

CUSTOMER CONTRACT REQUIREMENTS
Satellite Program
CUSTOMER CONTRACT 05152013

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

ARTICLE 1 DEFINITIONS

“Background Intellectual Property” shall mean all Intellectual Property owned, licensed or Developed by or on behalf of a Party or Customer prior to the EDC or independently of performance under this Contract that in each case is disclosed, delivered or used by a Party under this Contract, without reference to or use of the Intellectual Property or Confidential Information of the other Party, or acquired by a Party outside the scope of this Contract, except for Foreground Intellectual Property.

"Customer" means Buyer's customer.

"Customer Derivative Works" shall mean all Derivative Works Developed by or on behalf of Customer in accordance with the license granted to Customer under Paragraph 18.2(B), except Seller Foreground Intellectual Property.

“Derivative Work” means Foreground Intellectual Property Developed by editing, modifying, upgrading, updating, improving, revising, translating, abridging, condensing or expanding Background Intellectual Property or preexisting Foreground Intellectual Property.

“Derivative Work” excludes (a) a Party’s Foreground Intellectual Property that was either (x) used in Developing a Derivative Work of the Customer or other Party’s Intellectual Property or (y) Developed by a Party to work with the Customer or other Party’s Intellectual Property, as long as in each case it does not incorporate the Customer or other Party’s Intellectual Property and (b) a Party’s Background Intellectual Property.

“Effective Date of Contract (EDC)” shall mean the date the Contract is duly executed by both Parties, provided however, that with respect to Customer’s Background Intellectual Property, EDC shall mean the date of its contract with Buyer.

“Exploit” and “Exploitation” shall mean, with regard to (a) Seller Background Intellectual Property or Seller Foreground Intellectual Property incorporated or employed in the satellite (or components thereof), to use such Intellectual Property (in accordance with the license granted to Buyer and Customer under Article 18 (Intellectual Property Rights)) to launch, use, operate and maintain the satellite, and to sell, offer for sale, lease, market and rent capacity on, market and provide services with respect to the satellite, and (b) Seller Background Intellectual Property or Seller Foreground Intellectual Property incorporated or employed in other Goods, to use, reproduce, modify, and prepare Derivative Works of such Intellectual Property (in accordance with the license granted to Buyer and Customer under Paragraph 18.2.B) in order to launch, use, operate and maintain, and to sell, offer for sale, lease, market and rent capacity on, market and provide services with respect to the satellite. Exploit and Exploitation shall not mean any right to use Customer Derivative Works, Seller Background Intellectual Property or Seller Foreground Intellectual Property to construct, fabricate,

“Intellectual Property ” shall mean any and all designs, methods, techniques, analyses, concepts, layouts, software, inventions (whether or not patented or patentable), discoveries, processes, improvements, data and documentation, technical information, engineering, manufacturing and other drawings, specifications, or any similar matter or item in which an Intellectual Property Right may subsist, regardless of whether any of the foregoing has been reduced to writing or practice.

“Intellectual Property Rights” means any rights with respect to Intellectual Property and includes, without limitation, as required by the context, patents, patent applications and other patent rights; copyrights, copyright registrations and

copyright rights (including, without limitation, copyrights, copyright registrations and copyright rights with respect to computer software, firmware, programming tools, drawings, specifications, databases and documentation); trade secrets and other rights with respect to confidential or proprietary information; other rights with respect to inventions, discoveries, improvements, know-how, formulae, algorithms, processes, technical information and other technology; and other intellectual and industrial property rights, whether or not subject to statutory registration or protection; but, excluding any trademark, trade name or similar rights with respect to identification of source or origin.

“Seller Derivative Works ” shall mean Derivative Works Developed by or on behalf of Seller in accordance with the license granted to Seller under Paragraph 18.2(A).

“Foreground Intellectual Property” shall mean Intellectual Property Developed in performance of, or to enable Customer to obtain the benefits of, this Contract.

ARTICLE 12 ACCESS TO WORK IN PROGRESS

12.1 Access Subject to Safety and Security Rules. Customer’s access to Work under this Article shall be subject to Article 7 (Permits and Licenses: Government Approvals), and Article 21 (Confidential Information) and all Contractor and Subcontractor normal and customary safety and security rules and applicable regulations, which shall be provided in writing to Customer, through Buyer, upon Customer’s request prior to any facility visit.

12.2 Access to Work. Seller shall provide Costomer and its Consultant(s) reasonable access to Work being performed at Seller’s facilities, at reasonable times during the performance of the Work, provided that such access does not unduly interfere with such Work or any other activities at Seller’s facilities. All access to Work must have been previously coordinated with the Seller program manager or other person designated by Seller. Seller may, at its reasonable discretion, deny access to Consultants or persons who are a Competitor of Seller, or as necessary to comply with security requirements, or United States law. Seller and Customer shall discuss any reasonable concerns Seller may have regarding any affiliate of a Competitor having access to Work hereunder and reasonably determine whether any additional safeguards are appropriate. Subject to the restrictions set forth above, Customer and its Consultant(s) shall also be afforded access to the Key Subcontractors’ facilities, to the extent that Seller is permitted to provide such access, and subject to Seller accompanying Customer and its technical representative on any such visit.

12.3 Access to Documentation. Without limiting Paragraph 12.2 (Access to Work), Work-in-progress, Technical Data and Information, schedule data, drawings, circuit diagrams/schematics, specifications, standards or process descriptions relevant to the Work, test data, and any other documentation directly related to this Contract shall be subject to reasonable evaluation and inspection by Customer and its Consultant(s).

12.4 Certain Details Concerning Access to Work. Customer and/or its Consultant(s) visiting at the Seller facility or a Subcontractor’s facility (a) will abide by Seller’s security regulations and/or those of its Subcontractors and applicable United States Government regulations; (b) will not disclose to a third party any information received in connection with the access provided (unless otherwise allowed under this Contract) and will use such information only in the performance of this Contract, whether or not such information is marked or otherwise identified as proprietary; and (c) will not remove any documents, materials or other items from any facility of Seller or its Subcontractors without the express written consent of the Seller program manager and in accordance with Seller security procedures and appropriate non-disclosure protections.

12.5 Access by Consultants. All Customer Consultant(s)’ access under this Article shall be approved by Seller. Such approval shall not be unreasonably withheld or delayed. As a condition of approval and by their identification to Seller, Customer represents and warrants that a written agreement restricting the disclosure of information by the Consultant(s), in a form meeting the minimum requirements for protection of Seller information as set forth in Article 21 (Confidential Information) has been executed by the Consultant and Customer and will be enforced. Upon Seller’s request, Customer shall promptly provide Seller with signed copies of any such written agreements.

12.6 Reserved.

12.7 Inspection Does Not Constitute Acceptance. The inspection, examination, or observation by Customer or its Consultants with regard to any portion of Work produced under this Contract shall not constitute any acceptance thereof, nor shall it relieve Seller from fulfilling its contractual obligations hereunder.

12.8 Meetings and Presentations. Customer shall be entitled to reasonable notice of and to attend all program-specific meetings and reviews required in the Statement of Work. Customer shall have the right to participate in and to make recommendations in all such meetings and reviews at the system, subsystem and unit level. In addition, Seller and Customer shall mutually agree on which other program-specific meetings to which Customer will be invited to attend. Copies of presentations or other documents utilized during these meetings shall be furnished or made available to Customer and its Consultants. In all such meetings, Seller shall be represented by

its program manager or delegate and such other personnel as are reasonably required to support the particular presentation.

ARTICLE 13 INTER-PARTY WAIVER OF LIABILITY

13.1 Inter-Party Waiver. Customer and Seller agree to be bound by a no-fault, no-subrogation, inter-party waiver of liability and related indemnity provisions required by law and the Launch Services Agreement (and cause their respective Consultants and Subcontractors at any tier that are present at the Designated Launch Site and involved in the performance of this Contract to accede to such waiver and indemnity) for any loss or liability which a Party sustains as a result of injury to, or death of, its own employees and damage to its own property occurring while involved in Launch operations at the Designated Launch Site, whether or not such damage arises through negligence or otherwise. The Parties shall execute and deliver any instrument that may be reasonably required by the Launch Provider to evidence their respective agreements to be bound by such waivers. The Parties shall obtain from their respective insurers, and shall require their respective Consultants and Subcontractors at any tier (including suppliers of any kind) or by any person having an interest in a Satellite, that are present at the Designated Launch Site and involved in the performance of this Contract, and the Launch Provider, to obtain from their respective insurers an express waiver of such insurer's rights of subrogation with respect to any and all claims that have been waived pursuant to this Article 13.

ARTICLE 18 INTELLECTUAL PROPERTY RIGHTS

18.1 Ownership.

A. Each Party and Customer shall own its own Background Intellectual Property. Nothing in this Contract shall affect the ownership of Background Intellectual Property.

B. Customer shall own all Intellectual Property Rights, title and interest in and to all Customer Derivative Works and Buyer's Customer Foreground Intellectual Property. Seller shall own all Intellectual Property Rights, title and interest in and to all Seller Derivative Works and Seller Foreground Intellectual Property.

C. Buyer's Customer shall own all copyrights in the technical specification, excluding Buyer Background Intellectual Property. For clarification, Seller shall continue to own all Seller Background Intellectual Property incorporated in the technical specification or used by Seller to implement Customer's technical specification and perform hereunder.

D. Seller hereby makes any assignments necessary to accomplish the foregoing ownership provisions.

18.2 Licenses and Restrictions.

A. Buyer grants to Seller a limited, nonexclusive, nontransferable, royalty-free license, with no right to sublicense, to use, reproduce, modify, and prepare Derivative Works of Customer Background Intellectual Property and Customer Foreground Intellectual Property solely to provide the Goods in strict compliance with and during the term of this Contract.

B. Upon delivery of the Satellite, Seller grants to Buyer and Customer a limited, nonexclusive, irrevocable, royalty-free license, with the right to sublicense in writing upon the terms and conditions in Paragraph 18.2.H, under Seller's Intellectual Property Rights in Seller Background Intellectual Property and Seller Foreground Intellectual Property to exploit the satellite and Goods for a term equal to the actual life of the Satellite.

C. Seller grants to Buyer and Customer a limited, irrevocable, perpetual, royalty-free license, with the right to sublicense, under all of Seller's Derivative Works developed in connection with the performance of this Contract (whether developed prior to or after EDC) to use, make, have made, operate, test, modify, sell, offer to sell, and operate products and services incorporating Seller Derivative Works.

D. Seller has no license to use the Customer's trademarks or service marks without such Customer's express written consent.

E. Except as expressly set forth in this Contract, neither the execution of this Contract nor the furnishing of any Customer Intellectual Property hereunder shall be construed as granting to Seller either expressly or by implication, estoppel or otherwise, any license, implied license, right to use, or rights under any Intellectual Property Right, now or hereafter, related to Customer's Intellectual Property. Any rights not expressly granted by Customer shall be reserved by Customer.

F. Reserved.

G. Reserved.

H. Seller grants to Customer the right to sublicense the right to use (without the right to further sublicense), the Seller Background Intellectual Property and Seller Foreground Intellectual Property to its Consultants, Subcontractors and satellite operators on a need-to-know basis solely for purpose of exploiting the as-delivered satellite, as-delivered satellite operating software; and as-delivered DSS.

I. Seller understands and acknowledges that Customer and Buyer may have already developed, be developing, using, licensing, selling or marketing items and information that are similar to Seller's Background Intellectual Property. Subject to compliance with this Article 18, nothing in this Contract restricts Buyer or Customer's right to develop, use, license, sell, market or otherwise exploit items that are independently developed.

J. If the Contract is validly terminated for any reason prior to satellite delivery, any rights and licenses granted under this Article shall terminate, and Seller, Customer and Customer's Consultants and Subcontractors shall have no further rights with respect to the Seller or Customer Background Intellectual Property and Seller or Customer Foreground Intellectual Property.

K. Seller shall not have the right to use Seller Derivative Works and Customer shall not have the right to use Customer Derivative Works outside the activities of this Contract (equal to the scope of license set forth in Paragraphs 18.2.A or 18.2.B, above) without the prior written consent of the owning Party.

18.3 Escrow. No later than thirty (30) days after the delivery of the satellite, if requested by Buyer, Seller shall deliver in escrow for Customer's benefit: (1) all deliverable software, in both source code and object code form; and (2) all Technical Data and Information. The escrow shall be governed by an escrow agreement between Buyer and Customer. "Technical Data and Information" means documented information which is required for the use, operation, and maintenance of a satellite. This includes, for example, information in the form of drawings, photographs, technical writings, pictorial reproductions and specifications. This term does not include software, management and financial reports, and cost analysis and information relating to contract administration. Seller shall diligently keep such escrowed items updated upon release of any material revisions of the software and/or Technical Data and Information. If a release condition occurs, Customer shall have the right to a release of the escrowed items from escrow and shall be entitled to use such escrowed items to the extent necessary to exploit the satellite. Customer shall have the right to permit consultants to exercise such license for the sole purpose of assisting Customer to develop, support, and maintain such escrowed items to the extent necessary to exploit the satellite.

18.4 Further Assurances. Seller shall, at the Buyer's request, execute such assignments and other documents and take such other actions as may be reasonably necessary to effectuate this Article.

ARTICLE 21 CONFIDENTIAL INFORMATION

21.1 Reserved

21.2 Reserved

21.3 Additional Rights and Obligations:

A. Reserved.

B. Reserved.

C. Reserved.

D. Reserved.

E. Customer may disclose Seller Proprietary Information and Materials to its Consultants or satellite operators solely for the purposes of exploiting the Goods, provided that such Consultants are under written obligations to hold such Proprietary Information and Materials in confidence.

F. Reserved

ARTICLE 34 INDEMNIFICATION

34.1 Indemnities

A. Customer Indemnity. Customer shall indemnify and hold harmless Seller, its subsidiaries, affiliates, Subcontractors and assignees and their respective directors, officers, agents, servants, and employees (individually an "Indemnitee", collectively the "Indemnitees") from and against any loss, damage, liability or expense (including attorneys' fees and other expenses of investigating or defending claims and expenses related to establishing the right to indemnification) (hereinafter "Claims") resulting from (i) any representation made by Customer to any third party relating to Work; (ii) any claim of any third party, which may arise in connection with the use, loss of use, operation, performance, non-performance, failure or degradation of a Satellite, whether or not such third party deals with or through Customer (including customers or insurers) or any agency or other governmental authority of Customer's country; or (iii) any other third party claims relating to the Satellite or harm caused by a Satellite and, in each case, arising after Intentional Ignition and whether or not such loss, damage, liability, or expense arises out of an act or omission, negligent or otherwise, of an Indemnitee or the Indemnitees.

B. Facilities Indemnity. Each Party agrees to indemnify the other Party and its Affiliates, and hold the indemnified Party, and its Affiliates, harmless against any Claims (including reasonable attorney's fees and other expenses of investigating or defending Claims) to the extent such Claims result from damage to third party property or from personal injury, including death, occurring prior to Intentional Ignition, and to the extent arising from the negligent acts or omissions of the indemnifying Party, or its employees, Subcontractors, agents or Consultants while at the facilities of the other Party (other than the Designated Launch Site).

C. Indemnity for Inter-Party Waiver of Liability at the Designated Launch Site. Each Party shall indemnify against and hold harmless the other Party and/or its contractors and Subcontractors at any tier (including suppliers of any kind) that are present at the Designated Launch Site and involved in the performance of this Contract, from and against any claim made by the indemnifying Party and/or any of its contractors and Subcontractors (including suppliers of any kind) that are present at the Designated Launch Site and involved in the performance of this Contract, or by any person having an interest in a Satellite, in the event the indemnifying Party fails to cause its contractors and Subcontractors (including suppliers of any kind) to waive (in accordance with Article 13 (Inter-Party Waiver of Liability) any liability against the Launch Provider, the other Party or either of their contractors and subcontractors at any tier (including suppliers of any kind) present at the Designated Launch Site and involved in the performance of this Contract. The Parties shall execute and deliver any instrument that may be reasonably required by the Launch Provider to evidence their respective agreements to be bound by such indemnifications.

D. Conditions. The foregoing indemnities shall be conditioned on the Indemnitee providing Indemnitor with: (a) reasonable notice of any applicable claim; (b) sole control over the defense and settlement of any applicable claim provided: (i) Indemnitor provides Indemnitee with reasonable notice of settlement; (ii) within a reasonable time, Indemnitor provides the Indemnitee with the proposed claims and/or defenses and provides supporting data sufficient for the Indemnitee to evaluate whether there is a reasonable, good faith basis for Indemnitor's position; and (iii) the settlement does not require payment by Indemnitee or an injunction impacting Indemnitee; and (c) reasonable assistance in the defense of any applicable claim.