

FIXED PRICE PROCUREMENT ORDER TERMS & CONDITIONS

SS/L P-10S
(7/98)

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 legal entity that contracts with Buyer under this Subcontract. The term "Lower Tier Subcontractors" refers to Seller's Subcontractors at any tier.

(c) Customer refers to the SS/L customer.

(d) Prime Contract or Contract means the SS/L contract under which this Subcontract is issued.

(e) Days shall be understood to mean calendar days..

2. **ACCEPTANCE.** Seller shall be deemed to accept this Subcontract or any Amendment hereto upon written acceptance or the commencement of work. Acceptance is limited to the terms and conditions stated in the written Subcontract or Amendment furnished by Buyer. Any additional or different terms proposed by Seller are deemed rejected unless Buyer agrees otherwise in writing.

3. **LOSS OR DAMAGE CAUSED BY SELLER.** Seller shall indemnify and hold harmless Buyer and its officers and employees from any loss, cost, damage, expense or liability by reason of property damage, personal injury or death arising out of or in connection with the actions or omissions of Seller, its employees, agents and/or Lower Tier Subcontractors in the performance of this Subcontract. Without in any way limiting the foregoing undertakings, Seller and its Lower Tier Subcontractors shall maintain public liability and property damage insurance covering the obligations set forth above and shall maintain proper Workers' Compensation insurance covering their employees in the performance of this Subcontract.

4. **RESPONSIBILITY FOR PROPERTY.**

(a) All property, including but not limited to material, tooling 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, shall be and remain the property of Buyer, and title to such property shall not be affected by incorporation or attachment to any other property. All property manufactured or acquired by Seller under this Subcontract, the title to which is in Buyer, and all property furnished or consigned to Seller by Buyer under this Subcontract, shall be kept and maintained in first class condition and replaced to the extent necessary for performance under this Subcontract. Such property shall be used by Seller only in the performance of this Subcontract or as may otherwise be authorized in writing by Buyer, and shall remain the property of Buyer unless abandoned in place, in which case Buyer shall have no further obligation concerning same. When instructed by Buyer, Seller shall deliver the property covered by this clause to Buyer, F.O.B. carrier, Seller's plant, at the completion or termination of this Subcontract or shall make such other disposition as Buyer may direct. Seller shall bear the risk of loss or destruction of and damage to property covered by this clause until delivered or returned to Buyer. Seller shall deliver or return such property in the same condition as when manufactured, acquired or received, except for reasonable wear and tear or for utilization thereof in accordance with the terms of this Subcontract.

(b) The provisions of paragraph (a) above shall apply with respect to any property provided by Customer(s) of Buyer and authorized for use under this Subcontract.

5. **PACKING, MARKING AND SHIPPING.**

(a) Seller shall pack, mark and ship all goods and supplies in accordance with the requirements of this Subcontract so as to be in compliance with transportation regulations and good commercial practice for protection and shipment and to 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. Any expense incurred by Buyer as a result of improper preservation packaging, packing, marking or method of shipment shall be reimbursed by Seller. Copies of packing lists showing this Subcontract number (and release number, if applicable) shall be included with each shipment, and each container shall be marked to show the Subcontract number. Copies of all bills of lading indicating the container and order numbers shall be faxed to Buyer's Traffic Department at a location specified by Buyer unless otherwise instructed. 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 two copies 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 supplies 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.

6. **DISCLOSURE AND USE OF DATA.**

(a) Seller agrees not to use or disclose drawings, specifications, technical information and other data furnished by Buyer except in furnishing supplies under this Subcontract. Nothing in this clause, however, shall restrict Seller's rights to use or disclose drawings, specifications, technical information and other data which are or become generally known to the public without breach of this provision by Seller or are rightfully obtained from other sources.

(b) If documents supplied to Seller are marked with any type of "restricted use" legend by Buyer, Seller shall take all necessary steps to ensure that the contents of such documents are not disclosed to any person other than a person employed or engaged by Seller, whether under subcontract or otherwise, for the performance of this Subcontract. Any such document supplied to Seller shall be returned to Buyer together with any copies thereof upon completion of the purpose for which they were supplied. Whenever Seller makes copies of Customer or Buyer supplied "restricted use" documents for performance of work covered by this Subcontract, Seller shall immediately notify Buyer of the number of copies made and their distribution. Except with the written consent of Buyer, Seller shall not make use of any such information other than for the purposes of this Subcontract.

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

(a) When this Subcontract specifies that the designated delivery point is F.O.B. carrier, Seller's plant, risk of loss (used in this clause to include damage, destruction, theft or other loss of the supplies) shall pass to Buyer upon delivery of the items to the common carrier by Seller properly addressed, labeled and consigned and Buyer shall be responsible for asserting any claims against the carrier and for maintaining any required insurance against loss in transit.

(b) When this Subcontract specifies that the designated delivery point is F.O.B. destination, risk of loss shall remain with Seller until delivery of the items to Buyer, and Seller shall be responsible for asserting any claims against the carrier and for maintaining any required insurance against loss in transit.

(c) Seller shall bear all risks of loss and shipping costs as to rejected supplies after written notice of rejection has been given, except that Buyer shall be responsible for risk of loss as to the rejected supplies if such loss results from the negligence of officers, agents or employees of Buyer.

8. **ASSIGNMENT.** Neither this Subcontract nor any interest therein, except the right to receive payment, may be assigned 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 the assignment and each invoice to be paid to the assignee is clearly marked to show such assignment.

9. WAIVER, MODIFICATION AND DELIVERY. The failure of Buyer in any one or more instances to insist on delivery at an agreed time or on performance of any other provision of this Subcontract shall not be construed to be a waiver by Buyer of delivery time or any other provision in any later instance. Delivery according to the Delivery Schedule, being an important condition hereof, will not be advanced or delayed without written agreement signed by Buyer's authorized Subcontract Administrator. No provision herein concerning inspection or conclusiveness of acceptance shall exclude any warranty or constitute a waiver thereof. A modification of this Subcontract must be in writing and signed by Buyer's authorized Subcontract Administrator if it is to be binding on Buyer.

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

10. LAWS. This Subcontract shall be construed in accordance with the laws of the State of California without regard to its conflicts of laws rules. The rights and remedies provided Buyer herein shall be cumulative and in addition to any other rights and remedies provided by existing law or equity. Seller agrees that the supplies called for herein will be manufactured, prepared, sold, and installed, if applicable, in complete and strict compliance with all relevant federal, state and local laws. Buyer shall not be responsible for the consequences, direct or indirect, of an infringement by Seller or its Lower Tier Subcontractors and their employees, of applicable laws or statutes. Seller shall keep Buyer, its officers, employees, agents or assignees indemnified from and against any claims or action therefor.

11. PRICE WARRANTY. Seller warrants that the prices for the articles sold to Buyer under this Subcontract are no less favorable than those currently extended to any other customer in comparable status buying the same or like articles in equal or smaller quantities and under similar circumstances. If during the term hereof Seller reduces the price for any such article as to one or more categories of customers in a status comparable to Buyer, the corresponding price to Buyer shall be likewise reduced.

12. INTEREST.

(a) To the extent Buyer receives any interest which is allocable to a claim of Seller arising under this Subcontract and included in Buyer's claim on which such interest was received, Buyer shall pay Seller the portion thereof allocable to Seller. Otherwise, Buyer shall not be obligated for interest on any claim of Seller hereunder.

(b) Any liquidated amount owed by Seller to Buyer shall bear interest unless paid within thirty days, at six percent per annum from the date due until paid unless otherwise stipulated.

13. QUALITY OF MATERIALS AND WORKMANSHIP. Except as may be otherwise specifically stipulated in this Subcontract, all equipment, material, and articles incorporated in the work 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 the industry. If at any time Buyer notifies Seller that any such equipment, material, article or workmanship fails to meet the foregoing standards, Seller shall promptly take all remedial steps required to meet those standards.

14. INSURANCE.

(a) If this Subcontract requires work on and/or entry to premises occupied by or under the control of Buyer or involves the use or operation of property furnished by Buyer, Seller shall procure and maintain, during the entire performance period of this Subcontract, insurance of at least the kind and amounts set forth in the Schedule of this Subcontract and/or as required by

Clause 3 hereof and from 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 coverages, or
- (2) certified copies of existing insurance policies that have been endorsed to provide the required coverages, or
- (3) certificates of insurance executed by the insurer or its authorized representative that certify the required coverages.

(c) The furnishing of acceptable evidence of required coverages 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. BANKRUPTCY OR INSOLVENCY. In the event of the institution of any proceedings by or against Seller in voluntary or involuntary bankruptcy or insolvency or under any provisions of the United States Bankruptcy Act or the appointment of a receiver or trustee or a general assignment for the benefit of creditors of Seller or the breach or anticipatory breach by Seller of any term or condition hereof, Buyer shall be entitled to terminate this order as provided in Clause 26.

16. IMPROPER PAYMENTS, KICKBACKS, GIFTS, GRATUITIES, ETC. 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.

17. ACCESS TO WORK IN PROGRESS AND DATA.

(a) All work in progress under this Subcontract and data and documentation related to the work effort of Seller and its Lower Tier Subcontractors, including all design and test data, are subject to continuous examination, evaluation and inspection by Buyer and/or its Customer at any reasonable hour during the period of this Subcontract, including a period of ten (10) years after completion of deliveries hereunder. The test data referred to above shall also include relevant qualification data obtained earlier on the basis of which waivers in the test plan and quality assurance were granted.

(b) Seller shall, for the purposes of this clause, give Buyer and/or its Customer access to such documentation and to its premises where work on or in connection with the subject of this Subcontract is being, has been or is intended to be performed.

(c) This clause shall be inserted in all of Seller's Lower Tier subcontracts calling for the delivery of major components.

18. TITLE AND ASSUMPTION OF RISK. Subject to the provisions of this Subcontract, title to all items to be delivered under this Subcontract shall pass to Buyer at the time of final acceptance by Buyer, which final acceptance will be made or refused as provided hereunder. Any loss or damage to such items prior to passing of title shall be at Seller's risk.

19. INSPECTION AND ACCEPTANCE.

(a) All work under this Subcontract shall be subject to inspection by Buyer prior to acceptance and at such time and places as directed by Buyer. Seller shall provide and maintain an inspection system covering the work hereunder which is acceptable to Buyer and in conformance with any cited exhibits of this Subcontract. Buyer Source Inspection 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 provisions of this Subcontract.

(b) Buyer's Customer shall have the same access, rights to inspect, safety protection and relief from liability that this clause affords to Buyer.

(c) Acceptance - Except as regards latent defects, fraud or such gross mistakes as amount to fraud, the work 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 final delivery of the work to Buyer, provided that no non-conformance with any terms, conditions or specifications of this Subcontract is found.

(3) The correction by Seller in a manner acceptable to Buyer of any defects or variations from requirements discovered during the ninety (90) day inspection period following final delivery.

(d) "Latent Defects", for purposes of this clause, are conditions resulting in noncompliance of Seller's product or service with one or more Subcontract requirements, which noncompliance was not disclosed through the Subcontract test program.

(e) This Subcontract requires submittal of documentation including but not limited to design, analysis, drawings, materials and parts lists and processes which require Buyer approval. Such Buyer approval, however, does not in any manner constitute relief of Seller's responsibility for either determining the adequacy of said items for their intended use or Seller's responsibility for satisfying all requirements of the Subcontract.

(f) Remedy of any particulars referred to in paragraph (a) and (b) of this clause shall be accomplished by Seller, at its expense, promptly upon receipt of notice thereof. If Seller fails to remedy any such particulars promptly, Buyer may elect to have any or all such particulars remedied through other means, in which event Seller shall pay the reasonable costs of so remedying such particulars

20. **TAXES.** Unless otherwise stated in the Subcontract, the prices include all applicable federal, state and local taxes and export duties.

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 by fax or by mailing a written notice of termination to Seller.

(b) After receipt of a notice of termination, Seller shall, unless otherwise directed by Buyer, immediately terminate all work under this Subcontract and shall unless otherwise directed by Buyer:

(1) terminate all orders and subcontracts relating to the performance of the work terminated by the notice of termination;

(2) negotiate all claims arising out of such termination of orders and subcontracts. Buyer's prior approval of any Lower Tier Subcontractor termination claim is required before settlement.

(3) transfer title and deliver to Buyer (i) all completed work which conforms to the requirements of this Subcontract and does not exceed, in quantity, the amount authorized for performance by Buyer, and (ii) all reasonable quantities (but not in excess of amounts authorized by Buyer) of work in process and materials produced or acquired in respect to the performance of the work terminated which are of a type and quality

suitable for producing supplies which conform to the requirements of this Subcontract and which cannot reasonably be used by Seller in producing supplies for itself or for its other customers;

(4) take all action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest;

(5) submit to Buyer promptly, but not later than 30 days from the effective date of termination (unless otherwise extended by Buyer), its termination claim; provided, however, that in the event of failure of Seller to submit its termination claim within such period, Buyer may determine, notwithstanding the provisions of paragraph (c) hereof, on the basis of information available to it, the amount, if any, due Seller with respect to the termination and such determination shall be final.

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

(1) the Subcontract price for all supplies or services which have been accepted by Buyer in accordance with this Subcontract and not previously paid for;

(2) the costs incurred by Seller in accordance with this Subcontract to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this Subcontract, including the reasonable cost of work in process and materials delivered to Buyer in accordance with paragraph (b) of this clause and including the reasonable cost of discharging liabilities which are so allocable or apportionable;

(3) the reasonable costs incurred by Seller in protecting property in its possession in which Buyer has or may acquire an interest;

(4) Payments made under this paragraph (c), exclusive of payments under subdivision (3) hereof, shall not exceed the aggregate price specified in this Subcontract, less payments otherwise made or to be made.

(d) Buyer shall have access to Seller's premises and records prior or subsequent to payment, to verify charges supporting any termination claim.

(e) The provisions of this clause shall not apply if this Subcontract is terminated by Buyer for the default of Seller pursuant to Clause 26.

22. CHANGES.

(a) Buyer may, from time to time during the period of performance of this Subcontract, by written change notice issued by Buyer's authorized Subcontracts representative, make changes within the general scope of this Subcontract. Such changes shall include, but not be limited to, changes in drawings, designs, specifications, 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 or the time required for the performance of this Subcontract or otherwise affects any other provision of this Subcontract, an equitable adjustment shall be made in the price, delivery date, schedule, and/or other provisions as may be so affected and mutually agreed upon and this Subcontract shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within twenty (20) days from the date of receipt by Seller of the change order. The amount of the claim shall be stated when it is submitted or at a later date, not to exceed fifty (50) days from the date of assertion of the claim, which later date shall be requested at time of such submission. If the cost of supplies or materials made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such supplies or materials. Nothing in this clause shall excuse Seller from promptly proceeding with the change as directed.

(b) If Seller submits a claim for adjustment 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. Subject to paragraph (c) of this clause, the amount of any such cost increase or decrease shall be calculated in accordance with Seller's regularly established accounting practices and shall, if required by Buyer, be verified at no cost to Buyer by Seller's Independent Certified Public Accountant.

(c) Upon the receipt by Buyer of Seller's claim, with supporting cost details, the parties shall attempt to reach agreement on the pricing of the change order. In the event the parties are unable to reach agreement on the pricing of the change order, the matter shall be determined in accordance with the clause of this Subcontract entitled "Disputes" or "Arbitration" as appropriate.

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 sixty (60) 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 reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of sixty (60) 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 "Termination for Default" or the "Termination for Convenience" Clause of this Subcontract.

(b) If a stop work order issued under this clause is canceled or the period of the order or any extension thereof expires, Seller shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and this Subcontract shall be modified in writing accordingly, if:

- (1) the stop work order results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Subcontract and
- (2) the Seller asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if Buyer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this Subcontract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of Buyer, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(d) If a stop work order is not canceled and the work covered by such order is terminated for default, the reasonable costs resulting from the stop work order shall be allowed by equitable adjustment or otherwise.

(e) If Seller submits a claim for adjustment pursuant to paragraph (a) of this clause, Seller shall prepare and furnish to Buyer the detailed accounting of cost elements and any other data determined by Buyer as necessary to determine the reasonableness of any increase or decrease in the cost of, or the time required for, the performance of this Subcontract caused by the work stoppage.

24. EXCUSABLE DELAYS. Acts of God or of the public enemy, acts of Governments in their sovereign capacity, fires, floods, epidemics, acts of war, quarantine restrictions, labor disputes, embargoes and any other event beyond the reasonable control and without the fault or negligence of a party shall constitute a basis for excusable delays provided:

(a) notice is given to the other party within seven (7) days of the occurrence of such event:

(b) it can be established by either party on its behalf or on behalf of any of its Lower Tier Subcontractors any of the above events:

- (1) has delayed performance of its work, and
- (2) was beyond the reasonable control and not due to the negligence or default of such party and its said subcontractors.

(c) If delays affecting Seller's performance are reasonably likely to delay Buyer's performance under its Contract, Buyer shall be entitled to obtain such goods or services elsewhere for the duration of such failure and to reduce proportionally and without any obligation to Seller the quantity or amount of goods or services called for herein.

(d) If Buyer is temporarily unable to receive or utilize the goods or services called for herein because of causes beyond Buyer's control and without its fault or negligence, Buyer may suspend Seller's performance for the period of such disability (not to exceed thirty (30) days) by written notice to Seller without additional liability to Seller for such suspension.

(e) Notice shall be given within seven (7) days of the termination of the excusable delay condition.

25. OTHER DELAYS. Seller agrees to exert every reasonable effort, including the application of overtime and premium shipments at the expense of Seller, to meet the promised delivery dates. Seller agrees to notify Buyer immediately if at anytime it appears that the delivery schedule set forth herein 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. The furnishing by Seller of such notice shall not constitute a waiver of any of Buyer's rights under this Subcontract.

26. TERMINATION FOR DEFAULT.

(a) Buyer may (subject to the provisions of paragraph (c) below) 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 supplies or to perform the services within the time specified herein or any extension thereof: or
- (2) If Seller fails to perform any of the other provisions of this Subcontract or so fails to make progress as to endanger performance of this Subcontract in accordance with its terms and in either of these two circumstances 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.

(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) If this Subcontract is terminated 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 (i) any completed supplies, 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 property in the possession of Seller in which Buyer has an interest. Payment for completed supplies 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. Failure to agree to such amount shall be a dispute within the meaning of the clauses of this Subcontract entitled "Arbitration" or "Disputes", whichever applies.

(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 the 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 Clause hereof 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) Any dispute arising under this Subcontract which is not settled by agreement or pursuant to the following paragraphs of this clause may be settled by appropriate legal proceedings. 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 or Arbitration clauses of the Prime Contract and taken any further action as may be required under this Clause.

(b) Any decision on appeal or any other decision of the Customer under the Prime Contract which cannot be appealed under the Disputes or Arbitration clauses of the Prime Contract, if binding on Buyer, shall also bind Seller to the extent that it relates to this Subcontract, provided Buyer shall have promptly notified Seller of such decision and, if requested by Seller, shall have brought suit or filed a claim, as appropriate, against the Customer. A final judgment in any such suit or final disposition of such claim shall be conclusive upon Buyer and Seller.

(c) If any appeal, suit or claim is prosecuted by Buyer under this Clause, Seller shall be permitted at Seller's expense to participate fully in such prosecution for the purpose of protecting Seller's interest, if requested by Buyer. Seller shall prosecute any appeal, suit or claim initiated by Buyer at Seller's request. 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 proceeding 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 proceeding without Seller's consent.

(d) During pendency of any dispute, decision, appeal, suit or claim, Seller shall proceed diligently with performance. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal, suit or claim initiated by Buyer solely at Seller's request shall be paid by Seller; otherwise each party shall bear its allocable share of the expense. The rights and obligations of Buyer and Seller under this clause shall survive completion of, and final payment under, this Subcontract.

28. ARBITRATION. In the case where Seller is a person or firm, resident of or organized under the laws of a foreign jurisdiction and has its principal place of business outside the United States, 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 within thirty (30) days (or such longer period as may be mutually agreed) from the date that either party informs the other in writing that such dispute or disagreement exists, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the International Chamber of Commerce in effect on the date that such notice is given, except for the following: Either party which demands arbitration shall specify in writing the matter to be submitted to arbitration and, at the same time, choose and nominate a competent person to act as an arbitrator; thereupon, within fifteen (15) 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 resolve the question in dispute and if they agree upon such determination, the determination so made shall be in writing and signed by both arbitrators. If such two arbitrators fail to agree, they shall forthwith select a third arbitrator, giving written notice to both parties of the choice so made and fixing a time and place in Palo Alto, California at which both parties may appear and be heard

with respect to such controversy. 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 International Chamber of Commerce. 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. During pendency of any dispute, decision, appeal, suit or claim, Seller shall proceed diligently with performance. Each party shall bear the cost of preparing and presenting its case and the cost of the arbitration, including the fees and expenses of the arbitrator or arbitrators, will be shared equally by the parties unless the award otherwise provides.

29. TECHNICAL DATA AND INFORMATION

(a) As used in this clause "Space Research and Space Technology Purpose" means the use of technical data in connection with the design, development, construction, establishment, maintenance and operation of equipment and parts for use in connection with space satellites or other space-based systems and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of such satellites or systems.

(b) Buyer and its Customer shall have rights to use for any Space Research and Space Technology Purpose the technical documentation and the information contained in such documentation which is required to be delivered under this Subcontract provided, however, that if any of such written documentation is copyrighted, Seller agrees to and does hereby grant to Customer/Buyer 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 written documentation that is copyrighted, Customer shall apply an appropriate copyright notice to all copies of such copyrighted written documentation. Buyer and its Customer shall have unlimited rights in any deliverable technical documentation and information first produced by Seller under this Subcontract.

(c) All written documentation, other than documentation in which rights are provided to Buyer and Customer under the preceding paragraph, made available to Buyer or Customer in connection with the performance of this Subcontract, which is marked by Seller with an appropriate proprietary legend shall be protected by Buyer and Customer from disclosure to any person who is not an officer, employee, agent or consultant of Buyer or Customer in the same manner Buyer or Customer protects its own confidential information.

(d) Any other provisions of this Subcontract notwithstanding, with respect to any written documentation or information that any person or entity is authorized by the terms of this Subcontract to use only under certain conditions or limitations, such use or practice shall be:

(1) free, unconditional and unlimited from and after the time that such written documentation or information comes into the public domain, or

(2) at the sole discretion of such person or entity, on other terms from and after the time that such written documentation or information becomes otherwise lawfully available to such person or entity on such other terms.

(e) The person or entity to whom the data is furnished has the right at any time to modify, remove, obliterate or ignore any marking not authorized by this clause on any piece of written documentation furnished under this Subcontract, but only after notice and reasonable opportunity to Seller to defend such marking.

(f) Subject to the provisions of Clause 17, nothing contained in this clause shall require Seller to deliver any data beyond that specified under the Schedule of this Subcontract to be delivered.

(g) The provisions of this clause with respect to the transfer of technical

data are subject to all the laws and regulations, now or hereafter in effect, of the U.S. Government and its Departments and Agencies. There will be no transfer of technical data to third parties including third Governments without prior consent of the U.S. Government wherever such consent is required.

30. PUBLIC RELEASE OF INFORMATION. Prior to the release of articles, brochures, advertisements, prepared speeches and other information releases concerning the work performed or to be performed hereunder, Seller shall 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 for final payment under this Subcontract, the requirements of the "Technical Data and Information" 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, up to ten percent (10%) of the total Subcontract price, until such materials are delivered or deficiencies or inaccuracies therein are corrected. Neither the withholding nor the payment of any amounts shall be construed either as a waiver of any of Buyer or Customer rights or as evidence of the satisfactory performance of any of Seller's obligations under this Subcontract.

32. PATENT INDEMNITY - THIRD PARTY RIGHTS.

(a) Notwithstanding the passing of title to Buyer of any of the deliverable equipment and items under this Subcontract, Seller agrees: (1) to resist or defend at its own expense any claims for royalty payments or for equitable relief or damages against Buyer or Customer based on an allegation that the manufacture of any item under this Subcontract or the use, lease or sale thereof by Seller and/or its Lower Tier Subcontractors or use by Buyer or Customer infringes any intellectual property rights of third parties, (2) to pay any royalties and other costs and expenses related to the settlement of such request, and (3) to pay the cost and damages, including legal charges and expenses, related to any suit based on such a claim, provided that Seller is given prompt written notice of such request or claim by Buyer and given authority and such assistance and information as is afforded by applicable laws, rules or regulations or is available to Buyer for resisting such request or for the defense of such claim. Any such assistance or information furnished by Buyer shall be at Seller's expense.

(b) If, because of a request, claim or suit, (1) prior to delivery, the manufacture of any item is enjoined, or (2) after delivery, the use, lease or sale thereof, is enjoined, Seller agrees to utilize its best effort either (i) to negotiate a license or other agreement with claimant so that such item no longer infringes upon any intellectual property rights of third parties, or (ii) to modify such item suitably or substitute a suitable item therefor, subject to the technical approval of Customer and Buyer which modified or substituted item is not subject to such injunction, and to extend the provisions of this Clause thereto. In the event none of the foregoing alternatives are suitably and promptly accomplished by Seller, Seller shall be liable to Buyer for the additional costs and damages to Buyer and its Customer arising as a result of such injunction.

(c) Buyer neither represents nor warrants that performance of any work or the manufacture of any item called for under this Subcontract is free from third party claims for infringement of any intellectual property rights.

(d) The provisions of this clause, inclusive of all its subparagraphs, shall survive the completion, expiration or termination of this Subcontract.

33. WARRANTY.

(a) Seller warrants that the work furnished hereunder shall be suitable for its intended purpose, free from any defects in material or workmanship, and in accordance with applicable specifications, design 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 item or service, except that (1) notice of a defect in a corrected or replaced item 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. Seller agrees to exert every effort, including overtime, at his expense, to correct or replace a defective unit as quickly as possible.

(c) Buyer may, at any time during the period of this warranty and irrespective of prior inspections and acceptances, reject any item or services not conforming to the above warranty and require that Seller at its expense correct or replace at Buyer's options such items or services with conforming items or services. If Seller fails to correct or replace such defective items or services promptly after notification and authorization from Buyer, Buyer may, by contract or otherwise, correct or replace such defective items or services and Seller shall be liable for and pay to Buyer the cost of such correction or replacement. If, as a result of operating conditions, Buyer determines that it is impractical to have Seller repair or replace defective items or services, Buyer may require Seller to repay such portion of the order price as is equitable under the circumstances in lieu of repairing or replacing the defective items or services. In addition to the foregoing remedies, Buyer may require Seller to reimburse Buyer's additional costs resulting from Seller's nonconformance to the above warranty, notwithstanding any provision of this Subcontract to the contrary.

(d) In addition to the foregoing, Seller agrees that the items delivered under this Subcontract shall be covered by such other warranties as Seller or its Lower Tier Subcontractors customarily offer in connection with the sale of similar items including sales to Seller's or the pertinent Subcontractor's most favored purchaser.

(e) If requested by Buyer, Seller shall assign to Buyer all rights he 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 warranty and upon receipt of such warranty shall deliver to Buyer any documents by the warrantor evidencing the warranty.

(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 by law.

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

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 goods, 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 paragraph.

35. PRODUCT SUPPORT.

(a) In the event that an item delivered hereunder becomes defective or malfunctions for any reason, including in-orbit if integrated into a 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 Seller's responsibility in all applicable documentation, undelivered items and

unlaunched delivered items as required by Buyer.

(b) Seller warrants that the items 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 items deliverable against this Subcontract and an alternate qualified source is not available to Buyer, Seller shall make available to Buyer all documentation, drawings, etc. necessary to manufacture said items under a royalty-free license which is hereby granted to Buyer.

If the above listed Products are not Year 2000 Compliant, as described above, SS/L shall withhold payment until a compliant upgrade is applied and certified. In addition, failure to meet such compliance without full disclosure will be considered to be a "latent defect" as described in the standard Warranty clause of this Subcontract, with such rights and remedies as apply thereto.

36. RIGHTS IN INVENTIONS.

(a) Subject Inventions

(1) "Subject Invention" means any invention, discovery, improvement or innovation of more than a trifling or routine nature, whether or not patentable, conceived 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) Invention Disclosures: Seller shall furnish to Buyer a written disclosure of each Subject Invention promptly and in no event later than six (6) 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) Filing of Patent Applications: Should Seller elect not to file for patent protection of any Subject Invention, title to such subject Invention shall transfer to Buyer at Buyer's request provided (1) Buyer agrees to file for patent protection of the Subject Invention, (2) Buyer shall grant to Seller a paid-up, worldwide, non-exclusive, irrevocable license, with right of sublicense, under such Subject Invention.

(b) "Background Invention" means any invention, discovery, improvement or innovation other than a Subject Invention, whether or not patentable, which invention is directly incorporated or utilized in any work performed under this Subcontract.

(1) Background Inventions: Seller agrees to grant to Buyer, upon request, an irrevocable, royalty-free, non-exclusive license with right of sublicense to Buyer's Customer and third parties who are not direct competitors of Seller to practice and have practiced throughout the world any Background Invention to the extent that such practice is reasonable necessary to enable Buyer's Customer to maintain and operate the satellite system or other end product.

(c) Lower Tier Subcontracts: 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 research and development effort.

37. **YEAR 2000 WARRANTY** If this Subcontract includes computer hardware, firmware, software telecommunications and/or products which process date data, Seller represents and warrants that such products provided hereunder will accurately process, prior to, during and after the year 2000, all: (1) date related data and (ii) dates before, on or after January 1, 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) calendar days of discovery of any non-compliance, the discovering party shall notify the other party and, at SS/L's option, supplier shall, within five (5) calendar days of notice, repair or replace the non-compliant product at no cost to SS/L, or refund SS/L's purchase price. Nothing in the 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.