

TERMS & CONDITIONS

FOR

SUBCONTRACTS ISSUED

ON

COMMERCIAL SATELLITE PROGRAMS

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1. DEFINITIONS

The following definitions apply throughout this Subcontract unless otherwise specifically stated:

- (a) "Buyer" or "SS/L" means Space Systems/Loral, Inc.
- (b) "Seller" or "Subcontractor" means the provider of the Products being purchased by Buyer under this Subcontract. The term "Lower Tier Subcontractors" refers to Seller's subcontractors at any tier.
- (c) "Customer" refers to SS/L's customer(s).
- (d) "Subcontract" means the purchase order, subcontract, or long term purchase agreement entered into between Buyer and Seller and includes, without limitation, the Schedule, these Terms and Conditions and all exhibits and/or attachments.
- (e) "Contract" means the contract(s) between Buyer and its Customer under which this Subcontract is issued.
- (f) "Days" means calendar days.
- (g) "Product(s)" means any product or goods being purchased by Buyer under this Subcontract.

2. ACCEPTANCE OF TERMS

Seller shall be deemed to have accepted all of the terms of this Subcontract without change or modification, upon written acceptance of this Subcontract, upon acceptance of any payment or upon the commencement of work, whichever shall occur first. Unless specifically accepted by Buyer in writing, contrary or additional terms provided or submitted by Seller are rejected and shall not bind Buyer.

3. INDEMNITY BY SELLER

Seller shall defend, indemnify and hold harmless Buyer and Buyer's Customer, and their respective affiliates, officers, directors, employees, shareholders and agents, from and against all losses, costs, damages, suits, expenses and liabilities (including, but not limited to, reasonable attorneys' fees) arising from or related to the actions or omissions of Seller or its employees, agents and/or Lower Tier Subcontractors in the performance of this Subcontract.

4. BUYER-FURNISHED PROPERTY

All property, including but not limited to, materials, documentation, supplies, components, parts, jigs, fixtures, molds, tooling, gauges, devices and equipment which are either furnished to Seller by Buyer for performance of this Subcontract or for which Buyer has specifically agreed to pay Seller to purchase or develop (collectively "Buyer-Furnished Property") shall be and remain the property of Buyer. Incorporation or attachment to any other property shall not affect title to Buyer-Furnished Property. All Buyer-Furnished Property shall be kept and maintained by Seller in first class condition. In the event that any Buyer-Furnished Property, while in Seller's custody, possession or control, is lost or damaged in any way from any cause, Seller shall promptly replace such Buyer-Furnished Property at its expense. Seller shall only use Buyer-Furnished Property in the performance of this Subcontract or as may otherwise be authorized in writing by Buyer. As instructed by Buyer, Seller shall deliver Buyer-Furnished Property to Buyer either FOB Buyer's facility or CIP San Francisco Airport in accordance with ICC INCOTERMS 2000, or shall make such other disposition as Buyer

may direct. Seller shall bear the risk of loss or destruction of and damage to Buyer-Furnished Property until delivered or returned to Buyer. Seller shall deliver or return Buyer-Furnished Property in the same condition as when manufactured, acquired or received from Buyer, except for reasonable wear and tear or for utilization thereof in accordance with the terms of this Subcontract. Seller hereby waives all liens or similar remedies Seller may have or be entitled to assert against any Buyer-Furnished Property.

5. PACKING, MARKING AND SHIPPING

(a) Seller shall pack, mark and ship all Products in compliance with good commercial practice in a manner that will prevent damage or deterioration to the Products during transit, and Seller shall secure the most advantageous transportation service and rates consistent therewith. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage or storage unless specifically stated in this Subcontract. Seller shall reimburse any expense incurred by Buyer as a result of improper packaging, packing, marking or method of shipment. Copies of packing lists showing the Subcontract number (and purchase release number, if applicable) shall be included with each shipment, and each container shall be marked to show the Subcontract number and any other information specified in the Subcontract. Copies of all bills of lading indicating the container and Subcontract number, delivered item description, SS/L part number, waybill number and carrier information shall be faxed to Buyer's Representative and Buyer's Traffic Department immediately after delivery to the carrier. Any transportation charges paid by Seller for which Seller is entitled to reimbursement shall be shown on Seller's invoice as a separate line item, and the receipted freight bill shall be attached thereto. Seller will ensure that the packaging, marking, and shipment of hazardous materials or Products containing hazardous materials must conform to all laws and regulations of any governmental agency having jurisdiction.

(b) If an item is shipped to a destination other than Buyer's facility, Seller shall fax to Buyer's Representative and Buyer's Traffic Department a copy of the above-referenced packing list at the time of shipment.

(c) If, because of a failure of Seller to meet the delivery requirements of this Subcontract, Buyer finds it necessary to require shipment of any of the Products covered by this Subcontract by a method of transportation other than the method originally specified by Buyer, Seller shall reimburse Buyer the amount, if any, by which the cost of the more expeditious method of transportation exceeds the cost of the method of transportation originally specified, unless such failure is due to causes beyond the control and without the fault or negligence of Seller or its Lower-Tier Subcontractors.

6. PROPRIETARY INFORMATION

(a) "Proprietary Information" means all confidential and proprietary information (other than deliverable data and documentation which is subject to the Deliverable Reports and Documentation Article in the Schedule), in whatever form transmitted, including without limitation, designs, drawings, specifications, technical information, financial information and funding, pricing or schedule details, which is disclosed by a party ("Disclosing Party") to the other party hereto ("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 thirty (30) days of initial disclosure.

Proprietary Information shall not include any information that: (1) is already known to the Receiving Party at the time of its disclosure; without an obligation of confidentiality; (2) is or becomes publicly known through no wrongful act the Receiving Party; (3) is subsequently and rightfully obtained by the Receiving Party from a third party who is not under an obligation of confidentiality; or (4) is independently developed by the Receiving Party without reliance on the Proprietary Information as evidenced by written records.

(b) Subject to Paragraph (a) above, 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, attorneys, agents, representatives (who are not direct competitors of the Disclosing Party), and Customers (in the case of Buyer), 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 hereunder. The Receiving Party shall use at least 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.

(c) Notwithstanding the foregoing, the Receiving Party may disclose Proprietary Information in response to a subpoena or other court order, or as required by applicable law or regulation, without liability as long as it: (1) promptly provides written notice to Disclosing Party prior to making such disclosure to allow Disclosing Party a reasonable opportunity to obtain a protective order, (2) fully cooperates with the Disclosing Party if it decides to contest disclosure, (3) discloses only such Proprietary Information as is legally required and (4) exercises reasonable efforts to obtain proprietary treatment for any Proprietary Information being disclosed.

(d) All Proprietary Information disclosed from Buyer to Seller shall be and remain the sole property of Buyer. Seller shall use Buyer's Proprietary Information only for the performance of work under this Subcontract (or as otherwise authorized in writing by Buyer) and for no other purpose. Furthermore, Seller agrees to make no use of drawings, specifications and technical information or data (1) furnished by Buyer, or (2) prepared by Seller or its employees and agents during the course of performance of work under this Subcontract, except as required to perform hereunder. The Seller will not disclose to any third party any information it has acquired under, or as a result of this Subcontract or negotiations leading to it concerning Buyer's plans, business objectives, customers, personnel, products, processes, work or services without Buyer's prior written consent unless such confidential information becomes generally known without fault of Seller or it is obtainable from other sources without breach of this Subcontract.

(e) Seller shall not disclose or release for public dissemination, any information concerning this Subcontract in advertising or press releases without Buyer's prior written consent.

(f) Upon completion of this Subcontract or upon Buyer's request at any time, Seller shall, at Buyer's option, promptly: (1) return to Buyer, all Buyer Proprietary Information, including any copies thereof, or (2) destroy all Proprietary Information, including any copies thereof, and provide a certificate of destruction to Buyer.

(g) If Buyer and Seller have entered into a Non Disclosure Agreement in connection with the work to be performed under this Subcontract, the parties agree that any Proprietary Information exchanged under such NDA shall be deemed to be Proprietary Information provided under this Subcontract and subject to the terms of this Clause 6.

7. RISK OF LOSS

(a) Seller shall be fully responsible for risk of loss (used in this clause to include damage, destruction, theft or other loss of the Products) until Seller delivers the Products to the specified delivery point. By way of example:

- (1) If this Subcontract specifies the delivery point as either F.O.B Seller's plant or F.C.A. (international port in Seller's country) in accordance with ICC INCOTERMS 2000, risk of loss shall remain with the Seller and pass to Buyer upon delivery of the items to the common carrier by Seller properly packaged, addressed, labeled and consigned, and Buyer shall be responsible for asserting any damage or loss claims against the carrier and for maintaining any required insurance against loss in transit.
- (2) If this Subcontract specifies the delivery point as either F.O.B. destination or C.I.P. (San Francisco International Airport) in accordance with ICC INCOTERMS 2000, risk of loss shall remain with Seller until delivery of the Products to the specified F.O.B. or C.I.P. point and Seller shall be responsible for asserting any damage or loss claims against the carrier and for maintaining any required insurance against loss in transit.

(b) Seller shall bear all risks of loss and shipping costs for the return of Products rejected pursuant to the warranty provision after written notice of rejection has been given to Seller.

8. ASSIGNMENT

Neither Buyer nor Seller shall assign, transfer or delegate any of its rights, duties or responsibilities under this Subcontract, without the prior written consent of the other party. Notwithstanding, Seller may assign its right to receive payment. However, no assignment by Seller of its right to receive payment will affect Buyer's right of set-off against Seller nor will such assignment be binding on Buyer unless and until Buyer receives an executed copy of assignment. This Subcontract shall bind any successors and assignees of the parties as if they were an original party to this Subcontract.

9. WAIVER

(a) No delay or omission by Buyer to exercise any right or remedy hereunder shall be construed as a waiver of such right or remedy. Further, the waiver by Buyer of a particular breach of this Subcontract by Seller shall not be construed as, or constitute, a continuing waiver of such breach, or a waiver of any other breaches of the same or other provisions of this Subcontract.

(b) Any waiver of a requirement granted by Buyer or acceptance of a non-compliant condition applies only to the specific unit(s) identified. Said waiver or acceptance of a non-compliant condition does not constitute a change to or a waiver of any requirement of this Subcontract.

10. GOVERNING LAW

This Subcontract shall be interpreted, construed and governed by the laws of the State of California, U.S.A, without regard to its conflicts of law rules.

11. PRICE WARRANTY

Seller warrants that the prices for the Products sold to Buyer under this Subcontract are no less favorable than those currently extended to any other customer in similar conditions and circumstances,

buying the same or like Products in equal or smaller quantities. If during the period of performance of this Subcontract, Seller reduces the price for any such Product to one or more customers in a comparable status to Buyer, the corresponding price to Buyer shall be likewise reduced.

12. EXPORT CONTROL

(a) Designation of Export-Controlled Commodities for U.S. Manufacturers: The Products or services provided hereunder by Seller may be intended for use as, or as part of, an item designated as a defense article listed on the U.S. Munitions List (USML). Normally, any system, component, part, accessory, attachment or associated equipment including ground equipment, test equipment and interface hardware specifically designed, developed, configured, adapted, or modified for articles listed in Category XV of the USML (Space Systems and Associated Equipment) are themselves designated as defense articles. The export of all articles and services covered by the USML, including technical information directly related to these articles, is regulated by the Department of State. U.S. manufacturers of USML items are required by law to be registered with the U.S. Department of State, Directorate of Defense Trade Controls. Notwithstanding, certain satellite components or related systems have transferred from U.S. Department of State (ITAR - International Traffic in Arms Regulations/USML) to the U.S. Department of Commerce (EAR - Export Administration Regulations /CCL) export jurisdiction.

For U.S. manufacturers supplying satellite components or related systems under this Subcontract, Seller shall identify which of the two U.S. export control regimes (ITAR or EAR) pertains to each Product that Seller provides to Buyer hereunder.

- (1) If subject to ITAR, Seller shall provide one of the following:
 - (i) The U.S. Munitions List Category for the Product; or
 - (ii) If deemed to be subject to ITAR because of a formal determination (via a Commodity Jurisdiction request to the US Department of State), Seller shall provide a copy of Seller's Commodity Jurisdiction request and the Department of State's response letter; or
 - (iii) If deemed to be subject to ITAR because of the incorporation of parts/components from other U.S. companies that have been designated by them as subject to ITAR, Seller shall provide details on those specific parts/components and any information Seller has received from the part/component supplier regarding the ITAR determination.
- (2) If subject to EAR, Seller shall provide one of the following:
 - (i) The Export Control Classification Number ("ECCN") for the Product; or
 - (ii) If deemed to be subject to EAR because of a determination (via a Commodity Classification request to the Department of Commerce), Seller shall provide a copy of Seller's request and the Department of Commerce response.

In the event Seller does not know which U.S. export control regulation controls the Product, Seller must promptly notify Buyer.

(b) Designation of Export-Controlled Commodities for Non U.S. Manufacturers: The Products or services provided hereunder by Seller may be intended for use as, or as part of, an item designated as a defense article listed on the U.S. Munitions List (USML). The export of all articles and services covered by the USML, including technical information directly related to these articles, is regulated by the Department of State. Accordingly, Seller shall provide the following information for each Product that Seller provides to Buyer hereunder: (i) whether any parts or components in Seller's Product originated from the United States, and if so, Seller must identify for each specific item the U.S. manufacturer, part number, and item name; and (ii) whether a U.S. part manufacturer or supplier has advised Seller of any restrictions or other guidance relating to U.S. export control regulations, and if so, Seller must provide a copy of any such input from the U.S. part manufacturer.

(c) Export Compliance: It is the policy of Space Systems/Loral to comply strictly and completely with U.S. Government export laws and regulations in all aspects and phases of its business operations. In furtherance of this policy, Seller agrees that no employee or other person acting on behalf of the Seller will ship, mail, hand carry or in any other way export any USML or CCL commodity or directly related technical data, to a Foreign Person within or outside the United States, or knowingly cause or permit any other person to do so, without being certain:

- (1) That such export may lawfully be made to the intended foreign recipient, and
- (2) That the export is covered by either an approved export license or a valid license exemption, and
- (3) That all documentation required for the export has been prepared as required by regulation and accompanies the export. In the case of export-controlled technical data, the foregoing prohibition applies not only to actual shipments or transmissions of the data out of the United States in oral, written, graphic, photographic, taped or electronic form, but also to the release of the data in the U.S. with the knowledge or intent that the data will be shipped or transmitted from the United States to a Foreign Person or destination. It also applies to the release of export-controlled technical data of United States origin to a Foreign Person in the United States. This includes release to Foreign Person employees (non-U.S. Persons) employed by the Seller or its lower-tier subcontractors. All technical data received from Buyer must be considered to be export-controlled technical data and handled accordingly unless specifically designated and marked to the contrary. Seller is responsible for the application of appropriate markings to the technical data generated in performance of this Subcontract which will alert recipients to the nature of the data and the requirements for handling, storage and return or destruction of the data.

(d) Compliance With Laws: Seller shall strictly comply with all applicable U.S. export control laws and any licenses and governmental approvals issued pursuant to export and import to and from the United States insofar as they apply to it, and hold SS/L harmless from any claim, suit, loss, cost, damage, expense (including reasonable attorneys' fees) or liability by reason of Seller's violation hereof. Seller also agrees to promptly complete, execute and provide to Buyer all forms and certificates, and to enter into any US Government approved Technical Assistance Agreement (TAA) or similar agreement required in SS/L's judgment for proper performance of this Subcontract and conform to the provisions of the TAA and applicable export license. Nothing in this Subcontract or in

any requirement under this Subcontract shall be construed to mean that Seller should perform work in violation of any law, statute, code or ordinance.

If Seller intends to file for an export license through an agency of the U.S. Government, or to utilize a license exception authorized by the regulations of such an agency, Seller will provide written notification to Buyer a minimum of ten (10) working days prior to submitting such application or utilizing such exception.

(e) Buyer's Obligation: Buyer's obligations under this Subcontract are subject to and shall be modified if and to the extent required to conform to applicable U. S. Government export laws and/or export license provisions.

13. QUALITY AND WORKMANSHIP

All equipment, materials and articles incorporated into any Product shall be new, free from defects and of the most suitable grade for the purpose intended. All work under this Subcontract shall be performed in a skillful and workmanlike manner and shall be consistent with the best practices of Subcontractor's industry. If at any time Buyer notifies Seller that any such equipment, material, article or workmanship fails to meet the foregoing standards, Seller shall, at its expense, promptly take all remedial steps required to meet those standards.

14. INSURANCE

(a) Seller shall procure and maintain, at its sole cost and expense, in force during the entire performance period of this Subcontract, general liability, property damage and Worker's Compensation insurance in prudent, reasonable and/or statutory amounts adequate to cover Seller's obligations pursuant to Clause 3, Indemnity.

(b) At all times during the performance of this Subcontract Seller shall provide, upon Buyer's request, acceptable evidence of the required coverage as follows:

- (1) Certified copies of insurance policies that provide the required coverage; or
- (2) Certified copies of existing insurance policies that have been endorsed to provide the required coverage; or
- (3) Certificates of insurance executed by the insurer or its authorized representative that certify the required coverage.

(c) The furnishing of acceptable evidence of the required coverage shall not relieve Seller from any liability or obligation for which it is responsible.

(d) If at any time Seller fails to maintain the insurance required pursuant to this Subcontract or fails to deliver evidence of insurance as required, Buyer may, but only upon giving Seller five (5) days prior written notice, effect such insurance as the agent and at the expense of Seller by taking out policies with companies satisfactory to Buyer running for a period not exceeding one (1) year in any one policy. Buyer shall be entitled to recover the uninsured amount of any loss or damages and the cost and expenses of suit suffered or incurred during any period when Seller shall have failed or neglected to provide such insurance.

15. PROGRESS AND COMPLETION

(a) All delivery and/or completion dates stated in this Subcontract are critical and are of the essence. Seller agrees to exert every reasonable effort, including the use of overtime, work around methods and premium shipments (all at the sole expense of Seller), to meet the contractual delivery dates. Seller shall notify Buyer immediately if at anytime it appears the delivery schedule may not be met. Such notification shall include but not be limited to, the reasons for any possible delays and steps being taken to remedy such problems, including providing a recovery schedule if requested by Buyer. Seller's notice shall be for informational purposes only and shall not be construed in any manner as a waiver of Seller's obligations to meet the delivery schedule.

(b) If after all reasonable efforts have been undertaken, Seller is still unable to meet the contractual delivery date(s), Seller shall propose a new delivery date and promptly notify Buyer in writing. Any acceptance by Buyer of a new delivery date shall not be interpreted as a waiver or release of any rights or remedies Buyer may be entitled to under the Subcontract or at law. Buyer reserves all rights and remedies under the Subcontract and at law, including but not limited to, the assessment of liquidated damages based on the original contractual delivery date.

16. IMPROPER PAYMENTS, KICKBACKS, GIFTS AND GRATUITIES

Seller agrees that in carrying out its obligations under this Subcontract it will not make improper or unlawful payments of any salary, fee, commission or compensation of any kind or grant any improper or unlawful gift or gratuity of any kind either directly or indirectly to any officer, employee, agent or representative of Buyer or Buyer's Customer. Seller further agrees that if it violates this clause all payments due Seller under this Subcontract shall be forfeited and all payment previously made to Seller by Buyer returned, and Buyer shall also have the right to terminate this Subcontract for default as provided in Clause 26, "Termination for Default."

17. ACCESS TO WORK IN PROCESS AND DATA/DOCUMENTATION

(a) Seller agrees that all work in process under this Subcontract and all data and documentation (regardless of any Seller marking or legend thereon) related to the work effort of Seller and its Lower Tier Subcontractors are subject to continuous examination, evaluation, monitoring and inspection by Buyer and Buyer's Customer at any reasonable hour during the period of performance of this Subcontract, including Buyer and its Customers' right to have, make and retain copies of any data and documentation. For the avoidance of doubt, Buyer shall be entitled to provide copies of all data and documentation provided by Seller hereunder to its Customer(s) without obtaining further Seller approval.

(b) Subsequent to the completion of deliveries pursuant to this Subcontract, Seller shall retain all design, manufacturing and test data and documentation related to this Subcontract for the duration of the design life of the Products. In the event that any Product delivered hereunder becomes defective or malfunctions in any way and for any reason, including in-orbit performance anomalies or other failures of the furnished Products, said data and documentation shall upon request promptly be made available or delivered to the Buyer and Buyer's Customer.

(c) Seller shall include the substance of this Clause 17 in all of Seller's lower tier subcontracts for parts and/or materials that will be used in Products for flight use.

18. COMPLIANCE WITH LAWS

In the performance of this Subcontract, Seller shall fully comply with all applicable laws, rules, codes, regulations, restrictions and orders of any governmental authority having jurisdiction. If Buyer is fined or penalized as a result of any violation of any law or regulation committed or caused by Seller or Seller's lower-tier suppliers, or, if Buyer's customer reduces the price of the Buyer's prime contract as a result of actions or failure to take actions by Seller or Seller's lower-tier suppliers, Buyer shall reduce the price of this Subcontract by the same amount. Buyer's exercise of its rights under this clause shall not be a waiver of any rights Buyer has under any other clause or provision of this Subcontract.

19. INSPECTION AND ACCEPTANCE

(a) Seller shall provide and maintain an inspection and quality assurance system covering the work hereunder that is acceptable to Buyer and in conformance with the requirements of this Subcontract. If a quality problem arises, Buyer reserves the right to place in Seller's facility, an inspector who shall be entitled to inspect all work performed by Seller under this Subcontract.

(b) All Products shall be subject to inspection by Buyer prior to acceptance at such times and places as reasonably directed by Buyer. Except as regards to Latent Defects, fraud or such gross mistakes as amount to fraud, the Products shall be considered to be accepted by Buyer upon the occurrence of any of the following conditions:

- (1) Buyer makes final inspection of and gives written notice of final acceptance;
- (2) The completion of a ninety (90) day inspection period following delivery of the Products to Buyer, provided that no nonconformance with any requirements of this Subcontract is found; or
- (3) Buyer's written approval of Seller's correction of defects or deviations from requirements discovered by Buyer during the inspection process.

(c) Upon receipt of notice from Buyer, Seller shall promptly correct all defects discovered during the inspection process. If Seller fails to promptly correct such defects, Buyer may, including but not limited to, (1) have any or all such defects corrected through other means at Seller's expense, or (2) return the Products to Seller for the full invoice price plus any applicable transportation charges.

(d) "Latent Defects", for purposes of this Clause 19, are defects or conditions resulting in noncompliance of Products with one or more Subcontract requirements, which noncompliance was not disclosed through the Subcontract inspection or test programs.

(e) Buyer's inspection and acceptance of Products and/or approval of data and documentation submitted by Seller shall not constitute a waiver of any of Buyer's rights provided in this Subcontract and shall not excuse Seller from full compliance with all requirements of this Subcontract.

20. TAXES

Unless otherwise stated in the Subcontract, the Subcontract price includes all applicable taxes, tariffs, fees and/or duties that may be due under any law, which becomes due by reason of performance of this Subcontract or Buyer's purchase of the Products.

21. TERMINATION FOR CONVENIENCE

(a) This Subcontract may be terminated for the convenience of Buyer, at its option, in whole or in part, at any time during the period of performance of the Subcontract. Such termination shall be effected by delivery to Seller of a written notice of termination ("Termination Notice") specifying the extent to which performance of work under this Subcontract is terminated, the effective date of the termination and the instructions for accomplishing the termination.

(b) Upon receipt of a Termination Notice, Seller shall:

- (1) Stop work as directed;
- (2) Terminate all purchase orders and subcontracts relating to the performance of the work being terminated;
- (3) With the approval of Buyer, settle all outstanding liabilities and claims, if any, arising out of the termination of such purchase orders and subcontracts;
- (4) Deliver to Buyer for inspection and acceptance all completed Products, in accordance with the terms of this Subcontract;
- (5) Transfer title and deliver to Buyer all terminated work in process and inventory items procured specifically for the work being terminated (but not in excess of the amount authorized by Buyer), but only if such work in process and inventory items (1) are of a type and quality suitable for producing Products in conformance with the requirements of this Subcontract, and (2) cannot reasonably be used by Seller for itself or for its other customers;
- (6) Take all actions necessary to protect property in Seller's possession in which Buyer has or may express an interest; and
- (7) Complete performance of such part of this Subcontract, if any, that is not terminated.

(c) Upon termination by Buyer under this clause, Buyer's sole obligation shall be to pay to Seller the following amounts without duplication:

- (1) The Subcontract price for all completed Products that have been delivered to and accepted by Buyer in accordance with this Subcontract and not previously paid for;
- (2) Actual costs incurred by Seller to settle or liquidate claims against Seller arising out of termination of purchase orders or subcontracts as specified in paragraph (b)(3) of this clause;
- (3) Actual costs incurred by Seller in the performance of work on terminated Products that were not completed prior to the termination to the extent that such costs are reasonable in amount and are properly allocable under generally accepted accounting practices to the terminated portion of this Subcontract, minus all costs incurred by Seller related to work in process and/or materials that are retained by Seller in accordance with paragraph (b)(5) of this clause;
- (4) The reasonable costs incurred by Seller in protecting property in its possession that Buyer has or may have expressed an interest in.

(d) Notwithstanding anything to the contrary in this Subcontract, payments made under paragraph (c), exclusive of payments under paragraph (c)(4) hereof, shall not exceed, under any circumstances, (1) the percentage of work satisfactorily completed by Seller on the terminated portion of this Subcontract multiplied by the Subcontract price for such terminated portion of this Subcontract or (2) the maximum amount of any Buyer termination liability included in the Subcontract.

(e) Within sixty (60) days after the effective date of termination under this clause (unless otherwise extended in writing by Buyer), Seller shall submit to Buyer a termination settlement proposal, which shall contain detailed back up data and any other information requested by Buyer to determine the reasonableness of all amounts being sought by Seller. Buyer shall have access to Seller's premises and records to verify the amounts being sought in the termination settlement proposal. In the event the Parties are unable to reach agreement on the termination settlement, the matter shall be determined in accordance with Clause 28, Disputes/Arbitration.

22. CHANGES

(a) Buyer may at any time during the period of performance of the Subcontract, without invalidating this Subcontract, by written Contract Change Notice issued by Buyer's authorized Subcontracts representative, unilaterally direct changes within the general scope of this Subcontract. Such changes may include, without limitation, changes in drawings, designs, specifications, quantities, method of shipment or packing, place or time of delivery, additional or modified work requirements or omissions of work.

If any such change causes an increase or decrease in the cost of and/or the time required for the performance of this Subcontract, an equitable adjustment shall be made in the price and/or delivery schedule, provided that Seller shall only be entitled to an equitable adjustment if within thirty (30) days from the date of receipt of the Contract Change Notice Seller submits a settlement proposal to Buyer, in writing, for an adjustment in the price and/or the time of performance necessitated thereby. This settlement proposal shall include a detailed breakdown of the cost of the work, labor, services and materials to be altered, added or modified and all delivery schedule impacts. If Seller fails to submit a settlement proposal within this thirty (30) day period, Seller waives any right to an adjustment of the price and/or delivery schedule as a result of such change. If the cost of supplies or materials made obsolete or excess as a result of a change is included in the negotiated price adjustment, Buyer shall assume title to such supplies or materials and shall prescribe the manner of disposition.

(b) If Seller submits a proposal pursuant to paragraph (a) of this clause, Seller shall prepare and furnish to Buyer the detailed accounting of cost elements and any other data as determined by Buyer to be necessary to determine reasonableness of the amount of any increase or decrease in the cost of, or the time required for the performance of this Subcontract as modified by the change notice.

(c) Upon the receipt by Buyer of Seller's proposal, with supporting cost details as requested by Buyer, the Parties shall attempt to reach agreement on the price and/or delivery schedule impacts of the Contract Change Notice, in which case the Parties shall mutually execute an Amendment definitizing the results of such negotiations. In the event the Parties are unable to reach agreement on the price and/or schedule impact of the Contract Change Notice, the matter shall be resolved in accordance with Clause 28, Disputes/Arbitration. Upon receipt of a Contract Change Notice, Seller shall promptly proceed with the change in the work even if Buyer and Seller have not yet reached agreement regarding price and/or delivery schedule adjustments. Nothing in this Clause 22

shall excuse Seller from promptly proceeding with the change as directed.

23. STOP WORK ORDER

(a) Buyer may at any time, by written order to Seller, require Seller to stop all or any part of the work called for under this Subcontract for a period of up to one hundred eighty (180) days, and for any further period as required by Buyer. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, Seller shall immediately comply with its terms and take all steps to minimize the expenditure of costs allocable to the work covered by the order during the period of work stoppage. Within a period of one hundred eighty (180) days after a stop work order is delivered to Seller or within any extension thereof as required by Buyer, Buyer shall either:

- (1) Cancel the stop work order and authorize resumption of work, or
- (2) Terminate the work covered by such Stop Work Order as provided in Clause 26, "Termination for Default" or Clause 21, "Termination for Convenience".

(b) If a stop work order issued under this clause is canceled or the period of the stop work order or any extension expires, Seller shall promptly resume work in accordance with the terms of this Subcontract. In such event, an equitable adjustment shall be made in the delivery schedule or subcontract price, or both, if:

- (1) The stop work order resulted in an increase in the time required for, or in Seller's cost properly allocable to the performance of the work contained in the stop work order, and
- (2) The Seller submits a proposal for such adjustment within thirty (30) days after the end of the period of work stoppage.

(c) If the work covered by a stop work order is terminated in whole or in part for the convenience of Buyer, Seller's reasonable costs resulting directly from the stop work order shall be allowed in arriving at a termination settlement, but only if Seller submits a settlement proposal for such adjustment within thirty (30) days after the work covered by such stop work order is terminated.

(d) If Seller submits a proposal pursuant to paragraphs (b) or (c) of this clause, Seller shall prepare and furnish to Buyer a detailed accounting of cost elements and any other data determined by Buyer to be necessary to assess the reasonableness of the Seller's claim for adjustment.

(e) If Seller fails to submit a proposal within the thirty (30) day period specified in paragraphs (b) or (c) of this clause, Seller waives any right to an adjustment of the Subcontract price or delivery schedule as a result of the applicable stop work order. In the event the Parties are unable to reach agreement on the price and/or schedule impact of a stop work order, the matter shall be determined in accordance with Clause 28, Disputes/Arbitration.

24. EXCUSABLE DELAYS

(a) Events beyond the reasonable control and without the fault or negligence of a Party or its employees, agents or subcontractors, which may include, without limitation, acts of God, acts of Government, fires, floods, epidemics, acts of war, quarantine restrictions, labor disputes and embargoes ("Force Majeure Events"), shall constitute a basis for excusable delay, provided:

(1) Notice is given to the other Party within seven (7) days of the occurrence of such Force Majeure Event, which notice shall contain the date of the event, a description of the event, an assessment of the impact of and the anticipated duration of the Force Majeure Event; and

(2) The Party seeking relief can establish that the Force Majeure Event has delayed its performance under this Subcontract.

(b) If a Force Majeure Event affecting Seller's performance is likely to continue for such a duration that will adversely impact Buyer's performance under its Contract(s), Buyer may obtain some or all of the Products covered by this Subcontract elsewhere, in which case Buyer may, without any obligation or liability to Seller, unilaterally reduce and cancel the quantity or amount of Products called for in this Subcontract and terminate the Subcontract. If Buyer opts to terminate the Subcontract under this paragraph (b), Seller shall refund to Buyer any and all amounts paid by Buyer for any undelivered or unaccepted Products. All expenses incurred by Seller on Products cancelled under paragraph (b) of this clause shall be borne solely and entirely by Seller.

(c) Notice shall be given to the other Party within five (5) days of the termination of a Force Majeure Event.

(d) In the event of an excusable delay resulting from a Force Majeure Event, the Subcontract delivery schedule may be extended on no more than a day for day basis for the period of time of the excusable delay condition; a delivery schedule extension of greater than day for day shall be subject to negotiation. However, the Subcontract price shall not, under any circumstances, be increased as a result of a Force Majeure Event experienced by Seller. If the Parties are unable to reach agreement on a time extension, if any, to the Subcontract delivery schedule, the matter shall be determined in accordance with Clause 28, Disputes/Arbitration.

25. RIGHTS IN INVENTIONS

(a) Subject Inventions.

(1) "Subject Invention" means any invention, idea, concept, technique, discovery, improvement or innovation of more than a trifling or routine nature, whether or not patentable, conceived of or first actually reduced to practice in the performance of work and paid for under this Subcontract.

(2) Seller agrees to and does hereby grant to Buyer an irrevocable, royalty-free, non-exclusive license, with right of sublicense, to practice and have practiced Subject Inventions throughout the world.

(3) Seller shall furnish to Buyer a written disclosure of each Subject Invention promptly and in no event later than three (3) months after its conception or first actual reduction to practice. This disclosure shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation and, to the extent known, the physical, chemical or electrical characteristics of the Subject Invention to a person who is skilled in the applicable technical aspects thereof.

(4) Upon request, Seller shall advise Buyer of those countries, if any, wherein it intends to seek patent protection for Subject Inventions at its expense. Buyer may propose additional countries for filing in addition to those selected by Seller. If Seller decides not to seek patent protection in those additional countries proposed by Buyer, Buyer may seek

patent protection in such countries at its own expense. Each Party shall give the other Party all reasonable assistance in obtaining patent protection and in preparing and prosecuting any patent application filed by the other Party, and shall cause to be executed assignments and all other documents or instruments necessary to carry out the intent of this clause.

(b) Background Inventions.

(1) "Background Invention" means any invention, idea, concept, technique, discovery, improvement or innovation, other than a Subject Invention, whether or not patentable, which invention is incorporated or utilized in any work by Seller performed under this Subcontract.

(2) Seller agrees to and does hereby grant to Buyer an irrevocable, royalty-free, non-exclusive license, with right of sublicense, to practice and have practiced throughout the world any Background Invention to the extent reasonably necessary to enable Buyer and/or Buyer's Customer to maintain and operate the Products or the satellite system/end product which incorporates the Products.

(c) Seller shall include the substance of this clause, granting rights to Buyer and Buyer's Customer as provided above, in all Lower Tier Subcontracts hereunder.

26. TERMINATION FOR DEFAULT

(a) Buyer may by written notice of default to Seller, terminate the whole or any part of this Subcontract in any one of the following circumstances:

(1) If Seller fails to make delivery of the Products or to perform the Services within the time specified herein or any extension thereof;

(2) If Seller fails to perform any of the other material provisions of this Subcontract, or fails to make progress as to endanger performance of this Subcontract in accordance with its terms, and in either of these two circumstances Seller does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure; or

(3) If Seller becomes insolvent or is the subject of a voluntary or involuntary petition in bankruptcy.

(b) In the event Buyer terminates this Subcontract in whole or in part as provided in paragraph (a) of this clause, Buyer may take over such terminated work and prosecute the same to completion by contract or otherwise, and Seller shall be liable to Buyer for any excess costs for such work, provided that Seller shall continue the performance of this Subcontract to the extent not terminated under the provisions of this clause.

(c) In the event Buyer terminates this Subcontract in whole or in part as provided in paragraph (a) of this clause, Buyer may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (1) any completed Products, and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Subcontract as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve all property in the possession of Seller

in which Buyer has an interest. Payment for completed Products delivered to and accepted by Buyer shall not exceed the Subcontract price. Payment for Manufacturing Materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Seller and Buyer.

(d) If, after notice of termination under the provisions of this clause, it is determined for any reason that Seller was not in default under the provisions of this clause or that a delay was excusable under the provisions of Clause 24, "Excusable Delays", the rights and obligations of the Parties shall be the same as if notice of termination had been issued pursuant to Clause 21, "Termination for Convenience".

(e) The rights and remedies of Buyer provided in this Clause 26 are in addition to any other rights and remedies provided by law or under this Subcontract.

27. CLAIMS

(a) The term "Claim" means a written demand or assertion by Seller seeking an adjustment or interpretation of the terms of this Subcontract, payment of money, an extension of time, or any other relief with respect to the work being performed pursuant to this Subcontract. A Claim must include the following: (1) a statement that it is a Claim and a request for decision pursuant to this Clause 27; (2) a detailed description of the act, error, omission, unforeseen event or other condition giving rise to the Claim; (3) a detailed breakdown with supporting back up of all amounts, if any, being claimed; and (4) if the Claim seeks a time extension, a detailed schedule analysis demonstrating Seller's entitlement to a time extension.

(b) Claims must be submitted to Buyer within thirty (30) days after the occurrence of the event-giving rise to such claim. Seller agrees that strict compliance with the requirements of this Clause 27, paragraph (b) is an express condition precedent to Seller's right to pursue its Claim against Buyer in arbitration or otherwise.

(c) Buyer shall review Claims submitted by Seller on a timely basis. If Buyer determines that additional supporting data is necessary to fully evaluate a Claim, Buyer will request such additional supporting data, and such data shall be furnished by Seller within thirty (30) days after the date of such request. Buyer shall render a decision within sixty (60) days after the later of the receipt of the Claim or any additional supporting data. Buyer's decision shall be final and binding unless appealed in accordance with paragraph (d) of this clause.

(d) If Seller disputes Buyer's decision on a Claim, Seller shall have the right, within ninety (90) days after Buyer's decision is issued, to commence arbitration against Buyer in accordance with Clause 28. If arbitration is not commenced by Seller within ninety (90) days after Buyer's decision is issued, Buyer's decision on a Claim shall be final and binding and not subject to appeal or challenge.

(e) Notwithstanding any other provisions herein, any decision of the Customer under the Prime Contract which binds Buyer shall also bind Seller to the extent that it relates to this Subcontract, provided Buyer shall have notified Seller promptly of such decision and if requested by Seller, shall have appealed the decision in accordance with the disputes clause (via arbitration, litigation or otherwise) of the Buyer's Contract. A final judgment in any such appeal shall be conclusive, final and binding upon Buyer and Seller. If Buyer under this clause prosecutes any appeal, Seller shall be permitted at Seller's expense to participate fully in such prosecution for the purpose of protecting Seller's interest (provided the Buyer

retains overall control over the prosecution of such appeal). Each Party shall cooperate fully in assisting the other Party in such proceedings. Buyer agrees that after Seller has commenced to participate in any appeal against the Customer pursuant to this clause, Buyer will not enter into a settlement agreement with the Customer or take any other action which would prejudice Seller's rights in such appeal without Seller's consent. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal initiated by Buyer solely at Seller's request shall be paid by Seller; otherwise each Party shall bear its allocable share of the expense.

(f) Unless otherwise directed by Buyer, during the pendency of any Claim proceeding, Seller shall proceed diligently with performance of this Subcontract.

28. DISPUTES/ARBITRATION

(a) Except for any appeal covered under Clause 27, paragraph (e) above, any dispute or disagreement arising between Seller and Buyer in connection with this Subcontract, or the validity or enforceability thereof, which is not settled to the mutual satisfaction of Seller and Buyer, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that such notice is given. The arbitration shall be conducted in Palo Alto, California by a panel of three (3) arbitrators. The Party which demands arbitration shall choose and nominate a competent person to act as an arbitrator; thereupon, within thirty (30) days after receipt of such written notice, the other Party shall, in writing, choose and nominate a competent arbitrator. The two arbitrators so chosen shall meet and endeavor to select a third arbitrator, giving written notice to both Parties of the choice so made. In case the two arbitrators shall fail to agree upon a third arbitrator within a reasonable period of time, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or in the filling of a vacancy or in the failure or refusal of any arbitrator or arbitrators to attend or fulfill its or their duties, then upon application by either Party, an arbitrator shall be named by the chairman of the American Arbitration Association. Proceedings and documents produced therein shall be in the English language. The arbitration award shall be final and binding upon the Parties and judgment may be entered thereon, upon the application of either Party, by any court having jurisdiction.

(b) Each party shall bear its own costs and expenses (including the costs and expenses of the arbitrator it selected) and one-half of the costs and expenses of the third arbitrator.

(c) Unless otherwise directed by Buyer, during the pendency of any arbitration proceeding, Seller shall proceed diligently with performance of this Subcontract.

29. TECHNICAL DATA

(a) Buyer and its Customer shall have the unlimited right to use, for any purpose, all technical data and documentation, and the information contained therein, which is required to be delivered under this Subcontract.

(b) If any documentation described in paragraph (a) of this clause is copyrighted, Seller agrees to and does hereby grant to Buyer and its Customer the unlimited right to make copies of such copyrighted materials without payment of additional compensation to Seller, to the extent that Seller now has or hereafter acquires the authority to grant such right to make copies to others. With respect to all documentation that is copyrighted, Seller shall apply an appropriate copyright notice to all copies of such copyrighted documentation.

30. PUBLIC RELEASE OF INFORMATION

Prior to the release of news releases, articles, brochures, advertisements, prepared speeches and other informational releases concerning the work performed or to be performed hereunder to any third parties, Seller must obtain the written approval of Buyer concerning the content and timing of such release.

31. INTELLECTUAL PROPERTY INDEMNITY

(a) Seller, at its expense, agrees to defend, indemnify and hold harmless Buyer and Buyer's Customer, and their respective officers and directors, from and against any claim, suit, losses, or liabilities based on an allegation that the manufacture of any Product or the use, lease or sale of a Product infringes any intellectual property rights of third parties. Buyer shall give prompt written notice of such claim or suit and shall provide reasonable assistance and information to Seller. Any such assistance or information furnished by Buyer shall be at Seller's expense.

(b) If the manufacture of any Product or the use, lease or sale of any Product is enjoined or otherwise prohibited as a result of an intellectual property claim or suit, Seller shall at its own expense (1) resolve the matter so that the injunction or prohibition no longer remains, (2) procure for Buyer and/or Buyer's Customer the right to use the infringing item, or (3) modify the infringing item so that it becomes non-infringing or replace the infringing item with a non-infringing item, provided such item is fully equivalent in function and performance, subject to the technical approval of Buyer and Buyer's Customer. If Seller is unable to accomplish (1), (2), or (3) as stated above, Buyer shall have the right to terminate this Subcontract for default with respect to such Product, return such Product to Seller and receive a refund of the amounts paid for such Product. In addition, Seller shall be liable for all additional costs and damages incurred by Buyer and Buyer's Customer arising as a result of such injunction.

(c) The provisions of this Clause 31 shall survive the completion, expiration or termination of this Subcontract.

32. WARRANTY

(a) Seller warrants that the work performed and Products furnished hereunder shall be suitable for its intended purpose, shall be free from any defects in material, design or workmanship and shall be in strict conformance with all applicable Buyer specifications, design and performance requirements and drawings.

(b) Notice of any defect shall be given to Seller within three (3) years from the date of final acceptance by Buyer of the defective Product, except that (1) notice of a defect in a corrected or replaced Product shall be given within three (3) years after the date of final acceptance by Buyer of the corrected or replaced item, and (2) notice of a defect that is latent or that was caused or concealed by fraud or such gross mistakes amounting to fraud may be given at any time.

(c) Buyer may, at any time during the warranty period, and irrespective of prior inspection and acceptance, reject any Product not conforming to the above warranty and require Seller at its expense to correct or replace (at Buyer's option) such Product with a conforming Product. Seller agrees to exert every effort, including overtime, at its expense, to correct or replace a defective Product as quickly as possible. If Seller fails to correct or replace a defective Product promptly after notification and authorization from Buyer, Buyer may, by contract or otherwise, correct or replace such defective Products and Seller shall be liable for and pay to Buyer the costs of such correction or replacement. If, as a result of operational, schedule,

performance and/or life limitation considerations, Buyer determines that it is impractical to either repair or replace a defective Product, Buyer may require Seller to refund to Buyer up to the total price originally paid for the defective Product in lieu of repair or replacement. In addition to the foregoing remedies, Buyer may also require Seller to reimburse all of Buyer's additional costs resulting from failure of Seller's Products to comply with the conditions of paragraph (a) of this clause, notwithstanding any provision of this Subcontract to the contrary.

(d) If requested by Buyer, Seller shall assign to Buyer all rights Seller obtains under warranties given by its Lower Tier Subcontractors in connection with the work under this Subcontract to the extent that such rights are assignable. Any such assignment shall not relieve Seller of any of its responsibilities under this Clause 32. Seller shall notify Buyer of each such warranty, and upon request shall deliver to Buyer documents by the warrantor evidencing the warranty.

(e) Seller shall be responsible for all shipping costs and risk of loss associated with the return of a defective Product to Seller and the return of the repaired or replacement Product to Buyer.

(f) The rights and remedies provided under this clause are in addition to any other rights and remedies available to Buyer under this Subcontract or at law.

33. PRODUCT SUPPORT

(a) In the event that a Product delivered hereunder becomes defective or malfunctions for any reason and at any time (including after any applicable warranty period has expired), including in-orbit if integrated in a launched satellite, Seller shall promptly perform a failure verification and/or failure analysis and determine the appropriate corrective action at no cost to Buyer. Seller shall, at Seller's expense, take the appropriate measures to correct all defects determined to be the Seller's responsibility in all applicable documentation, undelivered Products and delivered unlaunched Products as required by Buyer. For the avoidance of doubt, Buyer shall be entitled to provide copies of all data and documentation provided by Seller under this Clause to its Customer(s) without obtaining Seller approval.

(b) Buyer shall immediately be provided with full visibility of all technical/programmatic aspects of failures and problems occurring on the ground or in orbit that are relevant to the Product being furnished by Seller on this Subcontract. However, Seller may protect the confidentiality and commercial sensitivity of the Seller's relationships with its other customers. The identity of other customer programs do not need to be revealed either directly or by inference without the permission of the respective customer.

(c) Seller warrants that the Products supplied under this Subcontract shall be available to Buyer for a period of five (5) years from the date of final delivery under this Subcontract or three (3) years after the expiration of any option provision contained in the Subcontract, whichever is later. In the event Seller discontinues manufacture of the Products deliverable against this Subcontract and an alternate qualified source is not available to Buyer, Seller shall make available to Buyer all documentation, drawings, designs, tooling and equipment necessary to manufacture said Products under a royalty-free license (with rights to sublicense) which is hereby granted to Buyer.

34. LIMITATION OF LIABILITY

In no event shall Buyer be liable directly or indirectly to Seller, its officers, directors, employees, subcontractors at any tier, agents or any permitted assignees, for any incidental, special, consequential or punitive damages, lost profits, lost revenue, or any other indirect damages in connection with this Subcontract, regardless of whether the basis of such liability is in contract, tort, or any other legal or equitable theory. In no event shall Buyer's total liability under or in connection with this Subcontract exceed the Subcontract price. This Clause 34 shall survive the termination of this Subcontract for whatever cause.

35. SEVERABILITY

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

36. ENTIRE AGREEMENT AND AMENDMENTS

This Subcontract constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, understandings and agreements with respect to the subject matter hereof. With the exception of a unilateral Contract Change Notice issued by Buyer pursuant to the provisions of Clause 22, "Changes", only a written instrument executed by both Parties may amend this Subcontract.