



FIXED PRICE PROCUREMENT ORDER TERMS & CONDITIONS

SS/L P-10S  
(9/99)

FOR

USE WITH SUBCONTRACTS PLACED

ON

COMMERCIAL SATELLITE PROGRAMS

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**1. DEFINITIONS**

As used throughout this Subcontract the following definitions apply 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.

(d) "Subcontract" means the 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 contained in this Subcontract.

(e) "Prime Contract" or "Contract" means the contract between Buyer and its Customer under which this Subcontract is issued.

(f) "Days" shall be understood to mean calendar days.

(g) "Product" means any product or goods being purchased by Buyer under this Subcontract.

**2. ACCEPTANCE**

Seller shall be deemed to have accepted all of the terms of this Subcontract or Amendments thereto, without change or modification, upon written acceptance of this Subcontract or upon the commencement of work. 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, Buyer's 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 material, supplies, components, parts, jigs, fixtures, molds, tooling, gauges, devices and equipment which is 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, then 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. When instructed by Buyer, Seller shall deliver Buyer-Furnished Property to Buyer either FOB Buyer's facility or CIP San Francisco Airport 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 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 Traffic Department. 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.

(b) If an item is shipped to a destination other than Buyer's facility, Seller shall fax Buyer 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. DISCLOSURE AND USE OF BUYER'S DATA**

(a) The phrase "Proprietary Information" means and refers to all information, in whatever form transmitted, including, without limitation, designs, drawings, specifications and technical information, which is disclosed by Buyer to Seller. In addition, all notes, memoranda or other materials prepared by Seller which describe or include Proprietary Information shall also be considered Proprietary Information. Proprietary Information shall not include any information that: (a) is already known to Seller at the time of its disclosure; (b) is or becomes publicly known through no wrongful act of Seller; (c) Seller subsequently and rightfully receives from a third party who is not under an obligation of confidentiality; or (d) is independently developed by Seller without reliance on the Proprietary Information.

(b) All Proprietary Information disclosed to Seller shall be and remain the sole property of Buyer. Seller shall use Proprietary Information only for the performance of this Subcontract (or as otherwise authorized in writing by Buyer) and for no other purpose. Seller shall not (except with Buyer's prior written approval) disclose Proprietary Information it receives from Buyer to any person or entity except its employees who have a need to know and who have been informed of and have agreed to abide by Seller's obligations under this Clause 6. Seller shall use not less than the same degree of care to avoid disclosure of 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) Upon completion of this Subcontract or upon Buyer's request, all Proprietary Information, including any copies thereof, shall be promptly returned to Buyer, or instead, at Buyer's option, Seller shall destroy all Proprietary Information and thereafter Seller shall provide a certificate of destruction to Buyer.

(d) Notwithstanding the foregoing, Seller may disclose Buyer's Proprietary Information in response to a subpoena or other legal demand, without liability as long as Seller, subject to the following limitations: (i) promptly provides written notice to Buyer prior to making such disclosure to allow Buyer a reasonable opportunity to obtain a protective order, (ii) fully cooperates with Buyer if Buyer decides to contest disclosure, (iii) discloses only such Proprietary Information as is legally required, and (iv) exercises reasonable efforts to obtain proprietary treatment for any Proprietary Information being disclosed.

#### **7. RISK OF LOSS AND RESPONSIBILITY FOR SUPPLIES**

(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 FCA, international carrier, risk of loss shall 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 CIP San Francisco International Airport, risk of loss shall remain with Seller until delivery of the items to the FOB or CIP 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 supplies rejected pursuant to the warranty provision after written notice of rejection has been given to Seller.

#### **8. ASSIGNMENT**

Seller may not assign, transfer or delegate any of its rights, duties or responsibilities under this Subcontract, except the right to receive payment, without the prior written consent of Buyer. No assignment of the 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**

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 of other breaches of the same or other provisions of this Subcontract.

#### **10. GOVERNING LAW**

This Subcontract shall be interpreted, construed and governed by the laws of the State of California 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. 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 of these Terms and Conditions entitled "Changes", only a written instrument executed by both parties may amend this Subcontract.

#### **13. QUALITY AND WORKMANSHIP**

Unless otherwise specifically stipulated in this Subcontract, all equipment, material, 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) If in the performance of this Subcontract, Seller is required to work in and/or enter premises occupied by or under the control of Buyer, Buyer's Customer or a third party or to use or operate property furnished by Buyer, Seller shall procure and maintain during the entire performance period of this Subcontract, public liability, property damage and Worker's Compensation insurance in prudent, reasonable and/or statutory amounts adequate to cover the Subcontractor's obligations pursuant to Clause 3 hereof with insurers acceptable to Buyer.

(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 required coverage shall not relieve Seller from any liability or obligation for which it is responsible.

(d) If at any time Seller neglects 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 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 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**

All delivery and/or completion dates stated in this Subcontract are critical and are of the essence of this Subcontract. 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 set forth in the Subcontract may not be met. Such notification shall include the reasons for any possible delays, steps being taken to remedy such problems and a proposed new 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 the terms of this clause all payments due Seller under this Subcontract shall be forfeited and Buyer shall have the right to terminate this Subcontract for default as provided in Clause 26 of these Terms and Conditions entitled "Termination for Default."

**17. ACCESS TO WORK IN PROCESS AND DATA/DOCUMENTATION**

(a) All work in process under this Subcontract and all data and documentation related to the work effort of Seller and its Lower Tier Subcontractors are subject to continuous examination, evaluation and inspection by Buyer and Buyer's Customer at any reasonable hour during the period of performance of this Subcontract. Subsequent to the completion of deliveries pursuant to this Subcontract, all design, manufacturing and test data and documentation related to this Subcontract shall be retained by Seller for the duration of the design life of the Products. Said data and documentation shall promptly be made available to the Buyer and Buyer's Customer, upon request, in the event that any Product becomes defective or malfunctions in any way and for any reason, including in-orbit performance anomalies or other failures of the furnished Products.

(b) Seller shall include the substance of this clause 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, regulations, restrictions and orders of any governmental authority having jurisdiction.

**19. INSPECTION AND ACCEPTANCE**

(a) Seller shall provide and maintain an inspection 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 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 termination 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, among other things, (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, are 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 and 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) Performance of work under 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 date upon which termination becomes effective, and the instructions necessary 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 and ratification 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, in accordance with the terms of this Subcontract, all completed Products;
- (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 (i) are of a type and quality suitable for producing Products in conformance with the requirements of this Subcontract, and (ii) 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 acquire 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 Clause 21, paragraph (b)(2) above;
- (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 Buyer in accordance with Clause 21, paragraph (b)(5) above;
- (4) The reasonable costs incurred by Seller in protecting property in its possession that Buyer has or may acquire an interest.

(d) Notwithstanding anything to the contrary in this Subcontract, payments made under this paragraph (c), exclusive of payments under item (4) hereof, shall not exceed, under any circumstances, (i) 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 (ii) 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 by Buyer), Seller shall submit to Buyer a termination settlement proposal, which shall contain detailed back up 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 the "Disputes" and "Arbitration" clauses of these Terms and Conditions.

## 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 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 or delivery schedule, provided that Seller shall only be entitled to an equitable adjustment if within twenty (20) 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 schedule impacts. If Seller fails to submit a settlement proposal within this twenty (20) 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 caused 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 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 the "Disputes" and "Arbitration" clauses below. 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 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 by this Subcontract for a period of up to one hundred eighty (180) days, and for any further period to which the parties may agree. 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 of that period to which the parties shall have agreed, 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 the "Termination for Default" or the "Termination for Convenience" clauses of these Terms and Conditions.

(b) If a stop work order issued under this clause is canceled, 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 twenty (20) 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 twenty (20) days after the work covered by such stop work order is terminated.

(d) If Seller submits a proposal pursuant to Clause 23, 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 claim for adjustment.

(e) If Seller fails to submit a proposal within the twenty (20) day period specified in Clause 23, 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 the "Disputes" and "Arbitration" clauses of these Terms and Conditions.

#### **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, 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 the event 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 Subcontractor Force Majeure Event is likely to continue for such a duration that will adversely impact Buyer's performance under its Prime Contract, 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. All expenses incurred by Seller on Products cancelled under this Clause 24, paragraph (b) 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; additional extensions 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 the "Disputes" and "Arbitration" clauses of these Terms and Conditions.

#### **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 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 that involve any research and development effort.

#### **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 Clause 26 paragraph (a), 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 Clause 26 paragraph (a), Buyer may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (i) any completed Products, and (ii) 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 therefor. 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 the clause of this Subcontract entitled "Excusable Delays", the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to the provisions of the clause of these Terms and Conditions entitled "Termination for Convenience".

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

## **27. DISPUTES**

(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: (i) a statement that it is a Claim and a request for decision pursuant to this Clause 27; (ii) a detailed description of the act, error, omission, unforeseen event or other condition giving rise to the Claim; (iii) a detailed breakdown with supporting back up of all amounts, if any, being claimed; and (iv) 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 a dispute. 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 in 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 twenty (20) 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 Clause 27, paragraph (d) below.

(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. 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 Prime Contract. A final judgment in any such appeal shall be conclusive 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. Each party shall cooperate fully in assisting the other party in such proceedings. Buyer agrees that after Seller has commenced to participate in any claim or 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 claim or appeal without Seller's consent. All costs and expenses incurred by Seller and Buyer in prosecuting any claim or 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) During the pendency of any dispute proceeding, Seller shall proceed diligently with performance of this Subcontract.

## **28. ARBITRATION**

(a) 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 or arbitrators 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 neutral arbitrator.

(c) 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 documentation, and the information contained therein, which is required to be delivered under this Subcontract.

(b) If any documentation described in this Clause 29 paragraph (a) 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 information 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. INVENTIONS AND TECHNICAL DATA - WITHHOLDING OF PAYMENT**

If, at the time of final payment under this Subcontract, the requirements of the "Technical Data" and the "Rights in Inventions" clauses have not

been completed to the extent required, Buyer may, notwithstanding anything in this Subcontract to the contrary, withhold payment to Seller of such amount as Buyer deems reasonable of the final payment, until such deficiencies are corrected.

### **32. PATENT 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 or suit 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 (i) resolve the matter so that the injunction or prohibition no longer pertains, (ii) procure for Buyer the right to use the infringing item, or (iii) modify the infringing item so that it becomes non-infringing, subject to the technical approval of Buyer and Buyer's Customer. If Seller is unable to accomplish (i), (ii), or (iii) 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 to Buyer and Buyer's Customer arising as a result of such injunction.

(c) The provisions of this Clause 32 shall survive the completion, expiration or termination of this Subcontract.

### **33. WARRANTY**

(a) Seller warrants that the work performed or 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 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 (i) 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 (ii) notice of a defect 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 notice period of this warranty, 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. 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.

### **34. LIENS**

(a) If required by Buyer, Seller shall deliver to Buyer before submitting any invoice for payment under this Subcontract or at any other time required by Buyer, satisfactory release of all liens arising from the Products, materials and equipment supplied and the Services rendered in connection with work performed by Seller under this Subcontract.

(b) Buyer may withhold from any payment otherwise due Seller any sum that Buyer has reason to believe may be needed to satisfy any lien arising out of the work under this Subcontract. Prior to the time of any such withholding, Buyer shall notify Seller in writing as to the nature of the lien and the amount of money to be withheld.

(c) Seller shall reimburse Buyer for all monies, including all costs and legal fees, spent in removing liens arising out of the work under this Subcontract. Such reimbursement may be deducted from any payment otherwise due to Seller. If Buyer does not hold money otherwise due to Seller, Seller shall promptly upon request by Buyer pay Buyer any amount due under this clause.

### **35. PRODUCT SUPPORT**

(a) In the event that a Product delivered hereunder becomes defective or malfunctions for any reason and at any time (even 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 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.

(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 customers 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 which is hereby granted to Buyer.

**36. YEAR 2000 WARRANTY**

(a) If any Products include computer hardware, firmware, software and/or other items which process date data, Seller represents and warrants that such Products will accurately process, prior to, during and after the year 2000, all: (i) date related data and (ii) dates before, on or after 1 January 2000, including but not limited to accurately inputting, storing, manipulating, comparing, calculating, updating, recording, displaying, sequencing, outputting and transferring such dates and data, including leap year calculations. Within thirty (30) days of discovery of any non-compliance, the discovering party shall notify the other party and, at SS/L's option, Seller shall, within five (5) days of notice, repair or replace the non-compliant Product at no cost to SS/L, or refund to SS/L the purchase price. Nothing in this warranty provision shall be construed to limit any other rights at law or in equity that SS/L may have with respect to year 2000 Compliance.

(b) If any Products are not Year 2000 Compliant, as described in paragraph (a) above, SS/L may withhold payment for such Products until a compliant upgrade is applied and certified.