

**WILLKIE FARR & GALLAGHER** LLP

1875 K Street, NW  
Washington, DC 20006-1238  
Tel: 202 303 1000  
Fax: 202 303 2000

**REQUEST FOR CONFIDENTIAL TREATMENT**

September 28, 2005

**VIA HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW TW-A325  
Washington, DC 20554

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SEP 28 2005

Federal Communications Commission  
Office of Secretary

Re: Loral Orion, Inc. (Debtor in Possession)  
First Milestone Manufacturing Contract Submission  
Call Sign: S2357 (Telstar 11N)

Dear Ms. Dortch:

Pursuant to the Commission's rules, Loral Orion, Inc. (Debtor in Possession) ("Loral Orion") hereby submits a binding, non-contingent satellite manufacturing contract and accompanying exhibits executed between Loral Orion and Space Systems/Loral, Inc. (Debtor in Possession) ("SS/L") for Telstar 11N, to be located at 37.55° W.L.<sup>1</sup> Loral Orion submits two versions of the satellite manufacturing contract: a redacted version for public inspection and an unredacted version that is confidential, subject to this request for confidential treatment.

Consistent with Commission policy, Loral Orion requests confidential treatment of the unredacted copy of the satellite manufacturing contract. The unredacted satellite manufacturing contract contains highly sensitive commercial and financial information, including details regarding amounts due, payment terms and schedules, financial and performance incentives, technical specifications, and unique commercial terms and conditions. The disclosure of this information likely would cause

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<sup>1</sup> Telstar 11N was previously referred to as Telstar 11R. While the T11 satellite was originally launched into 37.5° W.L., pursuant to a March 2005 coordination agreement with SES Americom, Inc., the satellite is operated at 37.55° W.L. A modification to the license to reflect this relocation was granted on May 6, 2005. *Policy Branch Information Actions Taken, International Bureau*, 20 FCC Rcd 8839 (2005). A modification to the Telstar 11N authorization will be sought to permit continued operation at this revised orbital location.

substantial financial and competitive harm to Loral Orion and SS/L, and is therefore exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act (“FOIA”)<sup>2</sup> and section 0.457(d) of the Commission’s rules.<sup>3</sup> The unredacted satellite manufacturing contract should be withheld from public inspection and should not be placed in the public file.

In support of its request for confidential treatment and pursuant to the requirements of section 0.459(b) of the Commission’s rules,<sup>4</sup> Loral Orion states the following:

1. Loral Orion seeks confidential treatment of the unredacted copy of its satellite manufacturing contract, including related exhibits, with SS/L. The unredacted contract and its exhibits contain trade secrets, unique and negotiated commercial terms and conditions, technical specifications, payment terms and schedules, and financial and performance incentives. This information has been redacted from the version of the contract that is available for public inspection. In addition to portions of the contract, exhibits A through E have been omitted from the public inspection copy.
2. The satellite contract is submitted pursuant to section 25.164(c) of the Commission’s rules, which requires a satellite licensee to submit a copy of its manufacturing contract with the Commission on or before the deadline for entering into such a contract.<sup>5</sup>
3. The satellite manufacturing contract contains trade secrets, unique and negotiated commercial terms and conditions, technical specifications, payment terms and schedules, financial and performance incentives, and other commercial, financial and technical information that is customarily guarded from competitors.<sup>6</sup> This information is exempt from disclosure under FOIA Exemption 4<sup>7</sup> and section 0.457(d) of the Commission’s rules.<sup>8</sup> The satellite manufacturing contract details unique financial and commercial terms and conditions that have been negotiated extensively by the parties. It also details the negotiated satellite construction schedule, including exhibits A through E, which provide technical specifications for construction, testing, and deployment of a sophisticated, unique GSO FSS satellite. Thus, this information in the satellite manufacturing contract qualifies as a trade secret, which is defined as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be

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<sup>2</sup> 5 USC § 552(b)(4). See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

<sup>3</sup> 47 CFR § 0.457(d).

<sup>4</sup> 47 CFR § 0.459(b).

<sup>5</sup> 47 C.F.R. § 25.164(c). In addition, the Commission required submission of the satellite manufacturing contract when it granted a November 29, 2001 modification request on September 28, 2004. *Policy Branch Information Actions Taken, International Bureau*, 20 FCC Rcd 960 (2004).

<sup>6</sup> 47 CFR § 0.457(d)(2).

<sup>7</sup> 5 USC § 552(b)(4).

<sup>8</sup> 47 CFR § 0.457(d).

the end product of either innovation or substantial effort.”<sup>9</sup> Neither Loral Orion nor SS/L customarily discloses any of the information redacted or omitted from the satellite manufacturing contract to competitors or to the public. Therefore, all of the aforementioned information is exempt from disclosure.

4. Loral Orion faces competition from a substantial number of companies involved in or developing Ku-band satellite systems, along with other companies currently providing comparable services using other satellite frequencies. These competitors include, but are not limited to, PanAmSat Corp., Intelsat, SES Americom, Inc., and New Skies Satellites.
5. Disclosure of the aforementioned trade secrets, unique and negotiated commercial terms and conditions, technical specifications, payment terms and schedules, financial and performance incentives, and other commercial, financial and technical information that would customarily be guarded from competitors likely would result in substantial competitive harm to both Loral Orion and SS/L. Release of this information would provide Loral Orion’s competitors with commercial information developed by Loral Orion and SS/L. The contract and its exhibits contain detailed descriptions of the satellite’s performance requirements and provide a roadmap of Loral Orion and SS/L’s satellite construction. Release of that information would provide competitors with valuable proprietary information at no expense, allowing competitors to imitate or build on Loral Orion and SS/L’s innovations without expending funds for their own research and development. Competitors could use the information disclosed to develop a competitive marketing strategy likely to cause harm to Loral Orion and SS/L. Furthermore, disclosure of financial information contained in the contract would provide competitors with valuable insight as to how Loral Orion and SS/L structure and price satellite programs. Disclosure likely would cause SS/L to be disadvantaged in competing for future contract procurements by allowing competitors and potential customers to better estimate and undercut SS/L’s bids. Indeed, release of redacted and omitted portions of the satellite manufacturing contract would provide competitors with a “model contract” to use when soliciting SS/L’s clients. It could also be used to provide other satellite manufacturers with key contractual provisions that they can use in tailoring competitive strategies, adversely affecting Loral Orion and SS/L’s future negotiating postures.
6. Article 28 of the satellite manufacturing contract contains specific provisions requiring both parties to maintain the confidentiality of proprietary information included in the contract and disclosed orally during discussions connected with the contract.
7. Neither Loral Orion nor SS/L customarily discloses the information redacted or omitted from the satellite manufacturing contract to competitors or to the public.
8. Loral Orion requests that the unredacted copy of the satellite manufacturing contract and exhibits be considered confidential indefinitely or for ten years as consistent with Article 28 of

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<sup>9</sup> See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (citation omitted).


the satellite manufacturing contract. Premature disclosure of the redacted and omitted information would unfairly advantage other satellite operators and damage Loral Orion's competitive position.

9. Using the *National Parks* test, commercial, technical, or financial data is kept confidential if its disclosure would either (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.<sup>10</sup> The Commission has previously determined that the financial and technical data contained in a satellite manufacturing contract are considered confidential under the second prong of the *National Parks* test.<sup>11</sup> Disclosure of this information would cause the satellite operator to "lose its competitive edge."<sup>12</sup> Loral Orion's satellite manufacturing contract contains just such proprietary and confidential financial and technical information. Disclosure would cause substantial competitive injury.

To provide appropriate protection from public disclosure, the Commission should strictly limit distribution of the unredacted copy of Loral Orion's satellite contract within the agency. Should any person outside the Commission request disclosure of the unredacted copy, Loral Orion requests to be notified immediately in order to oppose such request or take other actions as deemed necessary.<sup>13</sup>

Please contact the undersigned with any questions regarding this submission.

Kind regards,



Philip L. Verveer  
Jennifer D. McCarthy  
Karen Henein\*  
Counsel to Loral Orion, Inc. (Debtor in Possession)

Enclosures

cc: Andrea Kelly w/ enclosures (confidential version)

\* Admitted only to the Maryland Bar. Practicing under the supervision of members of the D.C. Bar.

<sup>10</sup> *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

<sup>11</sup> See *American Satellite Company; Request for Inspection of Rainbow Satellite, Inc. Documents*, Memorandum Opinion and Order, 1985 FCC LEXIS 3117 at ¶ 17 (1985).

<sup>12</sup> *Id.*

<sup>13</sup> Please note that although the final page is not numbered in sequence, the contract as submitted is complete as agreed to and executed by both parties.

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SEP 28 2005

Federal Communications Commission  
Office of Secretary

**CONTRACT**

**BETWEEN**

**LORAL ORION, INC.**

**AND**

**Space Systems/Loral, Inc.**

**FOR THE**

**"TELSTAR 11N"**

**Satellite Program**

**The attached Contract and the information contained therein are confidential and proprietary to Loral Orion, Inc. and Space Systems/Loral, Inc. and shall not be published or disclosed to any third party except as permitted by the terms and conditions of this Contract.**

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**PREAMBLE**

This Contract is executed as of 8 September, 2005, by and between Loral Orion, Inc., a corporation organized and existing under the laws of the State of Delaware, having a place of business at 500 Hills Drive, P.O. Box 7018 Bedminster, New Jersey 07921-0752 (hereinafter referred to as "Purchaser"), and Space Systems/Loral, Inc., a corporation organized and existing under the laws of the State of Delaware, having a place of business at 3825 Fabian Way, Palo Alto, CA 94303-4604 (hereafter referred to as "Contractor", and Purchaser and Contractor are hereafter referred to collectively as the "Parties" or individually as a "Party"), regarding the Telstar 11N Satellite program.

**RECITALS**

**WHEREAS**, Purchaser desires to procure a communications Satellite, Launch Services, a Launch and In-Orbit Insurance Policy, Launch Support Services, Mission Operations Support Services, a DSS, Training services and other items and services to the extent and subject to the terms and conditions set forth herein,

**WHEREAS**, Contractor is willing to furnish such Satellite, to procure [ ] on behalf of Purchaser Launch Services and a Launch and In-Orbit Insurance Policy, and to provide Launch Support Services, Mission Operations Support Services, a DSS, Training services and other items and services to the extent of and subject to the terms and conditions set forth herein, in consideration of the price and other valid consideration.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound, the Parties agree as follows:

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## ARTICLE 1 - DEFINITIONS

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

- 1.1 **"Acceptance"** (i) with respect to the Satellite shall be as provided in Article 10, and (ii) with respect to any Deliverable Item other than the Satellite shall be as provided in Article 11.
- 1.2 **"Affiliate"** means, with respect to an entity, any other entity Controlling or Controlled by or under common Control with such entity.
- 1.3 **"Article"** means an article of this Contract.
- 1.4 **"Attachment(s)"** means any and all attachment(s) that are attached hereto or to any Exhibit and incorporated herein or therein, as may be amended from time to time in accordance with the terms hereof.
- 1.5 **"Business Day"** means any day other than a Saturday, Sunday or any other day on which national banks are authorized to be closed in New York City, New York.
- 1.6 **"Candidate Launch Vehicles"** has the meaning set forth in Article 3.3.
- 1.7 **"Contract"** means the terms and conditions (Preamble, Recitals and Articles) of this executed contract, its Exhibits and its Attachment(s) as set forth in Articles 2.1 and 33, as may be amended from time to time in accordance with the terms hereof.
- 1.8 **"Contractor"** has the meaning set forth in the Preamble and any successor or assignee permitted hereunder.
- 1.9 **"Control"** and its derivatives mean, with respect to an entity, the legal, beneficial, or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights or the power to direct the management policies of such entity, whether through the ownership of voting stock, by contract, or otherwise.
- 1.10 **"Daily Rate"** has the meaning set forth in Article 13.4.
- 1.11 **"Deliverable Data"** means the data and documentation required to be delivered to Purchaser as specified in Article 3.1.
- 1.12 **"Deliverable Item"** means any of the items or services listed in Article 3.1, as may be amended from time to time in accordance with the terms hereof, and, collectively, the **"Deliverable Items."**

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- 1.13 **“Deliverable Services”** means those services listed in Article 3.1, as may be amended from time to time in accordance with the terms hereof.
- 1.14 **“Delivery”** has the meaning set forth in Article 3.2.
- 1.15 **“Dispute”** has the meaning set forth in Article 25.
- 1.16 **“Dynamic Satellite Simulator” or “DSS”** means the dynamic satellite simulator, including integrated software, all as described in Exhibit .
- 1.17 **“Effective Date of Contract” or “EDC”** means 8 September 2005..
- 1.18 **“Essential Obligations”** has the meaning set forth in Article 23.1.1.
- 1.19 **“Exhibit(s)”** means the exhibit(s) identified in Article 2.1 and attached hereto and incorporated herein, as may be amended from time to time in accordance with the terms hereof.
- 1.20 **“Failed Transponder”** has the meaning set forth in Article 13.7.
- 1.21 **“FCC”** means the Federal Communications Commission or any successor agency or governmental authority.
- 1.22 **“[ ]”** has the meaning set forth in Article 4.1.
- 1.23 **“Force Majeure”** has the meaning set forth in Article 17.
- 1.24 **“Incentive Payback”** means the amount of any unearned Orbital Performance Incentives referred to in Article 13.
- 1.25 **“In-Orbit Testing” or “IOT”** means the testing of the Satellite in-orbit in accordance with Exhibit D, Satellite Program Test Plan.
- 1.26 **“IOT Complete Date”** has the meaning set forth in Article 10.3.
- 1.27 **“Intellectual Property”** means all designs, methods, concepts, layouts, software, inventions (whether or not patented or patentable), processes, technical data and documentation, technical information and drawings, and similar matter in which an Intellectual Property Right subsists.
- 1.28 **“Intellectual Property Claim”** has the meaning set forth in Article 19.
- 1.29 **“Intellectual Property Right(s)”** means all common law and statutory proprietary rights, including patent, patent application, patent registration, copyright, trademark, service mark, trade secret, mask work rights, data rights and similar rights existing from time to time  
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time under the intellectual property laws of the United States, any state or foreign jurisdiction, or international treaty regime.

- 1.30 **"Intentional Ignition"** means, with respect to the Satellite, the start of the ignition process of the Launch Vehicle for the purpose of Launch, which is the time at which the command signal is sent to the Launch Vehicle. This definition shall be modified to reflect the definition of "intentional ignition" in the Launch Services Agreement applicable to Launch of the Satellite.
- 1.31 **"Launch"** means, with respect to the Satellite, Intentional Ignition followed by lift-off. This definition shall be modified to incorporate the definition of "launch" from the Launch Services Agreement applicable to the Launch of the Satellite.
- 1.32 **"Launch and In-Orbit Insurance Policy"** has the meaning set forth in Article 32.1.
- 1.33 **"Launch Agency"** means the provider of Launch Services responsible for the Satellite.
- 1.34 **"Launch Services"** means those services provided by the Launch Agency for the Launch of the Satellite pursuant to the Launch Services Agreement.
- 1.35 **"Launch Services Agreement"** or **"LSA"** means the contract between the Contractor and the Launch Agency that provides Launch Services for the Satellite.
- 1.36 **"Launch Site"** means the location that will be used by the Launch Agency for purposes of launching the Satellite, except in the case of Sea Launch it shall mean the home port located in Long Beach, CA.
- 1.37 **"Launch Support"** or **"Launch Support Services"** means those services specified in Exhibit A, Statement of Work to be provided by Contractor in support of Launch Services.
- 1.38 **"Launch Vehicle"** means the launch vehicle used to provide Launch Services for the Satellite.
- 1.39 **"London Inter-Bank Offer Rate"** or **"LIBOR"** means the rate per annum shown, on the third (3rd) London Business Day preceding the day of commencement of an interest calculation period, on page 3750 of the Dow Jones & Company Telerate screen or any successor page as the composite offered rate for London interbank deposits in an amount approximately equal to the amount on which the interest is to be applied for a three-month period (the "Rate Base"), as shown under the heading "USD" as of 11:00 a.m. (London Time); provided that in the event no such rate is shown, LIBOR shall be [Use or disclosure of the data contained on this page is subject to the restrictions set forth in this Contract.]

the rate per annum (rounded to the nearest 1/100th of one percent) based on the rates at which U.S. dollar deposits approximately equal in principal amount to the Rate Base and for a three-month period are displayed on page "LIBO" of the Reuters Monitor Money Rates Service or such other page as may replace the LIBO page on that service for the purpose of displaying London interbank offered rates of major banks as of 11:00 a.m. (London time) (it being understood that if at least two such rates appear on such page, the rate will be the arithmetic mean of such displayed rates); provided that in the event fewer than two such rates are displayed, or if no such rate is relevant, LIBOR shall be the rate per annum equal to the rate offered by Credit Suisse, New York Branch, at approximately 11:00 a.m. (London Time) to prime banks in the London interbank market on deposits in U.S. dollars in an amount approximately equal in principal amount to the aggregate principal balance of the Rate Base for a three-month period.

- 1.40 **"Losses"** has the meaning set forth in Article 20.1.
- 1.41 **"Milestone"** means a portion of the Work upon completion of which a payment is to be made in accordance with Exhibit E, Payment Plan and Termination Liability Schedule.
- 1.42 **"Mission Operations Support Services"** means the orbit-raising, IOT and related services specified in Exhibit A, Statement of Work, to be performed by Contractor for the Satellite.
- 1.43 **"NSP"** means not separately priced and included in the [ ].
- 1.44 **"Orbital Performance Incentive Period"** means, with respect to the Satellite, the period commencing on the day following the IOT Complete Date for such Satellite and ending on the last day of the Satellite Stated Life.
- 1.45 **"Orbital Performance Incentives"** means, with respect to the Satellite, an amount equal to [ ], which may be earned by Contractor based on in-orbit performance of such Satellite as set forth in Article 13.
- 1.46 **"Orbital Storage"** means, with respect to the Satellite, any period of time of intentional non-use by Purchaser of such Satellite provided that such Satellite has been placed into orbit and is capable of performing in accordance with Exhibit B, Satellite Performance Specification.
- 1.47 **"Paragraph"** means a paragraph under any Article hereof or section in an Exhibit or Attachment.

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- 1.48 **"Partial Loss"** means, with respect to the Satellite, that Transponder Failures have occurred, but the Satellite is not a Total Loss.
- 1.49 **"Party"** or **"Parties"** means Purchaser, Contractor or both, as the context requires.
- 1.50 **"Payment Plan"** means the payment plan for the applicable Deliverable Item, as set forth in Exhibit E, Payment Plan and Termination Liability Schedule, as may be amended from time to time in accordance with the terms hereof.
- 1.51 **"Performance Specification"** means the applicable performance specification for the Satellite or other Deliverable Item, as appropriate, in the context of the applicable clause, as such specification may be amended from time to time in accordance with the terms hereof.
- 1.52 **"Preamble"** means the preamble section of this Contract.
- 1.53 **"PMO"** means the Purchaser's program management office to be designated by Purchaser.
- 1.54 **"Product Assurance Program Plan"** means the product assurance program plan attached as Exhibit C, as may be amended from time to time in accordance with the terms hereof.
- 1.55 **"Proprietary Information"** has the meaning set forth in Article 28.
- 1.56 **"Purchaser"** has the meaning set forth in the Preamble and any successor or assignee permitted hereunder.
- 1.57 **"Purchaser Delay"** has the meaning set forth in Article 18.
- 1.58 **"Recitals"** means the recitals section of this Contract.
- 1.59 **"Satellite"** means the communications satellite that is to be manufactured by Contractor and to be Delivered to Purchaser pursuant to this Contract.
- 1.60 **"Satellite Anomaly"** means, with respect to the Satellite in-orbit, a condition or occurrence that has a material adverse impact on the Satellite Stated Life or performance of such Satellite.
- 1.61 **"Satellite Performance Specification"** means the Satellite performance specification attached as Exhibit B, as may be amended from time to time in accordance with the terms hereof.

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- 1.62 **“Satellite Pre-Shipment Review”** or **“SPSR”** has the meaning set forth in Article 9.
- 1.63 **“Satellite Program Test Plan”** means the Satellite program test plan attached as Exhibit D, as may be amended from time to time in accordance with the terms hereof.
- 1.64 **“Satellite Stated Life”** or **“Satellite Mission Life”** means, with respect to the Satellite, the contracted for life of [ ] for such Satellite as set forth in Paragraph 2.7 of Exhibit B, Satellite Performance Specification, commencing upon the IOT Complete Date for such Satellite.
- 1.65 **“Statement of Work”** or **“SOW”** means the statement of work attached as Exhibit A, as may be amended from time to time in accordance with the terms hereof.
- 1.66 **“Technical Assistance Agreement”** has the meaning set forth in section 120.22 of the U.S. International Traffic in Arms Regulations, 22 CFR §120-130.
- 1.67 **“Terminated Ignition”** means that, following the time when the electronic signal is sent to command the opening of any first stage propellant valves, the first stage engines of the Launch Vehicle are shut down for any reason before the hold down mechanism is released and the Launch pad is declared safe by the Launch Agency. This definition shall be modified to incorporate the definition of "terminated ignition" from the Launch Service Agreement applicable to the Launch of the Satellite.
- 1.68 **“Total Loss”** means with respect to the Satellite (i) the complete loss, destruction or failure of such Satellite, [ ]
- 1.69 **“Training”** means the training to be provided by Contractor in accordance with Exhibit A, Statement of Work.
- 1.70 **“Transponder”** means individually those sets of equipment within the communications subsystem of the Satellite that provide a discrete path to receive communications signals from earth, translate and amplify such signals and transmit them to earth as further described in Exhibit B, Satellite Performance Specification. A Transponder shall mean any one of the primary designated Ku-Band Transponders specified in Exhibit B, Satellite Performance Specification.
- 1.71 **“Transponder Failure”** means, at any time after Intentional Ignition, the failure (including permanently intermittent failures) of a Transponder [ ]

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All available redundant and/or spare components on the Satellite applicable to the Transponder must be used or cease to be available before a Transponder is considered to be a Transponder Failure

- 1.72 **“Work”** means all design, development, construction, manufacturing, labor, and services, including tests to be performed, and any and all Deliverable Items, including the Satellite, Deliverable Data, Mission Operations Support Services, procurement of Launch Services, Launch Support Services, the DSS, procurement of a Launch and In-Orbit Insurance Policy, Training, and equipment, materials, articles, matters, services, and things to be furnished and rights to be transferred to Purchaser under this Contract.

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## ARTICLE 2 - SCOPE OF WORK

### 2.1 Provision of Services and Materials

Contractor shall provide the necessary personnel, material, services, and facilities to design, manufacture, test and deliver one (1) Satellite, together with all other Deliverable Items referred to in Article 3.1. Contractor shall furnish and perform the Work in accordance with the provisions of this Contract, including the following Exhibits, which are attached hereto and made a part hereof:

- 2.1.1 Exhibit A, Statement of Work, dated 30 August 2005.
- 2.1.2 Exhibit B, Satellite Performance Specification, dated 31 August 2005.
- 2.1.3 Exhibit C, Product Assurance Program Plan, dated 30 August 2005.
- 2.1.4 Exhibit D, Satellite Program Test Plan, dated 31 August 2005.
- 2.1.5 Exhibit E, Payment Plan and Termination Liability Schedule, dated 1 September 2005.
  - 2.1.5.1 Satellite construction milestones are reflected in Exhibit E, Payment Plan and Termination Liability Schedule.

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### ARTICLE 3 - DELIVERABLE ITEMS AND DELIVERY SCHEDULE

#### 3.1 Deliverable Items

Subject to the other terms and conditions of this Contract, the items to be delivered under this Contract are specified below. Contractor shall deliver such items on or before the corresponding delivery dates and at locations specified as follows:

<u>Item</u>	<u>Description</u>	[
1.	Satellite	
2.	Deliverable Data	
3.	Training	
4.	Launch Support Services	
5.	Mission Operations Support Services	
6.	DSS	
7.	Launch Services	
8.	Launch and In-Orbit Insurance Policy	]

#### 3.2 Delivery

Delivery of each Deliverable Item except the Satellite, Launch Services and the Launch and In-Orbit Insurance Policy, shall occur upon arrival of such Deliverable Item at the location required by this Article 3.1. In the case of the Satellite, Delivery shall occur upon successful completion of Satellite Pre-Shipment Review pursuant to Article 9. Delivery of Launch Services shall occur at Launch, and Delivery of the Launch and In-Orbit Insurance Policy shall occur as provided in Article 32.

#### 3.3 Procurement of Launch Services

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Contractor shall provide engineering and other customary services to maintain compatibility of the Satellite for Launch with the list of candidate Launch Vehicles set forth in Paragraph 2.1 of Exhibit B, Satellite Performance Specification (the "Candidate Launch Vehicles") up to [ ] months prior to the scheduled Delivery date of the Satellite set forth in Article 3.1. On or before [ ] months prior to the then-currently scheduled Delivery date of the Satellite set forth in Article 3.1, Contractor shall provide Purchaser with the prices and availability of the various Candidate Launch Vehicles (and shall provide such other and reasonable data related thereto as requested by Purchaser and shall cooperate with Purchaser and provide reasonable assistance to Purchaser in evaluating the various Candidate Launch Vehicles) and Purchaser shall, on or before [ ] months prior to the scheduled Delivery date of the Satellite set forth in Article 3.1, notify Contractor in writing of its Launch Vehicle selection. Failure to notify Contractor of its Launch Vehicle selection by the date set forth in the immediately preceding sentence shall be a Purchaser delay of Work subject to Article 18. Upon notification by Purchaser of its Launch Vehicle selection, Contractor shall enter into an LSA with the selected Launch Agency and this Contract shall be modified accordingly to include the price and schedule of the Launch Services (and for other affected terms and conditions), and the Payment Plan shall be modified to reflect that the payments due to Contractor for the Launch Services [ ] shall be made sufficiently in advance, but not more than [ ] in advance, of the date Contractor owes the corresponding payment to the Launch Agency. Contractor shall have no obligation to make any payment to the Launch Agency in advance of receipt of the corresponding payment from Purchaser and, in the event that Purchaser fails to make any payment when due that results in additional charges under the LSA, the delay of Launch Services or the termination of the LSA, Purchaser shall bear responsibility for all such consequences. Notwithstanding the foregoing, Contractor shall use reasonable commercial efforts, at Purchaser's expense in cooperating with Purchaser to mitigate such consequences. Purchaser shall cooperate with Contractor in complying with all material terms and conditions in the LSA.

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**ARTICLE 4 - PRICE**

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#### 4.2 Taxes

The [ ] includes all applicable taxes, duties and similar liabilities (including interest, fines, penalties, or additions attributable or imposed on or with respect to, any such taxes, duties and similar liabilities) imposed by any United States federal, state, or local government in connection with Contractor's performance under this Contract.

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## ARTICLE 5 - PAYMENTS

### 5.1 Payment Plan

Payments by Purchaser to Contractor of the [ ] set forth in Article 4 and of the amounts for options, if any, exercised by Purchaser pursuant to this Contract shall be in accordance with Exhibit E, Payment Plan and Termination Liability Schedule, as applicable thereto.

### 5.2 Payment Conditions

5.2.1 Time Payments. All time payments due from Purchaser shall be paid no later than the due date specified in Exhibit E, Payment Plan and Termination Liability Schedule. Contractor shall submit to Purchaser an invoice with respect to each such payment no later than [ ] prior to such due date.

5.2.2 Milestone Payments. All payments due from Purchaser upon the completion of a Milestone described in Exhibit E, Payment Plan and Termination Liability Schedule shall be paid no later than [ ] after receipt by Purchaser of an invoice for a Milestone that has been completed in accordance with the requirements of this Contract.

5.2.3 Orbital Performance Incentives. The Orbital Performance Incentives payment due from Purchaser pursuant to Article 13.2 or Article 13.3, as applicable shall be due and payable no later than [ ] after receipt of an invoice in accordance with the requirements of this Contract.

5.2.4 Non-Warranty Payments. All amounts payable to Contractor with respect to non-warranty work performed pursuant to Article 15.3 shall be paid no later than [ ] after receipt of an invoice in accordance with the requirements of this Contract.

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5.2.5 Payment of Actuals. All amounts payable to Contractor on the basis of actual costs reasonably incurred by Contractor, including pursuant to Articles 5.3.2, 6.2, 6.3, 15.3, 21.2, 23.1.3, 23.1.6 and 23.2.3, shall be paid no later than [ ] after receipt of an invoice in accordance with the requirements of this Contract. [ ]

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5.3 Late Payment

5.3.1 [ ]

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5.3.2 Stop Work. If any payment is not made by Purchaser by the date [ ] after the date due in accordance with Article 5.2, without prejudice to Contractor's other rights and remedies set forth herein, Contractor may elect, upon a [ ] written notice, to cease performance of its obligations under this Contract, without prejudice or penalty. If Contractor subsequently resumes performance, the price, schedule, and other affected terms of this Contract shall be equitably adjusted to compensate Contractor

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for all impacts on Contractor associated with such Work stoppage, including documented actual costs reasonably incurred by Contractor associated with such Work stoppage, plus a markup of [ ] with such costs and markup to be invoiced and paid pursuant to the provisions of this Article 5.

5.3.3 Invoices. Invoices required to be delivered by Contractor hereunder shall be submitted by facsimile and air mail to Purchaser (original plus one (1) copy) at the following address:

[

Attn.:

:

]

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

5.4 Payment Bank

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

[

]

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

5.5 Disputed Amounts

If the event covered by a Contractor Milestone payment invoice has not been completed in accordance with the requirements of this Contract, Purchaser shall so notify Contractor in writing within [ ] of receipt of the invoice. Such notification shall state in reasonable detail the Contract requirements associated with the

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applicable Milestone event that have not been met. Upon correction of the noted discrepancy(ies), the Milestone invoice shall be reinstated for payment.

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## ARTICLE 6 - PURCHASER-FURNISHED ITEMS

### 6.1 Purchaser-Furnished Support

Purchaser-Furnished Support provided hereunder shall be in accordance with Section 2.5 of Exhibit A, Statement of Work.

### 6.2 Communications Authorizations

Purchaser shall be responsible, at its cost and expense, for preparing, coordinating and filing all applications, registrations, reports, licenses, permits and authorizations with the FCC if required to do so and with any other national governmental agencies having jurisdiction over Purchaser, for the construction, Launch and operation of the Satellite. Contractor shall provide such reasonable cooperation and support as Purchaser may reasonably request in support of Purchaser's preparation, coordination and filing of such applications, registrations, reports, licenses, permits and authorizations. From and after the IOT Complete Date, for any support provided by Contractor under this Article 6.2, Contractor shall be entitled to reimbursement of actual costs reasonably incurred in connection with the provision of such support, with such costs to be invoiced and paid in accordance with Article 5.2.5.

### 6.3 Radio Frequency Coordination

Purchaser shall be responsible for the timely preparation and submission of all filings required by the International Telecommunication Union (or any successor agency thereto) and all relevant domestic communications regulatory authorities regarding radio frequency and orbital position coordination. Such filings shall be made in accordance with the Radio Regulations of the International Telecommunication Union (or any successor agency) and the laws and regulations of all domestic communications regulatory authorities having jurisdiction over Purchaser. Contractor shall provide such reasonable cooperation and support as Purchaser may reasonably request in support of Purchaser's efforts in the preparation and submission of such filings. From and after the IOT Complete Date, for any support provided by Contractor under this Article 6.3, Contractor shall be entitled to reimbursement of actual costs reasonably incurred in connection with the provision of such support, with such costs to be invoiced and paid in accordance with Article 5.2.5.

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6.4 Launch Support Services

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6.5 Satellite Performance Data

In the event of a Satellite Anomaly that occurs during the Satellite Stated Life, Purchaser shall timely provide Contractor with or give Contractor access to any data Contractor may reasonably require to investigate and correct (per Article 15.2 hereof) such Satellite Anomaly and/or support Purchaser in making and perfecting claims for insurance recovery relating to such Satellite Anomaly as set forth in Article 32.2.

6.6 Late Delivery of Purchaser-Furnished Items or Services

The late delivery of Purchaser-furnished items or services, individually or combined, shall be considered an event beyond the reasonable control of Contractor, and Contractor shall be entitled to adjustments in price, schedule, performance requirements and other terms of this Contract in accordance with Article 18.

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## ARTICLE 7 - COMPLIANCE WITH U.S LAWS AND DIRECTIVES

### 7.1 General

Each Party shall, at its expense, perform its obligations hereunder in accordance with all applicable laws, regulations, and policies of the United States and the conditions of all applicable United States Government approvals, permits, or licenses.

### 7.2 Compliance with U.S. Export Control Laws

Contractor shall, at its expense, perform the Work in accordance with all applicable export control laws, regulations, and policies of the United States and the conditions of all applicable United States Government approvals, permits, and licenses.

Any obligation of Contractor hereunder to provide hardware, software, Deliverable Data, other technical information, technical services, Training, or any access to facilities to Purchaser and its personnel and/or its representatives shall be subject to applicable U.S. Government export control and security laws, regulations, policies and license conditions, as construed by Contractor. The Parties shall work cooperatively and in good faith to implement this Contract in compliance with such laws, regulations, policies and license conditions. If and to the extent required by U.S. law, Purchaser and its personnel and/or representatives shall enter into U.S. Government-approved agreement(s), including a Technical Assistance Agreement(s), separate from this Contract, governing Contractor's provision of hardware, software, Deliverable Data, other technical information, technical services, Training, or access to facilities in connection with this Contract.

### 7.3 Licenses and Other Approvals

Contractor shall timely apply for and, once issued, maintain U.S. Government export licenses, agreements and other approvals that are required for "foreign person" personnel and/or representatives of Purchaser (including, but not limited to, foreign subsidiaries and related entities of Purchaser involved with the procurement) as well as Purchaser's insurance providers, to have access to Contractor facilities, hardware, software, Deliverable Data, Training, other technical information or technical services in connection with the performance of this Contract. A "foreign person" shall be as defined in the U.S. International Traffic in Arms Regulations, 22 C.F.R. §120.16. As early as practicable, and in no event later than [ ], Purchaser shall provide Contractor with a list of countries of nationality (if other than the U.S.) of

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Purchaser's "foreign person" personnel and/or representatives (including, but not limited to foreign subsidiaries and related entities of Purchaser involved with the procurement), as well as Purchaser's insurance providers, if such personnel, representatives, or insurance providers will or may have access to U.S. export-controlled items or services under this Contract. Purchaser shall provide such reasonable cooperation and support as necessary for Contractor to apply for and maintain such required U.S. export licenses, agreements and other approvals, and shall promptly notify Contractor of any occurrence or change in circumstances of which it becomes aware that is relevant to or affects such export licenses, agreements and approvals. At Purchaser's request, Contractor shall include Purchaser (and related entities involved with the procurement) as a named party in any application to the U.S. government for approval of such export licenses, agreements and other approvals so as to permit Purchaser to be present during any discussion or meetings where Purchaser's foreign subsidiaries/related entities or insurance providers may receive from, or discuss, Contractor export-controlled items and/or services. Contractor shall provide the parties to such export licenses and agreements copies of the export licenses and agreements, including any U.S. government provisos related to same.

NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT, IN NO EVENT SHALL CONTRACTOR BE OBLIGATED UNDER THIS CONTRACT TO PROVIDE ACCESS TO CONTRACTOR OR SUBCONTRACTOR FACILITIES, PROVIDE ACCESS TO OR FURNISH HARDWARE, SOFTWARE, DELIVERABLE DATA OR OTHER TECHNICAL INFORMATION, OR PROVIDE TECHNICAL SERVICES OR TRAINING, TO ANY PERSON EXCEPT IN COMPLIANCE WITH APPLICABLE U.S. EXPORT CONTROL LAWS, REGULATIONS, POLICIES AND LICENSE CONDITIONS, AS CONSTRUED BY CONTRACTOR.

**7.4 No Unauthorized Exports or Retransfers**

PURCHASER SHALL NOT EXPORT OR TRANSFER TO ANY "FOREIGN PERSON" ANY HARDWARE, SOFTWARE, DELIVERABLE DATA, OTHER TECHNICAL INFORMATION OR TECHNICAL SERVICES FURNISHED HEREUNDER, EXCEPT AS EXPRESSLY AUTHORIZED BY THE U.S. GOVERNMENT IN ACCORDANCE WITH THE EXPORT LICENSES, AGREEMENTS AND OTHER APPROVALS REFERENCED IN ARTICLES 7.1, 7.2, AND 7.3 OR AS OTHERWISE EXPRESSLY AUTHORIZED UNDER U.S. EXPORT CONTROL LAWS.

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PURCHASER UNDERSTANDS AND WARRANTS THAT IT SHALL NOT RE-EXPORT, RE-TRANSFER OR DIVERT TO ANY THIRD PARTY ANY ITEM EXPORTED TO PURCHASER UNDER OR IN CONNECTION WITH THIS CONTRACT, EXCEPT AS EXPRESSLY AUTHORIZED BY THE U.S. GOVERNMENT IN ACCORDANCE WITH THE EXPORT LICENSES, AGREEMENTS OR OTHER APPROVALS REFERENCED IN ARTICLES 7.1, 7.2, AND 7.3 OR AS OTHERWISE EXPRESSLY AUTHORIZED UNDER U.S. EXPORT CONTROL LAWS.

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## ARTICLE 8 - ACCESS TO WORK-IN-PROGRESS

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

Contractor shall provide Purchaser and its duly appointed consultants and agents with access to the Work and Work in progress at Contractor's facilities hereunder as set forth in Exhibit A, Statement of Work.

### 8.2 Work in Progress at Subcontractors' Facilities

[

], and subject to compliance with Article 7 and each such subcontractor's safety and security regulations, Contractor shall allow Purchaser's personnel (or Purchaser's duly appointed consultants and agents) to have access to Work being performed with respect to such Satellite in each such subcontractor's plants for the purpose of observing the progress of such Work, subject to the right of Contractor to accompany Purchaser on any such visit to a subcontractor's plant. [

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### 8.3 On-Site Facilities for Purchaser's Personnel

For the purpose of monitoring the progress of the Work being performed by Contractor hereunder, Contractor shall provide office facilities at the Contractor's plant [

] through the IOT Complete Date. The office facilities to be provided shall include a reasonable amount of office space, office furniture, local telephone service, reasonable long-distance telephone usage, access to copy machines, facsimile machines, internet access and IT support, and meeting rooms to the extent necessary to enable Purchaser personnel to monitor the progress of Work under this Contract.

### 8.4 Purchaser Representatives as Competitors/Foreign Persons

Purchaser's consultants and agents shall not be in direct competition with (and shall not currently be employed by companies or entities that are in direct competition with) Contractor for the sale of commercial telecommunications satellites. Purchaser shall

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notify Contractor in writing of the name, title or function, business relationship, employer, citizenship status under U.S. export laws and such other information as may be reasonably requested by Contractor, with respect to each of its intended consultants and agents, and cause each such consultant and agent to: (i) execute a confidentiality agreement directly with Contractor in form and substance reasonably satisfactory to Contractor and containing terms substantially the same as those set forth in Article 28 and Article 29; and, (ii) pursuant to Article 7, execute a Technical Assistance Agreement or other agreement to ensure compliance with applicable U.S. export control laws and regulations to the extent required by applicable U.S. export laws or regulations. Contractor may in its reasonable discretion deny any consultant or agent of Purchaser access to Contractor facilities, products or information.

#### 8.5 Interference with Operations

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

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## ARTICLE 9 - SATELLITE PRE-SHIPMENT REVIEW (SPSR) AND DELIVERY

### 9.1 Satellite Pre-Shipment Review (SPSR)

- 9.1.1 Contractor to Conduct a Review of the Satellite Prior to Shipment. Contractor shall conduct a review of the Satellite prior to Contractor's shipment of such Satellite to the Launch Site. This review shall be in accordance with the terms of this Article 9 and Paragraph 2.2.7 of Exhibit A, Statement of Work (a "Satellite Pre-Shipment Review" or "SPSR").
- 9.1.2 Time, Place and Notice of SPSR. The SPSR shall take place at Contractor's facility. Contractor shall notify Purchaser in writing on or before [ ] prior to the date that the Satellite will be available for SPSR, which shall be the scheduled date for commencement of such SPSR. If Purchaser cannot commence such SPSR on such scheduled date, Contractor shall make reasonable efforts to accommodate Purchaser's scheduling requirements. If Purchaser shall fail to attend or complete the SPSR, Purchaser shall be deemed to have notified Contractor pursuant to Article 9.1.6 hereof that SPSR for the Satellite has been successfully completed.
- 9.1.3 Conduct and Purpose of SPSR. The SPSR shall be conducted in accordance with the terms of this Article 9 and Paragraph 2.2.7 of Exhibit A, Statement of Work. The purpose of the SPSR shall be to (i) review test data and analyses for the Satellite, (ii) demonstrate testing has been completed in accordance with Exhibit D, Satellite Program Test Plan, and (iii) determine whether the Satellite meets applicable Exhibit B, Satellite Performance Specification requirements (except those that have been waived pursuant to Article 9.1.4 below) and is ready for shipment to the Launch Site.
- 9.1.4 Waivers and Deviations. Contractor shall submit to Purchaser any request for a waiver of, or deviation from, provisions(s) of the Performance Specification applicable to the Satellite or other Deliverable Item. A request for waiver or deviation shall be deemed granted only if it has been approved in writing by a duly authorized representative of Purchaser. Each such waiver or deviation approved by Purchaser shall be deemed an amendment to the Performance Specification for such Satellite or Deliverable Item, permitting such waiver thereof, or deviation therefrom, effective on or after the date of such approval

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for such Satellite or Deliverable Item. [

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9.1.5 Purchaser's Inspection Agents. Purchaser may, subject to prior written notice to Contractor, cause any Purchaser personnel, consultant or agent designated by Purchaser to observe the SPSR pursuant to this Article 9; provided, however, that the provisions of Article 7 and Article 8.4 shall apply to any such agent.

9.1.6 SPSR Results. In the event that the SPSR demonstrates (i) testing has been performed in accordance with Exhibit D, Satellite Program Test Plan, and (ii) such Satellite conforms to the applicable requirements of Exhibit B, Satellite Performance Specification (including any waivers or deviations approved by Purchaser pursuant to Article 9.1.4), Purchaser shall provide written notification to Contractor [ ] after completion of the SPSR of its concurrence with the results of the SPSR (including any waiver of its right to compel correction of those non-conformances to the requirements of Exhibit B, Satellite Performance Specification, specified by Purchaser in such notice), and the Satellite shall be deemed delivered for all purposes hereunder ("Delivery" of the Satellite) and ready for shipment to the Launch Site.

In the event that such SPSR discloses (i) any failure to conduct testing in accordance with Exhibit D, Satellite Program Test Plan, or (ii) any non-conformance of such Satellite to the requirements of Exhibit B, Satellite Performance Specification, either of which is not the subject of any waivers or deviations approved by Purchaser pursuant to Article 9.1.4, Purchaser shall provide written notification thereof to Contractor [ ] after completion of the SPSR, which written notification shall state each such non-conformance Purchaser requires to be corrected or repaired (with reference to the applicable requirement of Exhibit D, Satellite Program Test Plan, or Exhibit B, Satellite Performance Specification, deemed not met), and Contractor shall make such corrections or repairs promptly and thereafter

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conduct a delta SPSR to verify the correction or repair, in accordance with the provisions of this Article 9.

If Purchaser fails to provide written notification required by either of the preceding Paragraphs of this Article 9.1.6 within the time specified, the SPSR shall be deemed to have been successfully completed and the Satellite shall be deemed delivered for all purposes hereunder ("Delivery" of the Satellite) and ready for shipment to the Launch Site.

Upon Delivery of the Satellite in accordance with this Article 9, Contractor shall thereafter transport such Satellite in accordance with Contractor's standard commercial practices to the Launch Site, and proceed to prepare the Satellite for Launch. Contractor shall have no obligation to ship the Satellite to the Launch Site until all non-conformances are corrected, repaired or have an approved waiver or deviation.

- 9.1.7 Inspection Costs Borne by Purchaser. All costs and expenses incurred by Purchaser and its agents in the exercise of its inspection rights under this Article 9, including travel and living expenses, shall be borne solely by Purchaser.
- 9.1.8 Correction of Deficiencies after SPSR. If at any time following Delivery of the Satellite and prior to Intentional Ignition (or in the event of a Terminated Ignition, prior to any subsequent Intentional Ignition), such Satellite or equipment on the Satellite fails, for reasons attributable to Contractor, to meet the requirements of Exhibit B, Satellite Performance Specification, as they may be modified as of such time pursuant to Article 9.1.4, Contractor shall promptly undertake to correct such deficiencies prior to Intentional Ignition (or in the case of a Terminated Ignition, prior to any subsequent Intentional Ignition) and the Contract Delivery schedule set forth in Article 3.1 shall be extended as necessary to accommodate such corrective actions. In addition, in the event of a Terminated Ignition, Contractor shall be entitled to compensation for such corrections, if any, as provided in Article 12.1.
- 9.1.9 Total Loss of the Satellite Prior to Intentional Ignition. Without prejudice to Purchaser's rights under Articles 21 and 23, if prior to Intentional Ignition the Satellite becomes a Total Loss, [

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**ARTICLE 10 - ACCEPTANCE OF SATELLITE, LAUNCH SUPPORT AND MISSION  
OPERATIONS SUPPORT SERVICES AND IN ORBIT TEST**

10.1 Satellite Acceptance

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10.2 Launch Support and Mission Operations Support Services

Upon arrival of the Satellite at the Launch Site, Contractor shall proceed with the provision of Launch Support Services in accordance with Exhibit A, Statement of Work. After Launch of the Satellite by the Launch Agency, Contractor shall proceed with the provision of Mission Operations Support Services in accordance with Exhibit A, Statement of Work.

10.3 In-Orbit Testing (IOT)

[ ] prior to the scheduled Launch of the Satellite, Contractor shall notify Purchaser in writing of the IOT schedule with respect to such Satellite. Purchaser may, at Purchaser's election and subject to Article 7 and Article 8.4 and applicable U.S. Government and Contractor security restrictions, observe such IOT at either Purchaser's or Contractor's facilities.

Contractor shall perform IOT and conduct an IOT review within [ ] of completing IOT (with a summary IOT report being submitted at least [ ] prior to conducting the IOT review), both in accordance with the applicable provisions of Exhibit A, Statement of Work, and Exhibit D, Satellite Program Test Plan. Upon the completion of the IOT review, Purchaser shall be deemed to have accepted the IOT results (the "IOT Complete Date").

10.4 Orbital Performance Incentives

From and after the IOT Complete Date, Contractor shall have the right to earn Orbital Performance Incentives in accordance with Article 13.

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**10.5 No Further Liability**

From and after the IOT Complete Date, Contractor shall have no further obligation with respect to the Satellite, except as otherwise provided in Articles 15.2 and 32.3; moreover, except as otherwise provided in Articles 12.1 (solely in the event, and to the extent, of a Terminated Ignition), 15.2, 19 and 32.3, Contractor's loss of Orbital Performance Incentives pursuant to Article 13 shall be Purchaser's sole and exclusive remedy with respect to the Satellite's use, condition and/or performance after Intentional Ignition.

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## ARTICLE 11 - ACCEPTANCE INSPECTION FOR DELIVERABLE ITEMS OTHER THAN THE SATELLITE

### 11.1 Deliverable Items of Hardware Other Than the Satellite

11.1.1 Inspection. With respect to each Deliverable Item of hardware (including software integrated in such hardware), Purchaser shall perform acceptance inspection [ ] after such Deliverable Item arrives at the location designated for Delivery thereof in Article 3.1. The purpose of the acceptance inspection shall be to determine whether each such Deliverable Item meets applicable Performance Specification requirements as of the date of such Delivery, as such requirements may have been modified pursuant to Article 11.6.

11.1.2 Acceptance Inspection Results. [ ] after completion of acceptance inspection pursuant to this Article 11 for any Deliverable Item, Purchaser shall notify Contractor in writing of the results of such acceptance inspection. In the event that such acceptance inspection demonstrates conformity of such Deliverable Item to the requirements of the applicable Performance Specification, such Deliverable Item shall be irrevocably accepted by Purchaser for all purposes hereunder ("Acceptance" with respect to each such Deliverable Item other than the Satellite), and Purchaser's notice shall so state. In the event that such acceptance inspection discloses any non-conformance of such Deliverable Item to the applicable Performance Specification, Purchaser's notice shall identify each such non-conformance (with reference to the applicable requirement of the Performance Specification deemed not met), and Contractor shall correct or repair such non-conformance promptly and resubmit such Deliverable Item for a delta acceptance inspection in accordance with the provisions of this Article 11. Such delta acceptance inspection shall be conducted by Purchaser to the extent necessary to verify the Deliverable Item of hardware (including integrated software) conforms to the requirements of the applicable Performance Specification. If Purchaser fails to provide notice within the time specified, Acceptance shall be deemed to have irrevocably occurred with respect to such Deliverable Item.

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11.2 Deliverable Data

For any Deliverable Data that requires Purchaser approval pursuant to Exhibit A, Statement of Work, Purchaser shall, [ ] of Delivery, notify Contractor in writing that such Deliverable Data has either been: (i) accepted (irrevocable "Acceptance" with respect to each such item of Deliverable Data), or (ii) that such Deliverable Data does not comply with the requirements of Exhibit A, Statement of Work, identifying each such non-conformance (with reference to the applicable requirement of Exhibit A, Statement of Work deemed not met). If Purchaser notifies Contractor of any non-conformance pursuant to the foregoing, Contractor shall promptly correct any non-compliant aspect of such Deliverable Data identified in such notice from Purchaser, and re-submit the Deliverable Data to Purchaser for a second acceptance inspection pursuant to this Article 11.2. If Purchaser fails to provide notice within the time specified, acceptance shall be deemed to have occurred with respect to such Deliverable Data (irrevocable "Acceptance" with respect to each such item of Deliverable Data). For any Deliverable Data that does not require Purchaser approval pursuant to Exhibit A, Statement of Work, such Deliverable Data shall be deemed accepted upon Delivery (irrevocable "Acceptance" with respect to each such item of Deliverable Data).

11.3 Training

Acceptance of Training, or any part thereof, required by Exhibit A, Statement of Work shall occur upon Contractor furnishing Training, or each part thereof, to Purchaser in accordance with the Delivery schedule ("Acceptance" with respect to Training). Any Training or part thereof furnished to Purchaser shall be accompanied by written notice from Contractor specifying that portion of the Training being furnished. Irrevocable Acceptance of Training or any part thereof shall be deemed to occur [ ] after completion of such Training or part thereof unless within such time Purchaser provides a written notice to Contractor that the Training, or part thereof, does not conform to the requirements of Exhibit A, Statement of Work, specifically identifying each such non-conformance against the applicable requirement of Exhibit A, Statement of Work. Contractor shall promptly correct such non-conformance, and upon such correction, the Training or part thereof shall be subject to Acceptance in accordance with the provisions of this Article 11.3.

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11.4 Deliverable Services

Irrevocable Acceptance of Launch Support Services and Mission Operations Support Services, or any part thereof, shall be deemed to occur upon Contractor furnishing such services, or such part thereof, to Purchaser in accordance with the Delivery schedule set forth in Article 3.1. In the event that, due to any non-compliance, timely notified by Purchaser, re-performance of services is required and practicable, such re-performance is subject to the provisions of Article 15.1.3.

11.5 Purchaser's Inspection Agents

Purchaser may, upon giving prior written notice to Contractor, cause any Purchaser personnel, consultant or agent designated by Purchaser to observe or conduct the acceptance inspection pursuant to this Article 11 in whole or in part; provided, however, that the provisions of Article 7 and Article 8.4 shall apply to any such agent and such agent shall comply with Contractor's normal and customary safety and security regulations provided to Purchaser in writing in advance of such inspection.

11.6 Waivers and Deviations

Waivers of or deviations from the Performance Specification applicable to any Deliverable Item subject to acceptance inspection pursuant to this Article 11 shall be addressed as set forth in Article 9.1.4.

11.7 Inspection Costs Borne by Purchaser

All costs and expenses incurred by Purchaser or its agents in the performance of its inspection rights under this Article 11, including travel and living expenses, shall be borne solely by Purchaser.

11.8 Warranty Obligations

In no event shall Contractor be released from any of its warranty obligations applicable to any Deliverable Item other than the Satellite as set forth in Article 15 as a result of such Deliverable Item having been Accepted as set forth in this Article 11.

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**ARTICLE 12 - TRANSFER OF TITLE AND RISK OF LOSS**

12.1 Satellite

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12.2 Deliverable Items Other Than The Satellite

Title and risk of loss of or damage to each Deliverable Item of hardware other than the Satellite shall pass from Contractor to Purchaser upon Acceptance of such Deliverable Item pursuant to Article 11.1. Purchaser's rights in and to Deliverable Data (including software and software integrated into hardware) are as set forth in Article 29.

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**ARTICLE 13 - ORBITAL PERFORMANCE INCENTIVES**

13.1 General

Purchaser shall pay Orbital Performance Incentives to Contractor with respect to the  
Satellite [

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13.7 Failed Transponder(s).

Contractor shall earn Orbital Performance Incentives for each Transponder on the Satellite for each day such Transponder does not experience a Transponder Failure.

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**13.9 Total Loss or Partial Loss Not Attributable to Contractor.**

If, after Intentional Ignition of the Launch Vehicle, the Satellite is determined to be a Total Loss, or if a Partial Loss has occurred (unless and to the extent of a Terminated Ignition as provided in Article 12.1) and, in either case, due to causes not attributable to Contractor, Contractor shall be deemed to have earned immediately the corresponding amount of its Orbital Performance Incentives that would otherwise be lost pursuant to this Article 13.

**13.10 Purchaser Operation of the Satellite.**

If, as a result of any act or omission on the part of Purchaser or Purchaser's representatives, consultants or subcontractors in the operation of, testing of, or communication with, the Satellite, such Satellite operates in a manner that is not in accordance with any requirements of Exhibit B, Satellite Performance Specification, Contractor shall continue to earn Orbital Performance Incentives with respect to such Satellite at the rate that applied prior to the act or omission resulting in degraded performance (subject to later adjustments pursuant to Articles 13.6, 13.7, or 13.8 with respect to failures to meet the requirements of Exhibit B, Satellite Performance Specification, not resulting from any such act or omission on the part of Purchaser or Purchaser's representatives, consultants or subcontractors).

**13.11 Access to In-Orbit Data and Measurements.**

During the Orbital Performance Incentive Period, in addition to the information to be provided by Purchaser in accordance with Article 6.5, Contractor shall have timely access to the data records of the Satellite.

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**ARTICLE 14 - CORRECTIVE MEASURES IN THE SATELLITE AND OTHER DELIVERABLE  
ITEMS**

If the data available from any satellite (or equipment thereon) manufactured by Contractor (whether in-orbit or on the ground) shows that the performance of such satellite deviates materially during the life thereof from that specified in the applicable performance specification for such satellite, Contractor shall [

] at Contractor's sole cost, take appropriate corrective measures, if any, in the unlaunched Satellite so as to eliminate therefrom the causes of such material deviation. If required, Contractor shall be entitled to a reasonable extension in the Delivery schedule for such unlaunched Satellite to effect the required corrective measures.

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## ARTICLE 15 - WARRANTY

### 15.1 Terms and Period of Warranty

#### 15.1.1 Satellite. [

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15.1.2 Deliverable Items of Hardware Other Than the Satellite. Contractor warrants that each Deliverable Item of hardware other than the Satellite delivered under this Contract shall be manufactured in conformity with the Performance Specification applicable to such Deliverable Item (as modified by any waiver and/or deviation pursuant to Article 11.6) and will be free from defects in materials and workmanship during the period commencing on the date of Acceptance of such Deliverable Item pursuant to Article 11 and ending on the second anniversary thereof.

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During the period specified above, as Purchaser's sole and exclusive remedy for any non-conformance or defect in such Deliverable Item of hardware other than the Satellite which Purchaser notifies to Contractor, such non-conformance or defect shall be remedied by Contractor at Contractor's expense by repair or replacement of the defective component (at Contractor's election). For any such Deliverable Item, Contractor shall determine if repair or replacement is required to be performed at Contractor's plant. If required, Purchaser shall ship to Contractor's designated facility. Contractor shall be responsible for the cost of shipment (including transportation, transit insurance, taxes and/or duties), and the cost of return shipment (including transportation, transit insurance, taxes and duties) to Purchaser at the location designated in Article 3.1. Risk of loss for such Deliverable Item shall transfer to Contractor upon delivery of such Deliverable Item to the shipping carrier by Purchaser, and risk of loss shall transfer to Purchaser for any such Deliverable Item once repaired or replaced pursuant to this Article 15.1.2 upon receipt thereof by Purchaser at the location designated therefor in Article 3.1.

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15.1.3 Training and Deliverable Services. Contractor warrants that the Training, Launch Support Services and Mission Operations Support Services it provides to Purchaser pursuant to this Contract will conform to reasonable industry standards of practice for the commercial satellite communications industry for work similar in type, scope, and complexity to the Work at the time such Work is provided. In the event Contractor breaches this warranty, as Purchaser's sole and exclusive remedy, Contractor shall apply reasonable efforts to correct the deficiencies in the provision of such Training, Launch Support Services and Mission Operations Support Services where it is practicable to do so (e.g., Contractor cannot correct deficiencies in, or re-perform, Launch Support Services from and after Launch).

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15.1.4 Deliverable Data. All Deliverable Data shall conform with the requirements of this Contract. In the event the Contractor breaches this warranty, as Purchaser's sole and exclusive remedy, Contractor shall correct promptly the deficiencies in the Documentation and Data and resubmit such Documentation and Data to Purchaser.

15.1.5 Disclaimer. [

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15.2 Satellite Anomalies

Contractor shall investigate any Satellite Anomaly occurring in the Satellite during the in-orbit life of such Satellite and known to it or as notified in writing by Purchaser, and shall undertake Satellite Anomaly resolution support services. If for any reason any such Satellite Anomaly cannot be or is not corrected (after reasonable efforts to effect a correction) as set forth in the immediately preceding sentence and as a result thereof, such Satellite suffers any operational or performance degradation or loss, (including any Failed Transponders) or becomes a Total Loss, Purchaser's sole and exclusive remedies with respect to such loss and any consequences therefrom shall be those set forth in Articles 13 and 32.3 as applicable, subject to the conditions and limitations of such Articles and in all cases subject to the limitation of liability stated in Article 15.1 above and Article 27.

15.3 Use Conditions Not Covered by Warranty

With respect to Deliverable items of hardware other than the Satellite, the warranty under this Article 15 shall not apply if adjustment, repair or parts replacement is required

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as a result, directly or indirectly, of accident, unusual physical or electrical stress, negligence, misuse, failure of environmental control prescribed in operations and maintenance manuals, repair or alterations by any party other than Contractor, or by causes other than normal and ordinary use. The warranty provided pursuant to this Article 15 is conditioned upon Contractor being given access, if required, to Deliverable Items delivered at Purchaser's facility in order to effect any repair or replacement thereof. [

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## ARTICLE 16 - CHANGES

### 16.1 Changes Requested by Purchaser

Purchaser may, in writing, request a change in the Work within the general scope of this Contract to:

- A. Order work in addition to the Work provided for herein; or
- B. Modify the whole or any part of the Work provided for herein.

Contractor shall respond to any such requested change in writing to Purchaser within [ ] after receipt of such requested change. If such change request causes an increase or decrease in the cost or the time required for completion of the Work to be provided herein, or otherwise affects any other provision of this Contract, such response shall provide a non-binding preliminary estimate of the impact of the change request on the [ ] (including costs associated with processing of the change request), Delivery schedules and other provisions of this Contract. If Purchaser desires to proceed with the change after receipt of Contractor's preliminary estimate, Purchaser and Contractor shall negotiate and agree in a timely manner to equitable adjustments in the [ ], Delivery schedules and other affected provisions of this Contract, and this Contract shall be amended in writing accordingly. In the event that Purchaser desires Contractor to proceed with the change prior to the Parties reaching agreement on the appropriate equitable adjustment associated with the change, Contractor shall proceed upon Purchaser's written direction provided that the Parties have agreed upon payment terms relating to the change that will be in effect pending agreement on the corresponding equitable adjustment.

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## ARTICLE 17 - FORCE MAJEURE

### 17.1 Force Majeure Defined

Contractor shall not be responsible for late Delivery, delay of the final completion date or nonperformance of its contractual obligations due to Force Majeure. Force Majeure shall be any event beyond the reasonable control of Contractor, and shall include, but not be limited to: (1) acts of God; (2) acts of a public enemy; (3) acts of a government in its sovereign or contractual capacity (including any action or inaction affecting the import or export of items); (4) war and warlike events; (5) catastrophic weather conditions such as hurricanes, tornadoes and typhoons; (6) fire, earthquakes, floods, epidemics, quarantine restrictions; (7) strikes, lockouts and other industrial disputes (other than at the facilities of Contractor); (8) sabotage, riot and embargoes; (9) technical problems generally affecting the commercial telecommunications industry (10) unavailability of the Launch Vehicle or Launch Site for any reason; and (11) other unforeseen and extraordinary events ("Force Majeure"). Contractor shall provide written notice to Purchaser immediately after it has been determined that Contractor's performance will be impacted by the occurrence of such Force Majeure, including a detailed description of the portion of the Work known to be affected by such delay. Contractor shall also provide the Purchaser prompt written notice when the event constituting Force Majeure appears to have ended.

### 17.2 Equitable Adjustments

Upon the occurrence of Force Majeure that causes a delay in Contractor's performance of its obligations hereunder, an equitable adjustment shall be negotiated in the Delivery schedules and other portions of this Contract affected by Force Majeure.

Any adjustment made pursuant to this Article 17.2 shall be formalized by the execution of an amendment to this Contract in accordance with Article 34.5.

### 17.3 [

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### ARTICLE 18 - PURCHASER DELAY OF WORK

If the performance of all or any part of the Work required of Contractor under this Contract is delayed or interrupted by Purchaser's failure to perform its contractual obligations hereunder, subject to Article 17 hereof, within the time specified in this Contract or within a reasonable time if no time is specified, or by an act or failure to act of Purchaser that unreasonably interferes with and/or delays Contractor's performance of its obligations under this Contract ("Purchaser Delay"), Contractor shall be entitled to an equitable adjustment in the [ ], performance requirements, Delivery schedules, and any other terms of this Contract affected by such act or failure to act of Purchaser. Contractor shall provide Purchaser written notice as soon as reasonably practicable after Contractor's performance has been impacted by a Purchaser Delay, and shall work with the Purchaser to minimize any such delay, including proposing work around plans for Purchaser's approval. Any adjustment made pursuant to this Article 18 shall be formalized by the execution of an amendment to this Contract in accordance with Articles 16 and 34.5

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## ARTICLE 19 - INTELLECTUAL PROPERTY INDEMNITY

### 19.1 Indemnification

Contractor, at its own expense, hereby agrees to defend or, at Contractor's sole option, to settle, and to indemnify and hold harmless Purchaser, and its respective parents, subsidiaries, affiliates (other than Contractor), representatives, and agents, and each of its and their officers, directors and employees, from and against any claim or suit based on an allegation that the manufacture of any Deliverable Item or any part thereof or the normal intended use, lease or sale of any Deliverable Item or any part thereof infringes any third party's Intellectual Property Right ("Intellectual Property Claim"), and shall pay any royalties and other liabilities adjudicated (or provided in settlement of the matter) to be owing to the claimant as well as costs and expenses (including any attorney's fees awarded to the claimant) incurred in defending or settling such Intellectual Property Claim. Contractor's obligations under this Article 19.1 shall be subject to the conditions to indemnification set forth in Article 20.3.

### 19.2 Infringing Equipment

If the manufacture of any Deliverable Item or the normal intended use, lease or sale of any Deliverable Item under this Contract is enjoined as a result of an Intellectual Property Claim or is otherwise prohibited, Contractor shall, at its option and expense (i) resolve the matter so that the injunction or prohibition no longer pertains, (ii) procure for Purchaser the right to use the infringing item, and/or (iii) modify the infringing item so that it becomes non-infringing while remaining in compliance with the Performance Specification (as such may be modified or waived pursuant to Article 9.1.4 or Article 11.6, as applicable). Purchaser shall reasonably cooperate with Contractor to mitigate or remove any infringement. If Contractor is unable to accomplish (i), (ii) or (iii) as stated above, Purchaser shall have the right to terminate this Contract, in whole or in part, with respect to such Deliverable Item, return such Deliverable Item(s) to Contractor (in space, with respect to an in-orbit Satellite), and receive a refund of the amounts paid hereunder for such terminated Deliverable Item(s) less a reasonable allowance for use and depreciation.

### 19.3 Combinations and Modifications

Contractor shall have no liability under this Article 19 for any Intellectual Property Claim arising from (i) use of any Deliverable Item in combination with other items not provided,

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recommended, or approved by Contractor, or (ii) modifications of any Deliverable Item after Delivery by a person or entity other than Contractor unless authorized by written directive or instructions furnished by Contractor to Purchaser under this Contract or (iii) the manufacture, delivery or use of any Deliverable Item in compliance with the design, specification or instructions of Purchaser.

19.4 Sole Remedies

The remedies set forth in this Article 19 are Purchaser's sole and exclusive remedies for, or related to, any Intellectual Property Claim.

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## ARTICLE 20 - INDEMNITY FOR PERSONAL INJURY AND PROPERTY DAMAGE

### 20.1 Contractor's Indemnity

Contractor, at its own expense, shall defend, indemnify and hold harmless Purchaser and its respective parents, subsidiaries, affiliates (other than Contractor), representatives, and agents, and each of its and their directors, officers and employees, from and against any losses, damages, and other liabilities, adjudicated (or provided for in settlement of the matter) to be owing to a third party claimant as well as costs and expenses (including court costs and reasonable attorneys' fees) (collectively, "Losses") for injury to or damage to the property of such third party, but only if such Losses were caused by, or resulted from, a negligent act or omission or willful misconduct of Contractor or its employees, subcontractors, or representatives. For the avoidance of doubt, the Satellite in any stage of manufacture or operation shall not be considered as property subject to coverage under this Article 20.1.

### 20.2 Purchaser's Indemnity

Purchaser, at its own expense, shall defend, indemnify and hold harmless Contractor, and its respective directors, officers and employees from and against any Losses for injury to or damage to the property of a third party claimant, but only if such Losses were caused by, or resulted from, negligent acts or omissions or willful misconduct of Purchaser or its employees or representatives.

### 20.3 Conditions to Indemnification

The right to any indemnity specified in Article 20.1 and Article 20.2 shall be subject to the following conditions:

The Party seeking indemnification shall promptly advise the other Party in writing of the filing of any suit or of any written or oral claim within the scope of Article 20.1 or Article 20.2 upon receipt thereof and shall provide the other Party, at its request, with copies of all documentation relevant to such suit or claim.

The Party seeking indemnification shall not make any admission nor shall it reach a compromise or settlement without the prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed.

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The indemnifying Party shall assist and shall have the right to assume, when not contrary to the governing rules of procedure, the defense of any claim or suit in settlement thereof and shall satisfy any judgments rendered by a court of competent jurisdiction in such suits and shall make all settlement payments. The Party seeking indemnification may participate in any defense at its own expense, using counsel reasonably acceptable to the indemnifying Party, provided there is no conflict of interest and that such participation would not adversely affect the conduct of the proceedings.

20.4 Waiver of Subrogation

Each Party shall use reasonable efforts to obtain a waiver of subrogation and release of any right of recovery against the other Party and its Affiliates, contractors and subcontractors at any tier (including suppliers of any kind) and their respective directors, officers, employees, shareholders and agents, that are involved in the performance of this Contract from any insurer providing coverage for the risks subject to indemnification by the insured Party under this Article 20.

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## ARTICLE 21 - TERMINATION FOR CONVENIENCE

### 21.1 Reimbursement of Contractor

21.1.1 Right to Terminate. Purchaser may terminate this Contract without cause, in whole, by giving Contractor written notice [ ] prior to the date of such termination; provided, however, Purchaser may not terminate this Contract as to the Satellite after SPSR for such Satellite. Upon the effectiveness of Purchaser's notice of termination for convenience, Contractor shall: (i) stop Work under this Contract; (ii) place no further orders or subcontracts for materials, services or facilities; (iii) terminate orders and subcontracts to the extent that they related to the performance of the Work; and (iv) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts.

21.1.2 Termination Liability. [

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### 21.2 Disposition of Work

Upon payment by Purchaser to Contractor of the termination liability amounts due under Article 21.1.2, subject to applicable U.S. Government export laws and license conditions, Purchaser may direct Contractor to transfer to Purchaser, in the manner and to the extent directed by Purchaser, title to and risk of loss and possession of any items comprising the Work terminated (including all Work-in-progress, parts and materials, all inventories, and associated warranties but not including Deliverable Data or any other portion of the Work to which Contractor would not have otherwise been obligated to transfer title hereunder had the Contract been completed). Contractor shall, upon direction of Purchaser, protect and preserve property at Purchaser's expense in the possession of Contractor or its subcontractors in which Purchaser has an interest and shall facilitate access to and possession by Purchaser of items comprising all or part of the Work terminated. [

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**ARTICLE 22 - LIQUIDATED DAMAGES FOR LATE SATELLITE DELIVERY**

22.1 Liquidated Damages

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## ARTICLE 23 - TERMINATION FOR DEFAULT

### 23.1 Purchaser Rights of Termination

23.1.1 Right to Terminate. Subject to Article 17, Article 18 and Article 23.1.4 below, Purchaser may terminate this Contract in whole or in part by written notice to Contractor if: [

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23.1.2 Termination Liability. In the event of termination pursuant to this Article 23.1, subject to Article 23.1.3, Purchaser, shall be entitled to [

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- 23.1.3 Contractor's Reimbursement for Terminated Work. In the event of termination pursuant to this Article 23.1, Contractor shall not be required to refund any amounts, and Purchaser shall remain liable for payment of all amounts with respect to Deliverable Items for which Acceptance has occurred, or that are retained by Purchaser, as follows: (i) at the price set forth in this Contract for completed items for which an itemized price is set forth herein and (ii) at the actual cost incurred by Contractor plus a markup of [ ] of such costs, for (a) such items for which no itemized price is set forth herein and (b) partially completed items or services and Work-in-progress.
- 23.1.4 Special Provision Limiting Purchaser's Remedies. Purchaser shall have no right to terminate this Contract pursuant to this Article 23.1 above after successful completion of SPSR for the Satellite. Purchaser's sole and exclusive remedy with respect to delays in Delivery of such Satellite shall be as specified in Article 22 and this Article 23.1.
- 23.1.5 Disposition of the Work. Unless Purchaser retains Deliverable Items or portions thereof pursuant to Article 23.1.3 hereof, Contractor shall retain title to any and all Work, Work-in-progress, parts or other material, inventories, and any associated warranties, and any subcontracted items Contractor has specifically produced, acquired, or subcontracted for in accordance with this Contract. If Purchaser elects to retain Deliverable Items of hardware or portions thereof, Purchaser may, subject to Article 7 hereof, require Contractor to transfer to Purchaser in the manner and to the extent directed by Purchaser, title to and possession of any items comprising all or any part of the Deliverable Items of hardware (including all Work-in-progress) and Contractor shall, upon direction of Purchaser, protect and preserve such Deliverable Items of hardware at Purchaser's expense in the possession of Contractor or its subcontractors and shall facilitate access to and possession by Purchaser of items comprising all or part of the Work terminated.
- 23.1.6 Invalid Default Termination. If, after termination pursuant to this Article 23.1, it is finally determined pursuant to Article 25 or written agreement of Purchaser that Contractor was not in default under Article 23.1.1, or that the default was  
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excusable under the Contract, the rights and obligations of the Parties shall be the same as if the termination had occurred under Article 21; except that Contractor shall also be entitled to recover its additional actual costs reasonably incurred due to such invalid default termination plus a markup of [ ] of such costs.

## 23.2 Contractor Rights of Termination

23.2.1 Right to Terminate. Contractor may terminate this Contract upon written notice to Purchaser if Purchaser fails to cure any material breach of its material obligations within [ ] after receiving written notice of such default (or such longer period as may be agreed to in writing by Contractor).

23.2.2 Termination Liability. In the event of termination pursuant to this Article 23.2, Contractor shall be paid as if such termination were for convenience pursuant to Article 21. Further, if Purchaser's failure to perform is a failure to pay Contractor invoiced amounts when due, Contractor shall be entitled to late payment interest pursuant to Article 5.3. Payment of the total amounts (termination for convenience amounts plus interest on outstanding invoices) payable by Purchaser pursuant to this Article 23.2.2 shall constitute a total discharge of Purchaser's liabilities to Contractor for termination pursuant to this Article 23.2.

23.2.3 Disposition of the Work. Contractor may elect immediately upon termination to take over all Deliverable Items (other than those for which Acceptance already has occurred) and Contract Work-in-progress and use or dispose of the same in any manner Contractor may elect. In such case, the fair market value of any Deliverable Items or Contract Work-in-progress retained or disposed of by Contractor shall be set-off against Purchaser's termination liability under this Article 23.2. Upon completion of all payments to Contractor in accordance with this Article 23.2, Purchaser may, subject to Article 7 hereof, require Contractor to transfer to Purchaser in the manner and to the extent directed by Purchaser, title to and possession of any items comprising all or any part of the Work terminated (including all Work-in-progress, but not including Deliverable Data or any other portion of the Work to which Contractor would not have otherwise been obligated to transfer title hereunder had the Contract been completed) not used or disposed of by Contractor pursuant to the foregoing sentence. Contractor shall, upon direction of Purchaser, protect and preserve such items at [Use or disclosure of the data contained on this page is subject to the restrictions set forth in this Contract.]

Purchaser's expense in the possession of Contractor or its subcontractors and shall facilitate access to and possession by Purchaser of items comprising all or part of the Work terminated. [

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23.2.4 Invalid Default Termination. If, after termination pursuant to this Article 23.2, it is finally determined pursuant to Article 25 or written agreement of Contractor that Purchaser was not in default under Article 23.2.1, Contractor shall be liable to Purchaser for direct damages resulting from such termination of this Contract (in no event exceeding amounts payable to Purchaser pursuant to Article 23.1, and subject to the limitation of liability set forth in Article 27).

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## ARTICLE 24 - OPTIONS

On or before the Critical Design Review (as defined in Exhibit A, Statement of Work), the Parties will establish an option pursuant to which Purchaser may elect to store the Satellite for up to [ ] following completion of SPSR.

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## ARTICLE 25 - DISPUTE RESOLUTION

Any dispute, claim, or controversy between the Parties arising out of or relating to this Contract ("Dispute"), including any Dispute with respect to the interpretation, performance, termination, or breach of this Contract or any provision thereof shall be resolved as provided in this Article 25.

### 25.1 Informal Dispute Resolution

Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their Dispute informally, in a timely and cost-effective manner, as follows:

- A. If, during the course of the Work, a Party believes it has a Dispute with the other Party, the disputing Party shall give written notice thereof, which notice will describe the Dispute and may recommend corrective action to be taken by the other Party. Contractor's program manager shall promptly consult with Purchaser's program manager and Director, Global Procurement in an effort to reach an agreement to resolve the Dispute.
- B. In the event that agreement cannot be reached within [ ] of receipt of written notice, either Party may request that the Dispute be escalated, and the respective positions of the Parties shall be forwarded to an executive level higher than that under Paragraph A above for resolution of the Dispute.
- C. In the event agreement cannot be reached within [ ] of receipt of written notice, either Party may request that the Dispute be escalated, and the respective positions of the Parties shall be forwarded to the Chief Executive Officer (CEO) or equivalent of each Party for resolution of the Dispute.
- D. In the event (i) agreement cannot be reached as provided in Paragraphs A, B, or C above within a total of [ ] after receipt of the written notice described in Paragraph A above, or (ii) a Party determines in good faith that amicable resolution through continued negotiation of the Dispute does not appear likely, either Party may proceed with litigation in accordance with Article 25.2.

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25.2 Litigation

In the event that any Dispute arising between the Parties cannot be settled pursuant to Article 25.1, either Party shall have the right to bring suit. Any such suit shall be brought in the United States District Court for the Central District of California, and the Parties hereby waive any objection to that venue and that court's exercise of personal jurisdiction over the case; provided further that if, for any reason, such court does not have or refuses to exercise subject matter jurisdiction over the Dispute, then litigation as permitted herein may be brought in the Superior Court for County of Santa Clara. The Parties hereby irrevocably consent to the exercise of personal jurisdiction by the state and federal courts in the State of California concerning any Dispute between the Parties. If for any reason, neither the state nor federal courts in California will exercise jurisdiction over the Dispute, then litigation as permitted herein may be brought in any court of competent jurisdiction in the United States of America.

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

### 26.1 Launch Services Agreement Inter-Party Waiver of Liability

26.1.1 Inter-Party Waiver. Each Party hereby agrees to be bound by the no-fault, no-subrogation inter-party waiver of liability and related indemnity provisions required by the Launch Services Agreement with respect to the Launch and to cause their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this Contract and any other person having an interest in the Satellite or any Transponder thereon (including customers of Purchaser) to accede to such waiver and indemnity, which in every case shall include claims against the Launch Agency, either Party and their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this Contract. The Parties shall execute and deliver any instrument that may be reasonably required by the Launch Agency to evidence their respective agreements to be bound by such waivers.

26.1.2 Waiver of Subrogation. The Parties also shall use reasonable efforts to obtain from their respective insurers, and shall require their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this Contract and any other person having an interest in the Satellite or any Transponder thereon (including non-consumer customers of Purchaser), to use reasonable efforts to obtain from their respective insurers, an express waiver of such insurers' rights of subrogation with respect to any and all claims that have been waived pursuant to this Article 26.

### 26.2 Indemnity Related to the Inter-Party Waiver of Liability

Each Party shall indemnify against and hold harmless the other Party and/or its contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this Contract, from and against any claim made by the indemnifying Party and/or any of its contractors and subcontractors (including suppliers of any kind) that are involved in the performance of the Contract, or by any person having an interest in the Satellite or Transponder thereon (including customers of Purchaser), or by insurer(s) identified in Article 26.1, resulting from the failure of the

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indemnifying Party to waive any liability against, or to cause any other person the indemnifying Party is obligated to cause to waive any liability against, the Launch Agency, the other Party or either of their contractors and subcontractors at any tier (including suppliers of any kind) involved in the performance of this Contract. The Parties shall execute and deliver any instrument that may be reasonably required by the Launch Agency to evidence their respective agreements to be bound by such indemnifications.

26.3 Survival of Obligations

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

26.4 Third Party Claims Coverage

With respect to third party liability for death or bodily injury or for the loss or damage to property that may be sustained, and any consequences thereof, resulting from, or arising in connection with the performance of the Launch Services for the Satellite, Contractor shall use reasonable efforts to require the Launch Agency to include Purchaser (and any other party or entity as Purchaser may request) as an additional named insured under all policies of third party claims coverage (or any other program of third party claims coverage, including coverage provided by agencies of any government) that are provided or required to be provided by or through the Launch Agency.

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**ARTICLE 27 - LIMITATION OF LIABILITY**

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## ARTICLE 28 - DISCLOSURE AND HANDLING OF PROPRIETARY INFORMATION

### 28.1 Definition of Proprietary Information

For the purpose of this Contract, "Proprietary Information" means all confidential and proprietary information (other than Deliverable Data, which is subject to the provisions of Article 29) in whatever form transmitted, that is disclosed or made available directly or indirectly by a Party (hereinafter referred to as the "disclosing Party") to the other Party hereto (hereinafter referred to as the "receiving Party") and: (i) is identified as proprietary by means of a written legend thereon or (ii) if disclosed orally, is identified as proprietary at the time of initial disclosure and then summarized in a written document, with the Proprietary Information specifically identified, that is supplied to the receiving Party within ten (10) days of initial disclosure. Proprietary Information shall not include any information disclosed by a Party that (i) is already known to the receiving Party at the time of its disclosure, as evidenced by written records of the receiving Party, without an obligation of confidentiality at the time of disclosure; (ii) is or becomes publicly known through no wrongful act of the receiving Party; (iii) is independently developed by the receiving Party as evidenced by written records of the receiving Party; or (iv) is rightfully obtained by the receiving Party from any third party without restriction and without breach of any confidentiality obligation by such third party.

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

Subject to Article 28.1, for a period of ten (10) years after receipt of any Proprietary Information, the receiving Party shall not disclose Proprietary Information that it obtains from the disclosing Party to any person or entity except its employees, Affiliates (who are not direct competitors of the disclosing Party), attorneys, agents and consultants (who are not direct competitors of the disclosing Party) who have a need to know, who have been informed of and have agreed in writing (or are otherwise subject to confidentiality obligations consistent with the obligations set forth herein) to abide by the receiving Party's obligations under this Article 28, and who are authorized pursuant to applicable U.S. export control laws and licenses or other approvals to receive such information. The receiving Party shall use not less than the same degree of care to avoid disclosure of such Proprietary Information as it uses for its own Proprietary Information of like importance; but in no event less than a reasonable degree of care. Proprietary Information shall be used only for the purpose of performing the obligations under this Contract, or as the disclosing Party otherwise authorizes in writing.

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28.3 Legally Required Disclosures

Notwithstanding the foregoing, in the event that the receiving Party becomes legally compelled (including disclosures necessary or in good faith determined to be reasonably necessary under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended), to disclose Proprietary Information of the disclosing Party, the receiving Party shall, to the extent practicable under the circumstances, provide the disclosing Party with written notice thereof so that the disclosing Party may seek a protective order or other appropriate remedy, or to allow the disclosing Party to redact such portions of the Proprietary Information as the disclosing Party deems appropriate. In any such event, the receiving Party will disclose only such information as is legally required, and will cooperate with the disclosing Party (at the disclosing Party's expense) to obtain proprietary treatment for any Proprietary Information being disclosed.

28.4 Return of Confidential Information

Upon the request of the Party having proprietary rights to Proprietary Information, the other Party in possession of such Proprietary Information shall promptly return such Proprietary Information (and any copies, extracts, and summaries thereof) to the requesting Party, or, with the requesting Party's written consent, shall promptly destroy such materials (and any copies, extracts, and summaries thereof), except for one (1) copy which may be retained for legal archive purposes, and shall further provide the requesting Party with written confirmation of same; provided, however, where both Parties have proprietary rights in the same Proprietary Information, a Party shall not be required to return such information to the other Party.

28.5 No License

Except as expressly provided in this Contract, nothing in this Contract shall be construed as granting the receiving Party whether by implication, estoppel, or otherwise, any license or any right to use any Proprietary Information received from the disclosing Party, or use any patent, trademark, or copyright now or hereafter owned or controlled by the disclosing Party.

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## ARTICLE 29 - RIGHTS IN DATA

### 29.1 Rights

Contractor shall retain title to all Deliverable Data (including software) and the Intellectual Property Rights contained therein, utilized or developed by Contractor during the performance of this Contract. Subject to U.S. export regulations and applicable export restrictions, Purchaser's officers, directors, employees, consultants and representatives shall have the non-exclusive, perpetual, worldwide, royalty-free right to obtain and use the Deliverable Data for the purpose of testing, operating and maintaining Purchaser's Satellites and for no other purpose. Purchaser's officers, directors, employees, consultants and representatives shall not disclose Deliverable Data to other companies, organizations or persons without the express prior written consent of Contractor. Purchaser shall have no rights in Deliverable Data (or Contractor Intellectual Property) other than as expressly stated in this Contract, and title to Deliverable Data shall not pass to Purchaser or any other entity pursuant to the terms hereof.

### 29.2 No Additional Obligation

Nothing contained in this Article shall require Contractor to provide any data other than as set forth in Exhibit A, Statement of Work.

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## ARTICLE 30 - PUBLIC RELEASE OF INFORMATION

### 30.1 Generally

Either Party intending to disclose publicly, whether through the issuance of news releases, articles, brochures, advertisements, prepared speeches or other information releases, information concerning the financial details of this Contract or Proprietary Information of the other Party regarding the Work shall obtain the prior written approval of the other Party with respect to the content and timing of such issuance, which approval shall not be unreasonably denied, delayed or withheld.

### 30.2 Exceptions

The obligations set forth in Article 30.1 shall not apply to the following:

- A. information that is publicly available from any governmental agency or that is or otherwise becomes publicly available without breach of this Contract; and
- B. internal publications or releases which are clearly marked as not intended for the public at large.

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31.2 Change of Address

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

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## ARTICLE 32 - RISK MANAGEMENT SERVICES

### 32.1 Launch and In-Orbit Insurance

Contractor shall use its reasonable best efforts to obtain quotes for launch and/or in-orbit insurance to cover the risk of loss or damage to the Satellite from Intentional Ignition and continuing up to one year after Launch (provided that such coverage period is then commercially available) on such commercial terms and conditions as are then commercially available, with a maximum sum insured of the Total Contract Price (or, if such coverage is not then available, at the maximum amount commercially available) (the "Launch and In-Orbit Insurance Policy"). Within [ ] of receiving such quotes from Contractor, Purchaser, in its sole discretion, shall either: (i) direct Contractor in writing to procure such insurance; or (ii) notify Contractor in writing that Purchaser rejects such Launch and In-Orbit insurance Policy. Failure of Purchaser to provide such written notice with the twenty [ ] period shall be deemed to be a rejection of such Policy.

If Purchaser directs Contractor to procure the Launch and In-Orbit Insurance Policy, Contractor shall promptly bind such insurance and this Contract shall be modified to incorporate the price of such Policy [

] and the Payment Plan attached hereto as Exhibit A shall be updated accordingly to reflect that Purchaser's payment to Contractor of any amounts due under the Launch and In-Orbit Insurance Policy from Contractor shall be made at least [

] prior to the date that the corresponding amount is due under the Launch and In-Orbit Insurance Policy from Contractor. Contractor shall have no obligation to make any payments under the Launch and In-Orbit Insurance Policy prior to the receipt of the corresponding payments from Purchaser, and any failure on the part of Purchaser to make any payment required under this Article 32.1, that results in the Launch and In-Orbit Insurance Policy failing to attach or to lapse, shall relieve Contractor of any consequences of such failure, and Contractor shall be entitled to an equitable adjustment to any term(s) of this Contract affected by such act or failure to act by Purchaser, including an equitable adjustment for Contractor's efforts in support Purchaser efforts in mitigating the consequences of Purchaser's acts of failures to act as described above.

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If Purchaser rejects the Policy, Contractor shall be relieved of all further obligations hereunder with regard to procurement of the Launch and In-Orbit Insurance Policy. Thereafter, subject to Article 7 and Article 28, Contractor shall provide customary and normal support to assist Purchaser in obtaining a Launch and In-Orbit Insurance Policy consisting of: (i) providing a comprehensive presentation package on the Satellite, suitable for presentation to the space insurance brokers and underwriters; (ii) supporting Purchaser with all necessary presentations (oral, written or otherwise), including attendance and participation in such presentations where requested by Purchaser; (iii) providing on a timely basis all reasonable and appropriate technical information, data and documentation; and (iv) providing documentation and answers to insurer and underwriter iniquities.

### 32.2 Insurance Amounts

Purchaser shall be the named insured and loss payee under any Launch and In-Orbit Insurance Policy placed by Contractor under this Article 32. In the event that, notwithstanding the foregoing, any loss is paid to Contractor under the Launch and In-Orbit Insurance Policy, then Contractor agrees to hold such amounts in trust for Purchaser and to pay such amounts to Purchaser within [ ] after Contractor receives the corresponding payment from the insurers and, for the avoidance of doubt, Contractor shall only be obligated to make payment to Purchaser under this Article 32.2 to the extent that Contractor receives payment from the insurers. Notwithstanding the foregoing, Contractor shall reasonably cooperate with Purchaser in recovering all amounts due from the insurers under the Launch and In-Orbit Insurance Policy, in which case Purchaser shall be entitled to direct and control any litigation and settlement negotiations arising in connection therewith and Purchaser shall (whether incurred by Purchaser or Contractor) pay all costs of litigation and administrative costs and expenses, including attorney's fees, incurred in connection with the prosecution of any such litigation. Purchaser shall comply with all material terms and conditions in the Launch and In-Orbit Insurance Policy necessary for the payment of claims, including any terms and conditions relating to salvage.

### 32.3 Claims Support

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Subject to Article 7 and Article 28, Contractor shall cooperate with and provide reasonable and customary support to Purchaser making and perfecting claims for insurance recovery and as to any legal proceeding as may be brought by Purchaser associated with any claim for insurance recovery. Contractor shall be entitled to reimbursement of actual costs reasonably incurred in connection with the provision of such support, such costs to be invoiced and paid in accordance with Article 5.

32.4 [

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### ARTICLE 33 - ORDER OF PRECEDENCE

In the event of conflict among the terms of this Contract (Preamble, Recitals, and Articles 1 to 34) and the Exhibits, the following order of decreasing precedence shall apply:

- o Contract terms and conditions (Preamble, Recitals and Articles 1 through 34)
- o Exhibit E Payment Plan and Termination Liability Schedule
- o Exhibit A Statement of Work
- o Exhibit B Satellite Performance Specification
- o Exhibit C Product Assurance Program Plan
- o Exhibit D Satellite Program Test Plan

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## ARTICLE 34 - GENERAL

### 34.1 Assignment

34.1.1 General. This Contract may not be assigned, either in whole or in part, by either Party without the express written approval of the other Party, not to be unreasonably withheld or delayed.

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34.1.3 By Contractor. Notwithstanding the foregoing, Contractor may assign or transfer this Contract upon reasonable notice to Purchaser or all of its rights, duties, or obligations hereunder to: (i) any Affiliate of Contractor or (ii) any person in connection with the sale, transfer, merger, assignment or other reorganization affecting Contractor or all (or substantially all) of Contractor's assets or capital stock, whether by way of merger, consolidation, or otherwise, provided that after such transaction or series of related transactions, the net worth of such assignee or transferee shall not be substantially less than the net worth of Contractor immediately before such transaction or series of related transactions, and in the case of the sale of all or substantially all the assets of Contractor, the assignee or transferee or successor, has the experience, resources and personnel required to perform the Work in accordance with this Contract; and the assignee,

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transferee, or successor to Contractor has expressly assumed all the obligations of Contractor and all terms and conditions applicable to Contractor under this Contract.

34.1.4 Security Interests. Either Party, upon prior written notice to the other Party, may grant security interests in its rights hereunder to lenders that provide financing for the performance by such Party of its obligations under this Contract or for the subject matter hereof. In the event that either Party is sold to or merged into another entity, its responsibilities under this Contract shall not be altered and the successor organization shall be liable for performance of such Party's obligations under this Contract.

34.2 Binding Effect

This Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

34.3 Severability

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

34.4 Waiver of Breach of Contract

A waiver of any provision or any breach of a provision of this Contract shall not be binding upon either Party unless the waiver is in writing, signed by a duly authorized representative of the Party to be bound, as applicable, and such waiver shall not affect the rights of the Party not in breach with respect to any other or future breach. No course of conduct by a Party shall constitute a waiver of any provision or any breach of a provision of this Contract unless a written waiver is executed in accordance with the provisions of this Article 34.4.

34.5 Amendments

This Contract, including any and all its Exhibits, may not be modified except by written instrument of subsequent date signed by an authorized officer of Contractor, or another

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person designated in writing by any such authorized officer to sign such an instrument, and an authorized officer of Purchaser, or another person designated in writing by any such authorized officer of Purchaser to sign such an instrument.

34.6 Captions

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

34.7 Relationships of the Parties

It is expressly understood that Contractor and Purchaser intend by this Contract to establish the relationship of independent contractors only, and do not intend to undertake the relationship of principal and agent or to create a joint venture or partnership or any other relationship, other than that of independent contractors, between them or their respective successors in interests. Neither Contractor nor Purchaser shall have any authority to create or assume, in the name or on behalf of the other Party, any obligation, expressed or implied, or to act or purport to act as the agent or the legally empowered representative of the other Party, for any purpose whatsoever.

34.8 Entire Agreement

This Contract, including all its Exhibits, represents the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations and agreements with respect to the subject matter hereof, which cease to have any further force or effect.

34.9 Standard of Conduct

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

34.10 Construction

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

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**34.11 Counterparts**

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

**34.12 Applicable Law**

This Contract shall be interpreted, construed and governed, and the rights of the Parties shall be determined, in all respects, according to the laws of the State of New York without reference to its conflicts of laws rules.

**34.13 Survival**

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

**34.14 U.N. Convention on the International Sales of Goods**

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

**34.15 No Third-Party Beneficiaries**

This Contract is entered into solely between, and may be enforced only by, Purchaser and Contractor and their permitted assigns, and this Contract shall not be deemed to create any rights in third parties, including suppliers, customers and owners of a Party, or to create any obligations of a Party to any such third parties.

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IN WITNESS WHEREOF, the Parties have executed this Contract by their duly authorized officers as of the date set forth in the Preamble.

Space Systems/Loral, Inc.

Loral Orion, Inc.

By: Rocky

By: [Signature]

Name: \_\_\_\_\_

Name: Jeffrey C. Stine

Title: CFO

Title: Assistant Secretary