launch into space. From and after Hand Over (as defined in Paragraph 5.4.2), the products may not be resold, diverted, transferred, trans-shipped or otherwise be disposed of in any other country or in any other manner, either in their original form or after being incorporated through an intermediate process into other end items without the prior written approval of the United States Government, which approvals are the sole responsibility of Customer. Additionally, transferring registration or control to any other non-U.S. person or non-U.S. business entity of the products furnished under this Contract is considered an export and as such also requires prior written approval from the United States Government, which approvals are the sole responsibility of Customer. Customer represents and warrants that the ultimate end use of the products is for telecommunications and broadcast services.

ARTICLE 10 TITLE AND RISK OF LOSS

- 10.1 For each Satellite, risk of loss or damage to the Satellite shall pass from Boeing to Customer upon Intentional Ignition, provided, however, that in the event of a Terminated Ignition, risk of loss or damage to the Satellite shall revert back to Contractor until the subsequent moment of Intentional Ignition during the next Launch attempt.
- 10.2 Title for each Satellite shall pass from Boeing to Customer upon the earlier of:
- 1) Final Acceptance as defined in Article 5.10; or
 - 2) that date which is [REDACTED] Launch; or
 - 3) in accordance with Paragraph 32.4.
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- 10.3 Contractor warrants to Customer that it has and will transfer to Customer good title to each Satellite and all other Deliverables required to be delivered hereunder, free from any claim, lien, pledge, mortgage, or [REDACTED] subject to the provisions of this Contract.

ARTICLE 11 EXCUSABLE DELAYS

- 11.1 If the performance of either Party or a subcontractor of either Party under this Contract is prevented or delayed by: acts of God, of the public enemy, or of Government, including but not limited to the Governments of the United States and the country of the Launch Site in their contractual or sovereign capacity (including the refusal, suspension, withdrawal, or non-renewal of export or import licenses essential to the performance of the Contract); fire; flood; earthquake; rolling blackouts; epidemic; quarantine restriction; strike; walkout; freight embargo; Subcontractor recalls of critical components; or any other event which is beyond the reasonable control of the Party whose performance is delayed or prevented ("Force Majeure Events"), said inability to perform or delay in performance shall constitute an excusable delay. In the event of an excusable delay, there shall be an equitable adjustment to the time of delivery for the impacted Satellite and/or performance and Liquidated Damages stated in this Contract. The affected Party shall give notice in writing to the other Party within five (5) Business Days that an excusable delay condition exists after learning of such delay. Such notification shall include the cause of the excusable delay, the expected length of the excusable delay, and alternate plans to mitigate the effect of the excusable delay. Each Party shall use its best efforts to avoid any impacts to the P904 Program caused by an excusable delay.
- 11.2 If the affected Party, as defined in Paragraph 11.1 above, requests or experiences, on a cumulative basis, excusable delay(s) greater than [REDACTED] the Parties shall enter into good faith negotiations to develop a mutually agreeable course of action and/or an equitable adjustment to the affected terms of this Contract.
- 11.3 Notwithstanding the foregoing, if the Launch is delayed due to a Force Majeure Event affecting either Party or a subcontractor thereof at any point in time after the shipment of the Spacecraft to the Launch Site has occurred, each Party shall bear their own expenses at the Launch Site as a result of the excused delay. Expenses shall include but not be limited to; support personnel standby; extra travel expenses; transport termination or rescheduling fees; and installation/de-installation of communication links to the Launch Site.
- 11.4 In the event of loss or damage to the Satellite or Satellites caused by a Force Majeure

Event prior to transfer of the risk of loss to Customer, the provisions of Section 8.4 shall take precedence over this Section 11.4. However, in the event Contractor's performance is prevented or delayed by a Force Majeure Event for more than [REDACTED] or it is reasonably ascertainable that Contractor's performance will be delayed by a Force Majeure Event for more than [REDACTED] then Customer may terminate this Contract (in whole or in part) upon written notice. Thereafter, the Parties shall negotiate and agree upon an equitable termination settlement in accordance with Section 17.13 of this Contract, (except that an amount for profit (as provided in Section 17.10) shall NOT be included in such settlement), for the portion of the Contract that is terminated, which will be based upon the following factors: (i) the actual costs incurred by Contractor, (ii) the amounts already paid by Customer to Contractor, (iii) the salvage value of any Deliverables or Work in progress retained by Contractor, (iv) the value of all services and Deliverables Accepted and/or retained by Customer, (v) Customer's out-of-pocket costs actually incurred, and (vi) the amount of insurance proceeds recovered, if any, from Contractor's Ground Insurance in accordance with Section 8.4. If the Parties cannot agree upon a termination settlement, the matter shall be resolved in accordance with Article 30, Applicable Law and Dispute Resolution.

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ARTICLE 12 ACCESS TO WORK IN PROGRESS AND DATA

12.1 Subject to Article 29.1.B, all Consultants to be given access to Boeing's Work in progress and/or data shall be identified by Customer and approved by Boeing in advance. Such approval shall not be unreasonably withheld or delayed, and shall also be subject to the execution of a Proprietary Information Non Disclosure Agreement by said Consultants containing obligations and restrictions no less stringent than those set forth in Article 21 hereof.

12.2 Boeing shall afford Customer and Consultants access to all Work in progress being performed at Boeing's plants and at the Launch Site pursuant to this Contract, including technical data, documentation, and hardware, at reasonable times during the period of Contract performance, provided such access does not unreasonably interfere with such Work or require the disclosure of Boeing's Proprietary Information to third parties and subject to (i) Boeing's normal and customary security procedures and (ii) U.S. or foreign government regulations. Contractor shall give Customer notice of all tests, including (without limitation) intermediate tests and those of a subsystem level, to be performed hereunder and shall reasonably cooperate with Customer in such scheduling to accommodate the schedules of Customer and its Consultants, in accordance with the SOW.

12.3 To the extent that Boeing's major subcontracts permit, Boeing shall afford Customer and Consultants access to Work being performed pursuant to this Contract in Subcontractor's plants in the company of Boeing's representatives, or otherwise as mutually agreed.

Boeing shall exert reasonable efforts in subcontracting to obtain permission for Customer and Consultant(s) access to those major Subcontractors' plants to witness the performance of the Work. Major subcontracts are defined as those subcontracts in excess of [REDACTED] or Satellite, or other subcontracts of lesser value that the Parties agree to designate as a major subcontract.

12.4 Customer and Consultants shall have the right to witness on a non-interference basis all tests scheduled by Boeing in connection with the performance of Work under this

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Contract. If the system or subsystem tests are performed by a Subcontractor of Boeing, Boeing shall take all reasonable steps to secure Customer's access to the Subcontractor's facility or facilities. Customer's right to witness testing shall be on a non-interference basis and subject to (i) any Subcontractor security procedures, (ii) U.S. or foreign government regulations, and (iii) reasonable notice to Boeing of Customer's intent to witness such testing.

- 12.5 Contractor shall consult with Customer as to all material program decisions concerning the Work to be performed hereunder and the P904 Satellite Program management. Contractor shall obtain Customer's approval as required by the Statement of Work before closing any material milestone events or review defined in the SOW.
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- 12.6 Neither (i) the witnessing and inspection by Customer (or its Consultants) nor (ii) the acceptance by Contractor of proposals, suggestions or recommendations of Customer (or its Consultants) shall release or satisfy any obligation assumed by the Contractor pursuant to this Contract or operate as a waiver of any non-conformance or defect in any Deliverable under this Contract or in any way prejudice the remedies available to Customer under this Contract, unless such acceptance is in writing and is intended as a formal waiver and modification of the Contract requirements.
- 12.7 Upon request by Customer, Contractor shall, at its own expense, make a reasonable number of copies of relevant documents and test results and deliver them to Customer in the requested format(s) as required per the SOW.

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ARTICLE 13 INTER-PARTY WAIVER OF LIABILITY

- 13.1 All operations at the Designated Launch Site for each Satellite pursuant to this Contract will be subject to a no-fault, no-subrogation inter-party waiver of liability under which Customer, Boeing and each other Person present at the Designated Launch Site, including the Launch Provider ("Other Users"), agrees to be responsible for any loss or liability which it sustains as a result of damage to its own property and employees, including death, while involved in operations, whether or not such damage arises through negligence of any Person. The foregoing waiver by Contractor and Customer does not preclude recovery of any refunds pursuant to Paragraph 8.2 of payments made by Customer under the Contract. It is the intent of the Parties that this inter-party waiver of liability be construed broadly to achieve its intended objectives of clarifying and minimizing the risk of liability to third parties arising from Launch Site Operations. Prior to commencement of Launch Site Operations, each Party will provide to the other Party evidence that all other such Persons have agreed to such inter-party waiver of liability.
- 13.2 If either Party contracts or subcontracts with a third party to provide services which necessitate the contractor's or subcontractor's presence at the Designated Launch Site, then such Party will also ensure that such third party agrees to a no-fault, no-subrogation inter-party waiver of liability and indemnity for damages it sustains, identical to the Parties' respective undertakings under this Article.
- 13.3 In the event that either Customer or Boeing fails to obtain the aforesaid inter-party waiver of liability and indemnity from their respective contractors or subcontractors then such Party shall indemnify and hold the other Party, the Launch Provider, the Other Users (as defined above) of Launch Services and their respective contractors and subcontractors harmless from claims brought by such Party's subcontractors with respect to matters that otherwise would have been covered by the inter-party waiver of liability.
- 13.4 The Parties will take such further actions as may be required to implement the provisions of this Article 13, including the execution of such agreements and waivers as

are customarily used with respect to operations at the Designated Launch Site and are consistent with the provisions of this Article.

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ARTICLE 14 WARRANTY

- 14.1 Subject to the provisions of Article 33, Limitation of Liability, and Paragraph 14.4 below, and in addition to Contractor's warranties in Paragraphs 4.6 and 10.3, and the mutual warranties in Paragraph 34.7, Boeing warrants that the Satellites delivered under this Contract shall (a) be free from material defects in materials or workmanship, and (b) designed and manufactured in accordance with Contractor's best commercial practices (in accordance with the terms of the Contract), and (c) conform in all material respects to the specifications set forth in Exhibit B, Spacecraft Technical Specification. This warranty shall run for each particular Satellite until Intentional Ignition or the date ~~that is two (2) years following the date of the actual date that the Satellite is Ready for~~ Shipment, whichever is earlier.
- 14.2 Customer shall have the right at any time during the period of this warranty to require that any Work not conforming in any material respect to this Contract or the Exhibits hereto, and in such a way as to affect the successful Launch or Stated Communications Capacity or Stated Satellite Life, for each Satellite, be promptly corrected or replaced as determined by Boeing (at Boeing's expense) with conforming Work. If Boeing fails to correct or replace such defective Work within a reasonable period after notification from Customer, Customer may then require Boeing to repay or reduce such portion of the Contract Price as is determined in accordance with the Waiver Payment provisions and mass penalty provisions of Paragraphs 6.16 and/or 6.17 in lieu of repairing or replacing such defective Work. Boeing's obligations under this Paragraph 14.2 to correct or replace non-conforming Work shall apply in all cases from and after the time Boeing learns of the non-conformance, whether from Customer or otherwise.
- 14.3 Any disputes with respect to any matter covered by this Article shall be resolved pursuant to Article 30, Applicable Law and Dispute Resolution.
- 14.4 THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING FITNESS FOR PARTICULAR PURPOSE OR MERCHANTABILITY AND THE REMEDY PROVIDED HEREIN IS THE SOLE REMEDY FOR FAILURE BY BOEING TO FURNISH THE SATELLITES FREE FROM MATERIAL DEFECTS IN MATERIAL OR WORKMANSHIP AS SET

FORTH IN PARAGRAPH 14.1 ABOVE. ALL OTHER WARRANTIES OR
CONDITIONS IMPLIED BY ANY OTHER STATUTORY ENACTMENT OR RULE
OF LAW WHATSOEVER ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

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ARTICLE 15 INDEMNIFICATION

- 15.1 Subject to the indemnification obligations of each Party contained in Article 13, each Party shall indemnify, defend, and hold the other and all its directors, officers, agents, subcontractors, subsidiaries, affiliates, parent companies and employees, or any of them, harmless from any liability or expense in connection herewith on account of damage to property (excepting other Spacecraft in flight) and injuries, including death, to all persons including but not limited to employees of the Parties, and their subcontractors, and of all other persons performing any part of the Work hereunder, arising from any occurrence, caused by any act or omission of the indemnifying Party or its subcontractors, or any of them in connection with the work to be performed by such Party under this Contract. The indemnifying Party shall have the right, but not the obligation, to participate in any legal or other proceedings concerning claims for which it is indemnifying under this Article 15 and to direct the defense of such claims. However, with respect to such legal or other proceedings, the indemnifying Party shall pay all expenses (including reasonable attorneys' fees incurred by the indemnified Party in connection with such legal or other proceedings) and satisfy all judgments, costs or other awards which may be incurred by or rendered against the indemnified Party. The indemnifying Party shall not settle any such claim, legal or other proceeding without first giving a reasonable amount of prior written notice of the Terms and Conditions of such settlement and obtaining the consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed.
- 15.2 Notwithstanding the foregoing, neither Contractor nor Contractor's Subcontractors shall have any liability in contract or in tort, for damages to or caused by the Spacecraft after Intentional Ignition, and Customer shall obtain waivers of subrogation rights from Customer's insurers against Contractor, Contractor's Affiliates and Subcontractors.
- 15.3 In the event that either Party fails to obtain the waivers of rights of subrogation required by Article 8, such Party shall indemnify and hold harmless the other from any actual damages, including reasonable attorney's fees, resulting therefrom.

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ARTICLE 16 TAXES AND DUTIES

16.1 The Contract Price excludes, and Contractor and Contractor's Affiliates and Subcontractors shall not be required to pay, any present or future non-U.S. Taxes related to this Contract imposed by any jurisdiction other than the United States or any State of the United States. Except as otherwise provided herein, the Contract Price includes Taxes related to this Contract imposed by the United States or any state therein which are properly levied upon Contractor or Contractor's Affiliates in connection with Contractor's performance of the Work under this Contract.

~~16.2 Contractor shall consult with Customer or its designated Consultant(s) on any Taxes~~ which are not included in the Contract Price. In the event any such Taxes are levied upon Contractor, Contractor's Affiliates or Subcontractors in respect of the Spacecraft, Contractor shall immediately notify Customer. Customer, within [REDACTED] of receipt of such notification from Contractor, shall either have the Taxes waived or request Contractor to pay the Taxes. For those Taxes in Paragraph 16.1 that Contractor is required by law to pay, or that are not included in the Contract Price and Customer requests Contractor to pay, Customer shall reimburse Contractor in an amount which leaves Contractor in the same economic position as if such payment of charges and reimbursement thereof had not been required, within [REDACTED] of Customer's receipt of Contractor's invoice. Contractor's reimbursement request will be accompanied by evidence of the amount and purpose of such payments and the date and the entity paid, and shall include a calculation of the amount of reimbursement required under the preceding sentence.

16.3 Contractor shall be responsible for and shall pay all Taxes imposed by the United States or any state therein which are properly levied upon Contractor or Contractor's Affiliates in connection with Contractor's performance of the Work under the Contract, except those levied as a result of transfer of title in the United States for an unlaunched Satellite.

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ARTICLE 17 TERMINATION

17.1. Customer may issue a written notice of default (the "Default Notice") to Contractor, and terminate this Contract in whole or in part, at Customer's sole discretion, if:

17.1.1 Any Satellite is not delivered within [REDACTED] Days of the applicable Ready for Shipment date in Article 3, as such date may have been extended pursuant to Article 11, Excusable Delays (and then only to the extent of such excusable delay); OR if Contractor agrees in writing that its performance or the performance of any of its Subcontractors has become so delayed as to make it clearly ascertainable that a delay of [REDACTED]

[REDACTED] Days in the applicable Ready for Shipment date in Article 3 will occur (as such date may have been extended pursuant to Article 11, Excusable Delays (and then only to the extent of such excusable delay)) (such agreement not to be unreasonably withheld or delayed) (For the avoidance of doubt, if Contractor, acting reasonably, does not agree in writing that it is clearly ascertainable that that such delay will occur, Customer shall continue to be obligated to make payments for completed milestones pursuant to Article 4.); or

17.1.2 The Certain Documentation (listed in Exhibit F) is not delivered by that date which is [REDACTED] Days after the date the first of the three Satellites is actually Launched, as such date may have been extended pursuant to Article 11, Excusable Delays (and then only to the extent of such excusable delay); or

17.1.3 Contractor commits a breach of its other material obligations hereunder, and within [REDACTED] of Customer's written notice to Contractor detailing such breach (a) such breach is not corrected, or (b) the Parties have not agreed upon a reasonable plan for the correction of such breach; or

17.1.4 Boeing commences a voluntary proceeding concerning itself under any applicable bankruptcy, insolvency, reorganization, adjustment of debt, relief of debtors or similar law ("Insolvency Law"); or any involuntary proceeding commences against Boeing under an Insolvency Law and the petition has not been dismissed within [REDACTED] after commencement of the proceeding;

or a receiver or custodian is appointed for or takes charge of all or a substantial portion of the property of Boeing and such custodian or receiver has not been dismissed or discharged within [REDACTED]. Contractor has taken action toward the winding-up, dissolution or liquidation of Boeing or its business; or Contractor has been adjudicated insolvent or bankrupt or an order for relief or other order approving a case or proceeding under an Insolvency Law has been entered; or Contractor has made a general assignment for the benefit of creditors or become unable to pay its debts generally as they become due; or any secured or lien creditor of Contractor commences a foreclosure action against Contractor and such action is not dismissed within [REDACTED] after commencement (all inclusively referred to herein as a "Contractor Insolvency Event").

- 17.2. Customer's service of a Default Notice on Contractor shall operate to terminate this Contract forthwith with respect to that portion of the Work which is in default under Paragraphs 17.1.1, 17.1.2, 17.1.3 or 17.1.4 as Customer shall elect. In the event Customer terminates this Contract as provided in Paragraph 17.1.1, 17.1.3 or 17.1.4, Customer's sole remedy shall be a refund of payments previously made to Boeing under this Contract applicable to the terminated portion of the Work (including an equal allocation of non-recurring costs associated with such Work), plus: (a) those Liquidated Damages, if any, collected pursuant to Paragraphs 6.12 through 6.15, Liquidated Damages; and (b) interest on such refunded amounts from the time paid until the time refunded at the Discount/Interest Rate. In the event Customer terminates this Contract, in whole or in part, as provided in Paragraph 17.1.2, Customer's sole remedy shall be a refund [REDACTED] applicable to the Certain Documentation required for Satellite 1, plus direct, reasonable termination costs in excess of the Certain Documentation Price, not to exceed [REDACTED] of the Certain Documentation Price, plus Contractor shall be required to provide, at its own expense, telemetry, tracking and control services for the Satellite or Satellites, until [REDACTED] after the earlier of the date that Contractor provides the Certain Documentation or the date that Customer is able to procure replacement documentation from a third party. Contractor shall pay to Customer the full amount of the damages to which Customer is entitled within [REDACTED] of Contract termination.

- 17.3 Upon refund of payments in accordance with Paragraph 17.2 above, then Contractor shall be entitled to retain title to any and all terminated Work, Work in progress, parts or other material, together with any associated warranties, and any subcontracted items which Boeing has specifically produced or acquired or contracted for in accordance with this Contract.
- 17.4 If, after termination of this Contract or a portion thereof under the provisions of Paragraph 17.2 it is determined by a court under Paragraph 30.4 or admitted in writing by Customer that Boeing or any of its Subcontractor(s) were not in default under the provisions of this Article, or that the default was excusable under the provision of Article 11, Excusable Delays, then such termination shall be deemed a termination for Customer's convenience and the provision of Paragraph 17.13 shall apply.
- 17.5 Notwithstanding the other provisions of this Article, a termination for Contractor's default shall not relieve the Parties of their obligations with respect to a launched Satellite and there will be no termination for default related to a launched Satellite for whatever reason pursuant this Article after Launch of such Satellite.
- 17.6 Additionally, notwithstanding the other provisions of this Article, there shall be no termination for Contractor's default in the event of the non-availability of the Launch Vehicle, except as otherwise set forth in this Article 17.
- 17.7 In addition to and subject first to Customer's rights under Article 34, Liquidated Damages, the rights and remedies provided to Customer in this Article 17, and in Articles 4 and 6, shall be exclusive and in lieu of any other rights and remedies provided by law or in equity in the event Boeing fails to meet its obligations to perform the Work.
- 17.8 Boeing may terminate this Contract in whole upon written notice of default (the "Default Notice") to Customer if:
- 17.8.1 Customer fails to make any undisputed payment due to Contractor hereunder when due pursuant to Article 4, Contract Price, Payment and Adjustments, provided such failure is not cured within a period of [REDACTED] following receipt of notice thereof from Boeing; or

17.8.2 Customer commences a voluntary proceeding concerning itself under any applicable bankruptcy, insolvency, reorganization, adjustment of debt, relief of debtors or similar law ("Insolvency Law"); or any involuntary proceeding commences against Customer under an Insolvency Law and the petition has not been dismissed within [REDACTED] after commencement of the proceeding; or a receiver or custodian is appointed for or takes charge of all or a substantial portion of the property of Customer and such custodian or receiver has not been dismissed or discharged within [REDACTED] or Customer has taken action toward the winding-up, dissolution or liquidation of Customer or its business; or Customer has been adjudicated insolvent or bankrupt or an order for relief or other order approving a case or proceeding under an Insolvency Law has been entered; or Customer has made a general assignment for the benefit of creditors or become unable to pay its debts generally as they become due.

17.9 If termination occurs pursuant to Paragraph 17.8 above, Contractor shall take the following actions:

- (1) stop the terminated portion of the Work under this Contract;
- (2) place no further orders or subcontracts for materials, services, or facilities related to the terminated portion of the Work;
- (3) terminate orders and subcontracts to the extent that they relate to the performance of the terminated portion of the Work; and
- (4) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts for materials, services, or facilities.

17.10 Contractor shall then generate a proposal, certified by the chief financial officer of Contractor, for settlement of the terminated Work. The proposal shall include Boeing's "actual reasonable costs" (defined as all costs actually expended by Boeing in the performance of the Work under this Contract up until the date of termination), settlement of all Subcontractor termination proposals, and other direct costs associated with the termination, and shall include a proposal (and corresponding reduction or an

estimated reduction) for the disposition of all Work created under this Contract, including the sale of all items of the Work that can be returned or used for other spacecraft or that Contractor is, at or about the time of the termination proposal, reasonably able to re-deploy to another project, sell or return to one or more vendors and shall give to Customer credit for any sums (less costs incurred) recovered by such alternative use, if any. Contractor shall use commercially reasonable efforts to mitigate the termination damages it suffers, including by selling, returning or re-deploying to other programs all Work (or parts thereof) to the extent practicable. Boeing shall include a [REDACTED] percent profit on the total termination amount described in the above proposal. Upon request from Customer, Contractor shall explain and substantiate all costs included in the termination proposal, and Customer shall have the right to audit such costs (at Customer's expense) using Deloitte & Touche, Ernst & Young or Price Waterhouse, at Customer's discretion, and Contractor shall cooperate with any such auditor and provide all data and records reasonably requested. The final termination costs shall be negotiated and agreed upon by the Parties acting in good faith (the "Termination Costs"). If within a reasonable period of time (not to exceed one year unless agreed upon by the Parties) after Customer has paid the Termination Costs, Contractor is able to re-deploy or sell off any portion of the Work, Contractor shall refund to Customer a portion of the Termination Costs. Notwithstanding the foregoing, in no event shall Customer's termination liability determined hereunder exceed the amount that Customer was required to pay for such terminated Work pursuant to the terms of Contract.

The Contractor shall advise Customer of the terms of the settlement with each of its Major Subcontractors in the event of termination pursuant to this Section 17.10, but the Contractor shall not enter into any such settlement unless Customer has approved such settlement, such approval not to be unreasonably withheld or delayed. If delay in approval by Customer results in additional termination liability to the Major Subcontractor, Customer shall be responsible for such additional costs.

Should the total dollar amount of the Termination Costs be greater than the aggregate of all payments made by Customer to Contractor, then Customer shall pay to Contractor the amount of the difference within [REDACTED] of the Parties' agreement on such Termination Costs. Should the Termination Costs be less than the aggregate of all

payments made by Customer to Contractor, Contractor shall refund to Customer the amount of the difference within [REDACTED] of the Parties' agreement on such Termination Costs. In either case, the final payment or refund shall be deemed the final payment under this Contract ("Final Payment") unless submitted for dispute resolution under Paragraph 17.14.

- 17.11 Upon payment of the Final Payment, title to all equipment and hardware (and other tangible materials related to such equipment and hardware) which would have been incorporated into a deliverable item under the Contract and which are specific to the P904 Satellite Program and not generally able to be used by Boeing in other satellite programs (e.g., antennas for the [REDACTED] slot location) or which Boeing has been unable to sell, return or redeploy to other programs as required by Paragraph 17.10, shall, subject to applicable United States Government export regulations, vest in Customer. Contractor shall deliver all such items to Customer FOB Contractor's plant, El Segundo, California. Customer shall accept such items, be entitled to retain title to such items, together with any associated warranties, and any subcontracted items which Boeing has specifically produced or acquired or entered into in accordance with this Contract and which Contractor was unable to otherwise disposition pursuant to Paragraph 17.10. For a period of one year following termination, upon request, Boeing shall reasonably assist Customer to sell the tangible work and Customer shall reimburse Boeing's direct expenses associated therewith.
- 17.12 Should Customer not make the Final Payment under Paragraph 17.10, if necessary, within [REDACTED] of agreement upon the Termination Costs (assuming that Customer has not submitted the proposal to dispute resolution under Article 30), Boeing shall be entitled to retain title to any and all of the terminated Work, and submit for dispute those payments due.
- 17.13 Customer may, prior to the Launch of any Satellite, by written notice to Contractor, terminate this Contract, in whole or in part, for its convenience. In such event, the terms of Paragraphs 17.10 through 17.12 shall apply.

17.14 All disputes between the Parties arising from a termination or other action under this Article 17 shall be resolved according to the dispute resolution procedures set forth in Article 30, Applicable Law and Dispute Resolution.

ARTICLE 18 DATA AND SOFTWARE

18.1 Use of Contract Deliverable Data

Subject to the provisions of Article 21, Proprietary Information, and except as otherwise expressly provided by this Contract, Customer and its contractors and Consultants shall have a nonexclusive, non-transferable, worldwide, royalty-free license and right to use the Contract Deliverable Data and any other Contractor Technical Data (as defined in Article 20) necessary for the P904 Satellite Program solely for purposes of using, maintaining and operating the Satellites. Notwithstanding the foregoing, any Customer owned Technical Data that is included in the Contract Deliverable Data shall continue to be owned by Customer and may be used by Customer for any purpose.

18.2 Use of Copyrights

Notwithstanding any other provision hereof the ownership and title to copyrights in Contract Deliverable Data that do not include Customer's Intellectual Property or Proprietary Information shall remain in Boeing or its licensor(s). Boeing grants to Customer a royalty-free, nonexclusive right under Boeing's copyrights to make copies of the Contract Deliverable Data and Technical Data solely for use in connection with the use, maintenance and operation of the Satellites and delivered Equipment. On all documentation that is copyrighted, Customer shall apply the appropriate copyright notice to all copies made thereof. All rights to documentation not owned by Boeing are limited by the extent of Boeing's rights and interests therein.

18.3 Software Rights in Ground Segment Software

The Ground Segment Software is comprised of a number of software sub-elements which are proprietary to either Boeing or to Boeing's Subcontractors. Boeing shall grant to (and in the case of its Subcontractor's software, shall obtain for) Customer, DIRECTV Operations, LLC, Customer's Affiliates, and Customer's satellite operator, a non-exclusive, non-transferable license and worldwide, royalty-free right (i) to use, modify, and maintain the Ground Segment Software, only for the purpose of using, controlling, maintaining and operating the Satellites, provided however that Customer

may, upon notification to Boeing, transfer the Ground Segment Software to another location for the purpose of controlling the Satellites and (ii) to reproduce the Ground Segment Software, for the purposes of safekeeping (archives) or backup, provided all copyright notices and proprietary markings are reproduced.

Except for those rights in the Ground Segment Software specifically granted in this Contract, no rights in the Ground Segment Software are granted to Customer. The Ground Segment Software in object code form and source code form and the documentation are a trade secret of Boeing and/or Boeing's Subcontractor. Customer agrees to preserve such Ground Segment Software in confidence and shall not disclose such Ground Segment Software to any third parties, except as permitted pursuant to this Contract. This provision does not limit the right of Customer to use Ground Segment Software, or information therein, which Customer may already have without restrictions or obtains without restriction. Third parties do not include those contractors and Consultants who have Customer's permission and who have agreed in writing to use the Ground Segment Software only in accordance with these restrictions. Customer agrees to take all reasonable steps to safeguard from theft, loss and negligent disclosure to others all Ground Segment Software delivered hereunder. Customer shall take appropriate action by instruction or agreement with its employees, contractors, and Consultants who are permitted access to the Ground Segment Software advising such employees, contractors, and Consultants in writing of Customer's obligations hereunder. The foregoing obligations shall survive termination or expiration of this Contract.

18.4 Software Rights in Space Segment

18.4.1 Boeing shall grant to Customer and its contractors a non-exclusive, non-transferable (except by agreement, said agreement not to be unreasonably withheld or delayed) license and worldwide, royalty-free right to use and, subject to the provisions of 18.4.2 below, modify and maintain, the Space Segment Software for the purpose of utilizing, configuring, reconfiguring, maintaining, operating and controlling the Satellites. Notwithstanding the foregoing, any use of the Space Segment Software by Customer's contractors shall be strictly limited in accordance with the preceding sentence (via contract between Customer and such contractor).

18.4.2 Upon Customer's written request, Boeing shall deposit Escrow Materials (as defined below) in escrow on commercially reasonable terms with an independent escrow agent that has been mutually agreed upon by the Parties. As used herein, "Escrow Materials" shall be defined to mean the latest version of the source code, together with any related documentation, for any Space Segment Software, including the latest version of Boeing's internally developed source code, and to the extent Boeing has a lawful right to do so, any third party software which is incorporated in the Space Segment Software, and associated documentation. Such escrow shall be established and maintained at the expense of Customer. The escrow deposit shall be annually updated so as to accurately reflect the then current version of the Escrow Materials. The Escrow Materials shall be released to Customer upon the occurrence of any of the following events:

- (i) Boeing fails to materially perform its defined maintenance and/or support obligations under this Contract; or
- (ii) Boeing fails to cure after a reasonable time any material software defect occurring after Launch which affects performance of one or more Satellites or provision of direct to home service (in which case only software necessary to correct the defect shall be released); or
- (iii) A Contractor Insolvency Event occurs as defined in Paragraph 17.1.4.

18.5 Vendor Software

Vendor Software shall be provided to Customer in accordance with the particular Vendor's usual software license agreement, which agreement(s) will be provided to Customer upon installation of said software. Customer agrees to use Vendor Software only in accordance with the provisions of such software license agreement, copies of which have been provided by Boeing to Customer.

18.6 In the event of any termination of the Work under this Contract, any data rights specified in this Article associated with the terminated Work shall revert to Boeing, and

Customer shall have no further rights with respect to such data, with the exception of any data related to hardware obtained under the provisions of Article 17.11.

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ARTICLE 19 PATENT/COPYRIGHT INDEMNIFICATION

19.1 Boeing agrees to indemnify and hold Customer, its employees, Affiliates parents, subcontractors and customers ("Customer Indemnitees") harmless from and against any liability or expense, and to defend at Boeing's own expense, any bona fide claim, action, proceeding or request for royalty payments or any claim for equitable relief or damages against any Customer Indemnitees based on an allegation that the manufacture, use, lease or sale of any item fabricated by Boeing or delivered to Customer under this Contract infringes any Letters Patent, trademark, Copyright, mask work, or any other intellectual property right, and to pay any royalties and other costs related to the settlement of such claim, action, proceeding or request, and to pay the costs and damages, including reasonable attorney's fees, finally awarded as the result of any claim, action or proceeding based on such request, provided that: (1) Boeing is given prompt written notice of such request or claim by Customer or any Customer Indemnitee, and (2) Boeing is given sole authority and full assistance and information as is available to Customer or any Customer Indemnitee for resisting such request or for the defense of such claim, action or proceeding, and (3) Customer or any Customer Indemnitee does nothing to prejudice or compromise Boeing's ability to defend or settle such demand, claim, action or proceeding. Any such assistance or information that is furnished by Customer or any Customer Indemnitee at the written request of Boeing is to be at Boeing's expense. In no event shall Boeing's entire liability under this Article 19 exceed the Contract Price and the existence of one or more claims or lawsuits shall not extend this amount.

19.2 In the event that, as a result of any such claim, action, proceeding or request: a) prior to delivery, the manufacture of any item is enjoined; or b) after delivery, the use, lease or sale thereof is enjoined, Boeing agrees to utilize its best effort, at no additional cost or expense to Customer, to either: (1) negotiate a license or other agreement with the claimant so that such item is no longer infringing; or (2) modify such item suitably or substitute a suitable item therefore, which modified or substituted item is not subject to such injunction, and to extend the provisions of this Article thereto. In the event that neither of the foregoing alternatives is suitably accomplished by Boeing, Boeing shall be liable to Customer or any Customer Indemnitee for the additional costs and damages arising as a result of such injunction; provided however, that in no event shall Boeing's

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entire liability under this Article 19 exceed the Contract Price. However, if such injunction occurs prior to Intentional Ignition and materially affects the use, lease or sale of one or more of the Satellites, Customer may terminate this Contract (in whole or in part) pursuant to Article 17.1.1 if the effect of the injunction is not removed by the date that is ninety (90) days from the date of the injunction or the end of the Damages Period under Article 34, Liquidated Damages, whichever comes first, provided Boeing's liability under such circumstances shall not exceed the Contract Price.

- 19.3 Customer agrees to indemnify and hold Boeing, its employees, Affiliates, parents, and Subcontractors ("Boeing Indemnitees") harmless from and against any liability or expense, and to defend at Customer's own expense, any bona fide claim, action, proceeding or request for royalty payments or any claim for equitable relief or damages against any Boeing Indemnitee based on an allegation that the provision, use, lease or sale of Customer's direct-to-home broadcast services and associated equipment (except to the extent such claim is based on the articles delivered by Boeing) infringes any Letters Patent, trademark, Copyright, mask work, or any other intellectual property right, and to pay any royalties and other costs related to the settlement of such claim, action, proceeding or request, and to pay the costs and damages, including reasonable attorney's fees, finally awarded as the result of any claim, action or proceeding based on such request, provided that: (1) Customer is given prompt written notice of such request or claim by Boeing or any Boeing Indemnitee and (2) Customer is given sole authority and full assistance and information as is available to Boeing or any Boeing Indemnitee for resisting such request or for the defense of such claim, action or proceeding, and (3) Boeing or any Boeing Indemnitee does nothing to prejudice or compromise Customer's ability to defend or settle such demand, claim, action or proceeding. Any such assistance or information that is furnished by Boeing or any Boeing Indemnitee at the written request of Customer is to be at Customer's expense. In no event shall Customer's entire liability under this Article 19 exceed the Contract Price and the existence of one or more claims or lawsuits shall not extend this amount.
- 19.4 The foregoing indemnity in Paragraphs 19.1 and 19.2 shall not apply to any infringement resulting from a modification or change, by other than Contractor or Contractor's Subcontractors, to an item after delivery.

- 19.5 In no event shall Boeing or Customer be liable to the other Party for any indirect, incidental, special, or consequential damages (including but not limited to lost profits).
- 19.6 The foregoing constitutes the Parties' entire obligation with respect to claims for infringement.
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ARTICLE 20 INTELLECTUAL PROPERTY

- 20.1 "Intellectual Property" as used herein, means all inventions, discoveries and improvements; all Technical Data including, but not limited to, engineering and manufacturing drawings, specifications, process information, technical reports; and all computer software and related documentation. Intellectual Property also includes all common law and statutory rights to the foregoing, including but not limited to, patents, copyrights, mask work registrations, and the like. "Technical Data" as used herein means documented information that is directly related to the design, development, use, operation and maintenance of the Satellite or Satellites. This includes, for example, information in the form of drawings, photographs, technical writings, pictorial reproductions and specifications.
- 20.2 Contractor and Customer will each retain sole ownership of their own respective Intellectual Property and Technical Data generated or owned prior to EDC (or independent of the efforts contained herein) and not derived from the Intellectual Property or Technical Data of the other Party. Ownership of background or pre-existing Technical Data or Intellectual Property or Proprietary Information (as defined in Paragraph 21.2), all of which was held prior to EDC, which will be used to perform the Work, will remain exclusively with the originating Party. For Customer, ownership of such Intellectual Property includes, but is not limited to, the satellite availability design approach developed by Customer, Customer's adaptation of the DMA map and the link budgets.
- 20.3 With regard to Intellectual Property developed independently for purposes of the performance of this Contract, (a) Contractor owns all right, title and interest in all Intellectual Property developed by, or on behalf of, Contractor; and (b) Customer owns all right, title and interest in all Intellectual Property developed under this Contract by, or on behalf of, Customer (excluding any Intellectual Property developed by Contractor or its Subcontractors).
- 20.4 Contractor hereby grants to Customer a royalty free, worldwide, non-exclusive license to use all Intellectual Property originated by Contractor for the sole purpose of using,

maintaining and operating the Satellites, procurement and use of additional satellites and making any necessary filings with the Federal Communications Commission.

20.5 Intellectual Property that is created under this Contract jointly by employees and/or agents of both Parties ("Joint Intellectual Property") shall be individually owned and assigned and marked with proprietary marks or marks of similar restriction either to Customer or Contractor based upon the following criteria. Joint Intellectual Property relating to the Customer's Field shall be owned by Customer. Joint Intellectual Property relating to the Contractor's Field shall be owned by Contractor. As used herein, "Contractor's Field" shall mean Satellites, including, for example, Satellite hardware, Ground Segment Software and Space Segment Software. As used herein, "Customer's Field" shall mean the unique manner in which Customer provides broadcast services, including for example, Customer's: (a) broadcast network, (b) spot beam delivery scheme specifically implemented under the Contract, (c) regional uplink scheme specifically implemented under the Contract, (d) digital protocols, (e) business plans, (f) uplink equipment, (g) the end-to-end link/availability models, (h) the end-to-end signal processing work station channel models, and (i) receiving equipment, but not including the Satellite hardware, Ground Segment Software or Space Segment Software.

20.6 The foregoing shall not prevent Contractor from offering or manufacturing any products or technology that it offered or manufactured for third party customers prior to the EDC.

However, the Parties agree that:

- (a) Customer-owned Joint Intellectual Property may be used by Contractor for the performance of similar activities for Contractor's other customers; provided, however, that Customer-owned Joint Intellectual Property shall not be offered or marketed to Contractor's customers who compete with Customer in the provision of multi-channel audio, video and/or data distribution without the prior written consent of Customer.
- (b) Contractor-owned Joint Intellectual Property may be used by Customer for the replacement, maintenance or repair of the Satellites, or procurement and use of additional satellites for use solely by Customer for Customer's business;

provided, however, that Contractor-owned Joint Intellectual Property shall not be offered or marketed to satellite manufacturers who compete with Contractor in the manufacture and sale of commercial communications satellites without the prior written consent of Contractor.

- 20.7 Contractor hereby grants to Customer, and Customer's subcontractors, a royalty free, worldwide, non-exclusive license to use, and sublicense the use of, Contractor's Intellectual Property as necessary to: (i) operate and maintain the Satellites; (ii) support Customer's insurance and export licensing activities for the Satellites; and (iii) in the event of Contractor's default pursuant to Article 17, to complete the manufacture of the Satellites. ~~Customer grants to Contractor a royalty free, worldwide, non-exclusive license to use, and sublicense the use of, Customer's Intellectual Property solely for the purpose of the design, manufacture and in-orbit operation of the Satellites on behalf of Customer.~~
- 20.8 Contractor shall be responsible for payment of any third party royalties or fees necessary for the use of a third party's proprietary hardware or software by Contractor required for Contractor's performance of the Work and for Customer and its subcontractors to use, operate and maintain the Satellite. Notwithstanding the foregoing, Customer shall be responsible for any such royalties or fees where Customer instructs Contractor to use such third party's proprietary hardware or software.
- 20.9 Each Party shall cooperate with the other Party in protecting their respective Intellectual Property rights including the filing of patent applications, registrations and the like.

ARTICLE 21 PROPRIETARY INFORMATION

21.1 Under this Contract, Boeing (and its Affiliates) and Customer may disclose to each other such of their respective information, some of which may be Proprietary Information as defined below, as the disclosing Party in its sole discretion believes will be essential to the objectives of the Contract and which it has a right to disclose.

21.2 "Proprietary Information" means information which a Party deems proprietary to it.

[REDACTED]

Each Party shall hold in confidence and withhold from third parties any and all Proprietary Information received under this Contract and shall use such Proprietary Information only as set forth in this Contract and for no other purpose unless the disclosing Party shall otherwise agree in writing. Each Party shall take reasonable and appropriate measures to safeguard any Proprietary Information received under this Contract from theft, loss or disclosure to others, and to limit access to Proprietary Information to those officers, directors and employees within the receiving Party's organization who reasonably require access in order to accomplish the intended purposes of this Contract.

21.3 In order to be protected hereunder, Proprietary Information shall be in written or other permanent form and be prominently identified as proprietary using an appropriate legend, marking stamp or other clear and conspicuous written identification which unambiguously indicates the information being provided is the originating Party's Proprietary Information. Any such information in other than written or other permanent form when disclosed shall be considered Proprietary Information hereunder, but only to the extent identified as the originating Party's Proprietary Information at the time of original disclosure and thereafter summarized in written form which clearly and conspicuously identifies the Proprietary Information. Such summary shall be

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transmitted by the originating Party to the receiving Party within thirty (30) Days of the non-written disclosure.

21.4 The receiving Party shall not be liable for use or disclosure of any such Proprietary Information if it can establish that the same:

- a) is or becomes a part of the public knowledge or literature without breach of this Contract by the receiving Party; or
- b) is known to the receiving Party without restriction as to further disclosure when received; or
- c) is independently developed by the receiving Party as demonstrated by written records; or
- d) becomes known to the receiving Party from a third party who had a lawful right to disclose it and without breach of this Contract.

Specific Proprietary Information shall not be deemed to be available to the public or in the possession of the receiving Party merely because it is embraced by more general information so available or in the receiving Party's possession.

21.5 Should the receiving Party be faced with judicial or administrative governmental action to disclose Proprietary Information received hereunder, said receiving Party shall promptly notify the originating Party in sufficient time (to the extent possible) to permit the disclosing Party to intervene in response to such action. If the receiving Party is required by law to disclose Proprietary Information, the receiving Party shall take steps to seek appropriate confidential treatment of the information, by protective order or otherwise.

21.6 The receiving Party agrees to promptly notify the disclosing Party of the loss or unauthorized use or disclosure of any Proprietary Information, and upon request of the originating Party, the receiving Party shall surrender any part or all of the Proprietary Information to the originating Party.

21.7 The individuals identified in Article 24, Notices, are designated as the point for receiving proprietary information exchanged between the Parties pursuant to this Contract.

- 21.8 Boeing shall have its Subcontractors (and any other Person who is permitted access as provided by this Contract) agree in writing to be bound to protect Customer's Proprietary Information on terms no less stringent than those set forth herein.
- 21.9 Customer shall have its Consultants (and any other Person who is permitted access as provided by this Contract), customers, contractors and subcontractors agree in writing to be bound to protect Boeing Proprietary Information on terms no less stringent than those set forth herein.
- 21.10 Boeing agrees and consents to Customer providing the terms and conditions of this Contract to such attorneys and financial, brokerage, and underwriting institutions as Customer may consider necessary provided that prior to such disclosure, such attorney or financial, brokerage, and underwriting institution, as the case may be, executes a non-disclosure agreement in favor of Customer and Boeing consistent with and no less restrictive than this Article 21.
- 21.11 Any copyrighted material belonging to a Party to this Contract may be copied by the other Party as necessary to enable the receiving Party to perform its obligations under this Contract, provided always that the copyright legend is retained on the material.
- 21.12 Except as otherwise expressly permitted by this Contract, upon termination of this Contract for any reason, the Parties shall cease use of all Proprietary Information furnished by the other Party and shall, at the direction of the furnishing Party, return or destroy all such Proprietary Information, together with all copies made thereof. Upon request, the receiving Party shall send the other Party a destruction certificate.

ARTICLE 22 CHANGES

22.1 Any changes requested by Boeing during the performance of this Contract, within the general scope of this Contract, which will add or delete Work, affect the design of the Satellites, change the method of shipment or packing, or the place or time of delivery, or will affect any other requirement of this Contract, shall be submitted in writing to Customer as soon as commercially practicable but in no event less than [REDACTED] prior to the proposed date of the change. If such Boeing requested change causes an increase or decrease in the total price or other terms of this Contract, Boeing shall submit a proposal to Customer.

22.2 Customer shall notify Boeing in writing as soon as commercially practicable but in no event more than [REDACTED] after receipt of the requested change proposal, whether or not Customer agrees with and accepts such change. If Customer agrees with and accepts the Boeing requested change, Boeing shall proceed with the performance of the Contract as changed and an amendment to the Contract reflecting the change proposal shall be issued. If Customer does not agree with such Boeing requested change, the Parties shall diligently work to reach agreement on such change. In the event the Parties are unable to reach agreement on such change, or price adjustment, if any, or both, Boeing shall proceed with the performance of the original Contract, unchanged.

22.3 Customer may submit to Boeing any changes requested by Customer during the performance of this Contract, within the general scope of the Contract, which will add or delete Work, affect the design of the Satellites, change the method of shipment or packing, or the place or time of delivery, or will affect any other requirement of this Contract. Boeing shall promptly respond to such request in writing to Customer as soon as commercially practicable but not more than within [REDACTED] after such request. Boeing shall submit to Customer, at the time the response to the requested change is submitted, reasonable details of the impact of such change, including changes to the Contract Price, delivery schedule, technical risk and contract terms. Customer shall notify Boeing in writing, within [REDACTED] after receipt of Boeing's response, whether or not it agrees with and accepts Boeing's response. If Customer agrees with and accepts Boeing's response, Customer shall provide written authorization to Boeing to proceed with the change and Boeing shall proceed with the performance of the

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Contract as changed. The Parties will negotiate in good faith an amendment reflecting such change which shall be incorporated into the Contract. In the event the Parties are unable to reach agreement on the terms of the propose change, either Party may refer the matter for resolution under the dispute resolution procedures set forth in Article 30, however, Customer shall also either (i) instruct Boeing to continue with performance under the Contract, unchanged, or (ii) provide payment to Boeing of any undisputed amounts (up to Boeing's actual costs) for Boeing to commence work on the proposed change during the dispute resolution period. In no event shall Customer be required to pay more for the change than the lesser of the full value of the Boeing proposal or the amount determined pursuant to Article 30.

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ARTICLE 23 PUBLIC RELEASE OF INFORMATION

Neither Party, nor any employee nor Consultant of either, shall issue news releases, articles, brochures, advertisements, prepared speeches, or other information releases concerning this Contract, the Work performed or to be performed under this Contract by Boeing or its Subcontractors, or the fact that Customer is contracting for the Satellites, without first obtaining the prior written approval of the other Party concerning the content and timing of such release or disclosure of information, which approval may be withheld or delayed at Customer's discretion. The initiating Party shall provide such releases to the other Party for review within a reasonable time prior to the desired release date.

Contractor shall not refer to the P904 Satellite Program, or the substance thereof, in any capacity while marketing its design and/or manufacturing capabilities to any third parties, other than the United States Government without the prior written approval of Customer.

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ARTICLE 24 NOTICES

Any notices, requests, demands and other formal communications required or desired to be given or made hereunder shall be in writing to the following points of contact at the following courier addresses or facsimile numbers, unless otherwise notified in writing:

For Contractor:
BOEING SATELLITE SYSTEMS, INC.
901 N. Selby Street
W-S10-S370
El Segundo, CA 90245, U.S.A.

[REDACTED]
[REDACTED]
[REDACTED]

For DIRECTV:
DIRECTV Operations, LLC
2230 E. Imperial Hwy
El Segundo, CA 90245
Attention: Phil Goswitz
Fax: (310) 964-1266
Email: pjgoswitz@directv.com
CC: ~~DIRECTV Counsel~~
Fax: (310) 964-4883
Email: bmregan@directv.com

Any notice or request shall be deemed to have been served if delivered by hand, when delivered, if sent by registered mail, upon receipt, if sent by facsimile transmission, upon receipt, and if sent by email, upon successful transmission. Either Party may change its address or point of contact for notices by notice to the other Party in accordance with this Article.

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ARTICLE 25 INTEGRATION

This Contract, together with the Exhibits, contains the entire agreement between the Parties relating to the subject matter hereof. All prior understandings (including the ATP), representations and warranties (including those contained in sales, promotional and/or marketing materials) by and between the Parties, written or oral, which may be related to the subject matter hereof in any way, are incorporated herein by this Contract.

ARTICLE 26 ASSIGNMENT

26.1 Neither Party shall assign, or transfer this Contract or any of its rights, duties or obligations hereunder to any person or entity, in whole or part without the prior written consent of the other Party, except that either Party may assign or transfer any of its rights, duties or obligations under this Contract, either in whole or in part, to its parent company, subsidiary or Affiliate in which the assigning Party has a controlling interest thereof.

Neither Party shall unreasonably withhold consent to any assignment or transfer providing that the requesting Party can demonstrate to the other Party's satisfaction (at its sole discretion) that:

- (1) its successor or assignee possesses the financial and technical resources to fulfill the obligations of this Contract; and
- (2) any such assignment or transfer shall not jeopardize any data rights or competitive position, or violate laws related to export or technology transfer, or otherwise increase the other Party's risks or obligations;

and the assignee agrees to assume the obligations and responsibilities of the assignor under the Contract, as evidenced by an assignment and assumption agreement that contains terms acceptable to the non-assigning Party.

26.2 This Contract shall be binding upon the Parties hereto and their successors and permitted assigns.

ARTICLE 27 SEVERABILITY

In the event any one or more of the provisions of this Contract shall, for any reason, be held to be invalid or unenforceable, the remaining provisions of this Contract shall be unimpaired, and the invalid or unenforceable provision shall be replaced by a mutually acceptable provision which, being valid and enforceable, comes closest to the intention of the Parties underlying the invalid or unenforceable provision.

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ARTICLE 28 CORRECTIVE MEASURES IN UNLAUNCHED SATELLITES

- 28.1 Without limiting the obligations of Boeing under other provisions of this Contract, if the data available from any Boeing satellite product line shows that there is a material deficiency in the design or manufacture of such satellite which, in the reasonable judgment of Boeing, may adversely affect the Satellites produced under this Contract, Boeing shall notify Customer of any such material deficiency coming to Boeing's attention and shall promptly take appropriate corrective measures at its own expense, with respect to the unlaunched Satellites so as to satisfactorily eliminate from such unlaunched Satellites all such material deficiencies.
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- 28.2 Boeing shall prepare and present to Customer on a quarterly basis throughout the period of manufacture of the Satellites and prior to Launch, "Relevant Information" which could reasonably be considered relevant to the Spacecraft or the Ground Segment Software being provided under this Contract. "Relevant Information" shall mean information about hardware or software used with other satellites or ground segment software related to failures, anomalies, non-conformance with specification, improvements or such other matters reasonably pertinent to the Launch and Specified Operational Lifetime of the Satellites or the proper and efficient functioning of the Ground Segment Software. Following such quarterly presentations, Boeing and Customer shall cooperate in good faith to determine whether any changes should be made to the Satellites or the Ground Segment Software in light of the information presented. In the event of a dispute concerning implementing any changes to the Satellites or Ground Segment Software arising under this Paragraph 28.2, the dispute shall be resolved according to the dispute resolution procedures set forth in Article 30.
- 28.3 If Boeing, in accordance with this Article, replaces any equipment or any part which was determined to be deficient, such deficient equipment or part shall remain or become the property of Boeing.

ARTICLE 29 CUSTOMER'S RESPONSIBILITIES

29.1 The responsibilities of Customer, which will be discharged at no cost to Boeing or its Affiliates or Subcontractors, are contained in or are to be identified in Exhibit B, Spacecraft Technical Specification, and are as set forth below. In the event that Customer fails to perform responsibilities per Article 29, and such failure results in a material impact to Contractor's ability to perform the Work pursuant to the terms of this Contract, Contractor shall be entitled to an equitable adjustment as mutually agreed in writing by the Parties, in terms of price and/or schedule per each occurrence.

A. Customer shall provide to Boeing:

1. Access to Satellite Monitoring and Test Equipment owned by the Customer for the purpose of placing the Satellites at the Specified Orbital Location, as applicable, and maintaining the Satellites at such location until Acceptance. Customer shall provide access starting one Month prior to the then scheduled Launch date for the duration of IOT.
2. All the necessary permits and licenses necessary to perform acceptance testing for each Satellite.
3. All reasonable and necessary information concerning Customer's desired slot for the Satellites in their orbital location relative to other satellites operating in that same orbital vicinity, in order to allow Boeing to operate the Satellites during IOT in compliance with applicable FCC rules and regulations regarding spatial isolation of satellites occupying the same orbital location.
4. Access to Customer's Ground Facility, if any, during normal business hours and subject to any security requirements thereof.
5. Upon receipt of written requests from Contractor for the closure of P904 Program review action items, Customer shall, within five (5) Days, provide written responses to such requests. Failure of Customer to respond within

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such time period shall not be deemed an approval of the applicable action item closure.

6. The meanings of the terms defined in the Launch Services Contract that are cross-referenced in this Contract.
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- B. Customer shall provide written notification to Boeing as early as practicable as to the identity and nationality of Customer's employees and Consultant(s) who are non-U.S. persons who will be assigned to the P904 Satellite Program (and subsequent changes in such personnel, if any). It is recognized that Customer may need to obtain certain United States Government approvals before such employees and Consultant(s) have access to Work pursuant to the provisions of Article 12, Access to Work in Progress and Data, and that the processing time for obtaining such approvals could take several Months.
 - C. Customer is responsible for obtaining the necessary orbital location, frequency spectrum and other approvals and licenses to operate the P904 Satellites. Customer agrees to indemnify Boeing for, and hold Boeing harmless against, any loss, damage, liability or expense (including attorney's fees and other expenses of investigating or defending claims) resulting from any claims made by any party or Person as a result of Customer's responsibilities under this Paragraph.
 - D. Customer shall obtain reapproval or reissuance of permits and licenses required in accordance with Paragraph 9.4.

ARTICLE 30 APPLICABLE LAW AND DISPUTE RESOLUTION

- 30.1 This Contract and any performance related thereto shall be interpreted and construed, governed and enforced under the laws of the State of California, USA, without giving effect to its conflict of laws principles.
- 30.2 If, during the course of performance hereunder, a dispute arises between Customer and Contractor as to the rights or obligations of either Party under this Contract, either Party may give written notice of its objections and the reasons therefor and may recommend corrective action. Boeing's Program Manager shall consult with Customer's Program Manager in an effort to reach a mutual agreement to overcome such objection or dispute. In the event mutual agreement cannot be reached within [REDACTED] [REDACTED] the respective positions of the Parties shall be forwarded to Contractor's Vice President and General Manager, and Customer's Senior Vice President, Communications Systems for resolution. If such persons are not able to reach a mutually agreeable resolution within [REDACTED] [REDACTED] the respective positions of the Parties shall again be forwarded to each Party's Senior Executive for resolution.
- 30.3 Except for disputes involving in-orbit performance incentives which are addressed in Paragraph 30.4 below, if resolution cannot be reached pursuant to Paragraph 30.2, the dispute shall be finally settled by a court of competent jurisdiction located in Los Angeles, California. The dispute procedure set forth herein shall be the Parties' exclusive remedy for any such dispute or claim (including claims for damages), provided, that either Party may seek interim injunctive relief in any court of competent jurisdiction (but not monetary damages) in aid of the court or to protect the rights of any Party pending the establishment of the jurisdiction of a particular Los Angeles court. The award of the court may include an award of attorneys' fees as determined by such court.
- 30.4 Notwithstanding the foregoing, if any dispute involving any payments, including but not limited to withholding, refund or earning of in-orbit performance incentives cannot be resolved between the Parties' Program Managers and Executives in an expedited fashion per Paragraph 30.2 above, such dispute shall be resolved through binding arbitration in accordance with the American Arbitration Association's ("AAA")

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Commercial Arbitration Rules using a single arbitrator, such arbitration to be held in Los Angeles, California. The Parties shall use best reasonable efforts to agree upon the appointment of an arbitrator within [REDACTED] of one Party's commencement of an arbitration proceeding with the AAA. In the event the Parties are unable to agree upon such appointment, the AAA shall appoint an arbitrator to resolve the dispute within [REDACTED] of the commencement of arbitration. The arbitration hearing shall be held within [REDACTED] of the arbitrator's appointment. To expedite the arbitration hearing, each Party shall be allowed to present a maximum of two factual witnesses to present and address the Satellite's technical performance data, and one expert witness to interpret the technical data and present that Party's incentive calculation. The Parties shall share the costs of the arbitration equally, and each Party shall submit to the arbitrator and exchange with each other in advance of the hearing their last, best offer ("Best Offer"). The arbitrator shall be limited to choosing one of the respective Best Offers of the Parties as the final award, binding on the Parties and enforceable by any court of competent jurisdiction. The arbitrator shall be required to render a decision within [REDACTED] after such arbitrator's appointment. If the arbitrator fails to render a decision within such period of time, or such longer period of time as may be mutually agreed upon by the Parties, the arbitration provisions of the Contract shall no longer apply to the Parties' then current dispute, and either Party may seek resolution in a court of competent jurisdiction located in Los Angeles, California, as stated in Paragraph 30.3 above.

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ARTICLE 31 OPTIONS

31.1 [REDACTED]

[REDACTED]

31.1.1 [REDACTED]

31.1.2 [REDACTED]

31.1.3 [REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

31.2.1

[REDACTED]

31.2.2

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ARTICLE 32 STORAGE

32.1 Except as stated in Paragraphs 32.2 through 32.4 below, Boeing shall store each Satellite at its own expense, if necessary, until the sooner of shipment of the Satellite to the Designated Launch Site, or for a period of [REDACTED] after the actual Ready for Shipment date.

32.2 In the event that Customer elects to postpone Launch of a specific Satellite, Customer shall provide [REDACTED] prior written notification to Boeing that it desires to place such Satellite into storage after the Satellite is Ready for Shipment. Boeing will:

- A. Within [REDACTED] thereafter submit a priced proposal to Customer outlining a plan for storage in the Continental U.S., including [REDACTED] free storage, transportation and periodic Satellite testing. The proposal will include Boeing's plan for Launch of the Satellite after storage; and
- B. Specify to Customer the storage arrangements that would be acceptable to Boeing, as well as recommend appropriate changes to the Contract terms relating to title, risk of loss, insurance, warranty, and taxes.

Upon agreement between Customer and Boeing as to storage of the Satellite, the Satellite shall be delivered by Boeing at the agreed storage site, and the Contract shall be amended pursuant to Article 22.

32.3 For a Satellite that has been in storage for a period of [REDACTED] or more at Customer's direction because Customer has elected to postpone the Launch, Delivery for all purposes under this Contract shall be deemed to have occurred on the date that is [REDACTED] after arrival of the Satellite at the storage location in the United States in accordance with this Article, Boeing shall be entitled to receive all remaining payments under the Contract associated with such Satellite placed in storage (except for Performance Payments (subject to the provisions of Paragraph 6.8), [REDACTED] or Mission Operations for each Satellite), regardless of whether the efforts associated with those payments have been completed. Customer shall be responsible for and shall pay

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all sales tax, if any, associated with the transfer of title to a Satellite while such Satellite is in storage, if such transfer occurs.

- 32.4 If a Satellite has not been Launched within [REDACTED] after its actual Ready for Shipment date, neither Party shall have any further obligations to the other Party under this Contract in respect to such Satellite, provided that Customer has met its obligations under this Contract, and title to the Satellite shall transfer from Contractor to Customer. Disposition of the Satellite shall be at the option of Customer with costs of such disposition to be borne by Customer subject to Article 9, Permits and Licenses: Government Approvals, hereof.

ARTICLE 33 LIMITATION OF LIABILITY

33.1 Boeing makes no warranty or agreement, express or implied, to or for the benefit of any Person or entity other than Customer concerning the performance of the Satellites or any other matters relating to the Work hereunder. Customer shall indemnify and hold harmless Boeing and its Affiliates and Subcontractors from and against any loss, damage, liability or expense (including attorneys' fees and other expenses of investigating or defending claims) resulting from (i) any representation made by Customer to any third party relating to the Work; (ii) any claim of Persons (including any agency or other governmental authority) dealing with or through Customer (including customers or insurers); or (iii) any other claims relating to the Satellite and arising after Launch of the Satellite, except for those claims for which Boeing shall indemnify Customer under Article 19, Patent/Copyright Indemnification. Customer shall obtain from its insurers waivers of any subrogation rights against Boeing or its Affiliates or Subcontractors, and shall provide evidence of such waivers to Boeing upon Boeing's written request.

33.2 Customer makes no warranty or agreement, express or implied, to or for the benefit of any Person or entity other than Contractor concerning any matters relating to this Contract. Contractor shall indemnify and hold harmless Customer and its Affiliates and subcontractors from and against any loss, damage, liability or expense (including attorneys' fees and other expenses of investigating or defending claims) resulting from (i) any representation made by Contractor to any third party relating to this Contract; or (ii) any claim of Persons (including any agency or other governmental authority) dealing with or through Contractor (including customers or insurers or Subcontractors). Contractor shall obtain from its insurers waivers of any subrogation rights against Customer, its Affiliates or subcontractors, and shall provide evidence of such waivers to Customer upon Customer's written request.

33.3 THE PARTIES TO THIS CONTRACT EXPRESSLY RECOGNIZE THAT COMMERCIAL SPACE VENTURES INVOLVE SUBSTANTIAL RISKS AND RECOGNIZE THE COMMERCIAL NEED TO DEFINE, APPORTION AND LIMIT CONTRACTUALLY ALL OF THE RISKS ASSOCIATED WITH THIS COMMERCIAL SPACE VENTURE. THE PAYMENTS AND OTHER REMEDIES

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EXPRESSLY SET FORTH IN THIS CONTRACT FULLY REFLECT THE PARTIES' NEGOTIATIONS, INTENTIONS AND BARGAINED-FOR ALLOCATION OF THE RISKS ASSOCIATED WITH COMMERCIAL SPACE VENTURES.

THE WARRANTY OBLIGATIONS OF THE PARTIES AND THE REMEDIES AGAINST EACH PARTY THEREFOR WHICH ARE EXPRESSLY SET FORTH IN ARTICLE 14 OF THIS CONTRACT ARE EXCLUSIVE AND ARE IN SUBSTITUTION OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING ANY STATUTORY WARRANTIES SUCH AS IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WHICH ARE EXPRESSLY DISCLAIMED. EACH PARTY'S SOLE AND EXCLUSIVE REMEDIES, AND EACH OTHER PARTY'S SOLE OBLIGATIONS FOR (i) ANY BREACH OF THIS CONTRACT, INCLUDING DELAY OR DEFAULT; (ii) ANY DEFECT, NON-CONFORMANCE OR DEFICIENCY IN ANY WORK UNDER THIS CONTRACT OR IN ANY INFORMATION, INSTRUCTIONS, SERVICES OR OTHER THINGS PROVIDED PURSUANT TO THIS CONTRACT; OR (iii) ANY OTHER CLAIMS WHATSOEVER ARISING OUT OF OR RELATING TO THIS CONTRACT AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER DENOMINATED AS CONTRACT, TORT, EQUITABLE, STATUTORY OR ANY OTHER TYPE OF CLAIM) IN THE PERFORMANCE OF THIS CONTRACT, ARE LIMITED TO THOSE SET FORTH HEREIN; AND ALL OTHER REMEDIES OR RECOURSE AGAINST SUCH PARTY OF ANY KIND ARE EXPRESSLY DISCLAIMED AND FOREVER WAIVED BY THE OTHER PARTY.

NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, UNDER ANY WARRANTY (EXPRESS, IMPLIED, OR STATUTORY) OR UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE, TORT, STRICT LIABILITY, CONTRACT, OR OTHER LEGAL OR EQUITABLE THEORY) HAVE ANY LIABILITY TO THE OTHER PARTY OR FOR ANY SPECIAL, CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES, WHETHER OR NOT FORESEEABLE, INCLUDING BUT NOT LIMITED TO LOST REVENUES OR PROFITS, COST OF CAPITAL, OR ANY OTHER FORM OF ECONOMIC LOSS

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RESULTING FROM ANY BREACH OF THIS CONTRACT OR WITH RESPECT TO ANY DEFECT, NON-CONFORMANCE OR DEFICIENCY IN ANY INFORMATION, INSTRUCTIONS, SERVICES OR OTHER THINGS PROVIDED PURSUANT TO THIS CONTRACT.

- 33.4 The Limitations of Liability set forth herein shall also apply to all Affiliates and Subcontractors of the Parties to the same extent as set forth herein with respect to each Party.

ARTICLE 34 MISCELLANEOUS

34.1 Disclaimer of Agency

None of the provisions of this Contract shall be construed to mean that either Party hereto is appointed or is in any way authorized to act as an agent of the other Party. This Contract does not constitute, create, give effect to, or otherwise recognize a joint venture, partnership or formal business organization of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein.

34.2 Waiver of Breach of Contract

A waiver of any breach of a provision hereof shall not be binding upon either Party unless the waiver is in writing and such waiver shall not affect the rights of the Party not in breach with respect to any other or future breach.

34.3 Contract Interpretation

Where the context so requires, words importing the masculine gender include the feminine and neuter genders. The recitals of this Contract are descriptive only and shall not create or affect obligations of the Parties.

34.4 Term of Contract

This Contract shall be in full force and effect as long as either Party is or may be required to perform any obligation pursuant to this Contract. In addition, Articles 4, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 30, 33, 34.7 and 34.8 shall survive the expiration or termination of this Contract for whatever cause.

34.5 Amendments

This Contract may not be modified except by written amendment signed by duly authorized representatives of both Parties.

34.6 Titles

Titles given to the Articles herein are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular article to which the title refers.

34.7 Additional Representations and Warranties

Each Party represents and warrants to the other that: (a) it has the right, power and authority to enter into and perform its obligations under this Contract; (b) it has obtained all necessary corporate approvals for execution, delivery and performance of this Contract, and (c) this Contract constitutes a legal, valid and binding obligation upon itself.

34.8 Guarantees

Prior to the date of the P904 Program Preliminary Design Review, each Party shall have executed and deliver to the other Party the Guarantees in the format as attached hereto as Exhibits G and H, respectively, or in an alternative format as mutually agreed by the Parties.

IN WITNESS WHEREOF, this Contract has been issued in two counterparts and signed in the city of El Segundo, California on behalf of Customer and Boeing by persons authorized on their behalf.

BOEING SATELLITE SYSTEMS, INC.

DIRECTV OPERATIONS, LLC.

By: *David L. Ryan*
(Signature)

By: *Mitchell Stern*
(Signature)

Name: David L. Ryan

Name: Mitchell Stern

Title: Vice President and General Manager

Title: President and Chief Executive Officer

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