

CUSTOMER CONTRACT REQUIREMENTS
Commercial Space-Based Network
CUSTOMER CONTRACT 40-0168

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

1. Throughout this document, "Work" means all design, development, construction, manufacturing, labor, and services, including tests to be performed, and any and all Deliverable Items, including Space Segment, Ground Segment, Deliverable Data, Mission Operations Support Services, Launch Support Services, Training, and equipment, materials, articles, matters, services, and things to be furnished and rights to be transferred to Customer, or any subcontract entered into hereunder by Buyer.
2. The following prime contract special provisions apply to this purchase contract:

A. INSPECTION AND ACCESS TO WORK IN PROCESS**(1) Work in Process at Subcontractors' Facilities**

In the case of Major Subcontracts, Seller shall require that each such subcontract contain a provision substantially similar to this with respect to Buyer's Customer's ("Customer") access to the applicable subcontractor's facilities and performance of the Work, including the provision of three (3) non-escort permanent badges and three (3) escort badges to agreed work areas where the Work is being performed. With respect to non-Major Subcontracts, Seller shall require that each such subcontract contain a provision permitting Customer, Customer's joint venture partner and their consultants and agents escorted access to the subcontractor's facilities for purposes of observing the Work performed under such subcontract.

(2) On-Site Facilities for Customer's Personnel

In the case of Major Subcontracts where Buyer has a presence at such facilities, Major Subcontractor shall use commercially reasonable efforts to ensure that reasonable on-site office facilities, consistent with the specifications described below, are available for up to two (2) of Customer personnel (and/or Customer's designated consultants and agents):

For the purpose of monitoring the progress of the Work being performed by Major Subcontractor, Major Subcontractor shall provide office facilities at or proximate to Major Subcontractor's plant for up to five (5) resident Customer and Customer's joint venture partner's personnel (and/or their designated consultants and agents) through Acceptance of the last Space-Based Network (SBM) delivered hereunder. The office facilities to be provided shall include a reasonable amount of office space, office furniture, local telephone service, reasonable long-distance telephone usage, internet access (at the same speed and quality available to Major Subcontractor personnel), electronic access to Major Subcontractor's dedicated and secure Program Information Management System (PIMS), a web-based information management tool as described the Space Based Network Statement of Work, access to copy machines, facsimile machines, meeting rooms, car parking facilities and, to the extent available, videoconference rooms, to enable Customer's personnel to monitor the progress of Work under this Contract.

(3) Interference with Operations

Customer shall exercise its rights in a manner that does not unreasonably interfere with Major Subcontractor's or its subcontractors' normal business operations or any agreement between Buyer and its subcontractors.

(4) Financing Entities

"Financing Entity" means any entity (other than Buyer, or parties related to Buyer, or competitors of Buyer), e.g., commercial bank, merchant bank, investment bank, commercial finance organization, corporation, or partnership, which has been specifically identified in a written notification to Buyer, providing money on a full or partial debt basis to Customer to fund the design, development, construction, procurement, maintenance, or operation of all or any material part of the joint network between Customer and Customer's joint venture partner.

Each Financing Entity shall have escorted access to the Work in the same manner and to the same extent as Customers and consultants and agents, provided such entities sign confidentiality agreements no less stringent than the Disclosure and Handling of Proprietary information terms provided in the prime contract.

B. WARRANTIES

(1) New Deliverables

Seller represents, warrants, and covenants that all equipment comprising the Deliverable Items shall be new, and neither refurbished nor re-manufactured.

(2) Spares

(This requirement only applies to Sellers of ground segment hardware.)

Seller shall provide Buyer with a plan for maintaining Spare Parts, including a list of all mission-critical replacement level parts. Such plan shall take into account delivery times for limited source and long-lead items. During the Initial Operations Period, Seller shall maintain and replenish a Spare Parts inventory in accordance with such plan. At the end of the Initial Operations Period, the Spare Parts inventory shall be fully-replenished by Seller. Any Spare Part shall be warranted.

(3) Software Warranty

Seller shall deliver Software free of material defects. In addition to the general warranty, through the Initial Operations Period, which occurs two years after Customer's acceptance of the Space-Based Network, Seller shall correct material software errors and bugs, and provide any patches and updates to bring the software in conformance with the Space-Based Network Statement of Work, and applicable Performance Specifications (collectively, "Software Corrections"), and Seller shall make upgrades, enhancements and releases (collectively, "Software Updates") available to Buyer and/or Customer a commercially reasonable price. Such Software Corrections and Software Updates shall be tested to bring the software in conformance with the Performance Specifications prior to release. Without limiting Seller's warranty obligations, to the extent that Seller has been given the right within its agreements, Seller shall pass through to Buyer and/or Customer the benefits of any warranties to which Seller is entitled to by virtue of Seller's purchase of ground software from the manufacturers, lessors or licensors of such items. Following the Initial Operations Period, Seller shall, at Buyer and/or Customer's option, and renewable on an annual basis, perform software warranty services.

(4) No Virus

Seller represents and warrants that (i) it shall ensure that no Viruses are coded or introduced into the Work; (ii) it shall not introduce into the Work any code that would have the effect of disabling or otherwise shutting down all or any portion of the Work; and (iii) it shall not develop, or seek to gain access to the Work through, any special programming devices or methods, including trapdoors or backdoors, to bypass any Buyer and/or Customer security measures protecting the Work. This warranty shall begin upon Acceptance of the Work embodying the code at issue and continue for the operating life of the Satellites. If a Virus is present in the Ground Segment at Acceptance, or upon

delivery of an update or item replaced during the warranty period, or at any time during the Initial Operations Period, Seller shall remove the Virus, assist Buyer and/or Customer in reducing the effects of the Virus, and assist Buyer and/or Customer with mitigating and restoring any such losses of operational efficiency or data that arise as a result of Virus, all at Seller's expense. In no event shall Seller invoke any disabling code at any time, including upon expiration or termination of the contract (in whole or in part) for any reason, without Buyer's prior written consent, which may be delegated to Customer.

(5) Source Code Escrow

To the extent that it has the right to do so, and to the extent that such source code is Buyer and/or Customer specific, Seller shall place such code version of software licensed to Buyer and/or Customer and necessary for use in the operations and maintenance of the Space-Based Network in escrow, at Buyer and/or Customer's expense, for release to Buyer and/or Customer or its designee upon the occurrence of certain agreed upon events, including the failure of Seller to maintain and support the software as set forth in the contract or in the event of the insolvency or bankruptcy of Seller.

(6) Intellectual Property

Seller represents and warrants that it is the owner of, or authorized to use and incorporate, any Intellectual Property utilized or incorporated in any Deliverable Item or the manufacture of any Deliverable Item. Seller is not aware of any claim or potential claim to the contrary by any third party. This warranty shall begin upon acceptance of the Work embodying the subject Intellectual Property and continue for the operating life of the Satellites. Buyer shall not be required to pay any license fees or royalties apart from those included in the Firm Fixed Price for use of any Intellectual Property utilized or incorporated in any Deliverable Item or the manufacture of any Deliverable Item.

(7) Pass-Through Warranties

Additionally, to the extent Seller has any rights or is the beneficiary of any warranties or representations from any third party with respect to any Deliverable Items, Seller shall assign such rights and benefits to Buyer and/or Customer; provided, however, if such assignment is prohibited under the agreement between Seller and such third party, Buyer and/or Customer shall be deemed to be a third party beneficiary of any such agreements.

C. **INTER-PARTY WAIVER OF LIABILITY FOR A LAUNCH**

(This requirement only applies to Buyer's Launch Subcontractors with access to the launch site and/or are providing services related to the launches.)

(1) Inter-Party Waiver

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

(2) Waiver of Subrogation

The Parties also shall obtain from their respective insurers, and shall require their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this contract and any other person having an interest in any Satellite (including non-consumer customers of Customer) to obtain from their respective insurers, an express waiver of such insurers' rights of subrogation with respect to any and all claims that have been waived pursuant to this Inter-Party Waiver of Liability for a Launch.

(3) Indemnity Related to the Inter-Party Waiver of Liability

Each Party shall each indemnify against and hold harmless the other Party and its contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this contract, from and against any claim made by the Indemnifying Party or any of its contractors and subcontractors (including suppliers of any kind) that are involved in the performance of the contract, or by any person having an interest in any Satellite (including non-consumer customers of Customer), or by insurer(s) identified in subpara. (1) above (Inter-Party Waiver), resulting from the failure of the Indemnifying Party to waive any liability against, or to cause any other person the Indemnifying Party is obligated to cause to waive any liability against, the Launch Agency, the other Party or either of their contractors and subcontractors at any tier (including suppliers of any kind) involved in the performance of this contract. The Parties shall execute and deliver any instrument that may be reasonably required by the Launch Agency to evidence their respective agreements to be bound by such indemnifications.

(4) Survival of Obligations

The waiver, indemnification and hold harmless obligations provided in this Inter-Party Waiver of Liability for a Launch shall survive and remain in full force and effect, notwithstanding the expiration or termination of this contract.

D. INTELLECTUAL PROPERTY

(1) Customer's Intellectual Property

- a. All Background and Foreground Intellectual Property made, developed, or created solely by Customer (or by others, other than Buyer or any of its subcontractors, acting on behalf of Customer), and all Intellectual Property Rights therein, shall be the sole and exclusive property of Buyer and /or Customer.
- b. The Space-Based Network Statement of Work and Technical Requirements for Customer's Space Based Network, and all Intellectual Property Rights therein, shall be the sole and exclusive property of Customer.

(2) Buyer's Intellectual Property

- a. All Background Intellectual Property, developed or created by Buyer (or its subcontractors) and all Intellectual Property Rights therein, shall be the sole and exclusive property of Buyer.
- b. All Foreground Intellectual Property, developed or created by Buyer (or its subcontractors), and all Intellectual Property Rights therein, shall be the sole and exclusive property of Buyer.
- c. All Foreground Intellectual Property, developed or created by Seller (or its subcontractors), and all Intellectual Property Rights therein, shall be the sole and exclusive property of Buyer.
- d. Seller agrees that the obligations regarding Handling and Use of Proprietary Information shall apply to Seller with respect to the handling and use of Buyer and/or Customer-specific information contained in any Deliverable Data, contract Exhibits and Attachments thereto, without regard to the time limitation set forth therein.

(3) Seller's Intellectual Property

- a. All Background Intellectual Property, developed or created by Seller (or its subcontractors), and all Intellectual Property Rights therein, shall be the sole and exclusive property of Seller (or its subcontractors).
- b. Seller agrees to and does hereby grant Buyer the right to use any Background Intellectual Property and to practice any Foreground Intellectual Property.

(4) License Rights**a. Grant by Seller**

Subject to the terms and conditions stated herein, Seller grants to Buyer and/or Customer a fully paid-up, irrevocable, perpetual, worldwide, nonexclusive right and license to use and have used, reproduce, and modify for the sole and exclusive purpose of testing, operating, and/or maintaining any Deliverable Item (including Deliverable Data), all Seller Background Intellectual Property and Foreground Intellectual Property incorporated into or necessary to use, operate, or maintain such Deliverable Items, now or hereafter owned by Seller (and/or its subcontractors) for which Seller (and/or its subcontractors) has or may acquire the right to grant such a license.

Buyer and/or Customer shall have no rights in Deliverable Data other than as expressly stated in this contract, except that Buyer and/or Customer may provide portions of the Deliverable Data related to operation or performance of the Satellite's payload as is commercially necessary and reasonable to market and sell the Satellite capacity to Customer's customers and potential customers. Title to Deliverable Data shall not pass to Buyer and/or Customer or any other entity pursuant to the terms hereof.

b. Grant by Buyer

Subject to the terms and conditions stated herein, Buyer grants to Seller a fully paid-up, irrevocable, perpetual, worldwide, non-exclusive right and license to use and have used for the sole and exclusive purpose of performing under this contract, all Buyer Background Intellectual Property or Buyer Foreground Intellectual Property including, to the extent necessary for the limited purpose of this license, those associated Intellectual Property Rights therein, owned by Buyer (or others acting on behalf of Buyer) for which Buyer has or obtains the right to grant such a license.

c. Subcontracts

Seller shall, unless otherwise authorized or directed in writing by Buyer, to the extent necessary to fulfill its obligations, use reasonable efforts to include in each Major Subcontract issued hereunder a license rights clause pursuant to which each such subcontractor will grant to Buyer and/or Customer (through Buyer) license rights or ownership rights, as applicable, in Intellectual Property incorporated in Deliverable Items hereunder and which Intellectual Property is developed by such subcontractor, and all associated Intellectual Property Rights therein, to the same extent as the license or ownership rights granted by Seller in this License Rights section.

d. Access to Work Product

Buyer may at any time request, and Major Subcontractor shall promptly provide access to any and all Work product created or performed by Major Subcontractor under this contract including, but not limited to reports, designs, drawings, tests, results, bills of material, data, software and source code (excluding source code that is Seller Ground Segment Background IP or that is included in the third party commercial off-the-shelf software). Buyer and/or Customer shall bear all reasonable expenses associated with Seller's collection of work product in response to a request by Buyer.

E. COMPLIANCE WITH U.S. LAWS AND DIRECTIVES

Seller shall not, directly or indirectly, take any action that would cause Buyer to be in violation of U.S. anti-boycott laws under the U.S. Export Administration Act, the U.S. Internal Revenue Code, or any regulation thereunder. In its performance of this contract, Seller will not, directly or indirectly, make, offer, or agree to make or offer any loan, gift, donation, or other payment, whether in cash or in kind, for the benefit or at the direction of any candidate, committee, political party, government or its subdivision, or any individual elected, appointed, or otherwise designated as an employee or officer thereof, for the purpose of influencing any act or decision of such entity or individual or inducing such entity or individual to do or omit to do anything, in order to obtain or retain business or other benefits except as may be expressly permitted under the Foreign Corrupt Practices Act and the regulations promulgated thereunder.

F. FOREIGN NATIONALS - FOREIGN SOURCES

(1) For the purposes of this clause,

- a. Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;
- b. Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
- c. Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.

(2) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(3) Seller acknowledges that equipment and technical data generated or delivered in the performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered in performance of this contract (see 22 CFR Section 125). Seller agrees to notify and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign nationals or their representatives. This notification will include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

G. EXPORT CONTROLLED DATA RESTRICTIONS

(1) For the purpose of this clause,

- a. Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;
- b. Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
- c. Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

- (4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).
- (5) Licenses and Other Approvals for Customer Personnel
Subcontractors shall timely apply for and, once issued, maintain U.S. Government export licenses, agreements and other approvals that are required for "foreign person" personnel and/or representatives of Customer (including, but not limited to, foreign subsidiaries and related entities of Customer involved with the procurement) as well as Customer's insurance providers and non-U.S. governmental authorities (as may be required under applicable law) to have access to Buyer and subcontractor facilities, hardware, software, Deliverable Data, other technical information or technical services in connection with the performance of this Contract. Customer shall provide the reasonable cooperation and support necessary for subcontractor to apply for and maintain such required U.S. export licenses, agreements and other approvals. Customer shall apply for, and once issued, maintain U.S. Government export licenses, agreements and other approvals to permit Customer to be present during any discussion or meetings where Customer's foreign subsidiaries/related entities, insurance providers and/or non-U.S. governmental authorities may receive from or discuss with Buyer or any of its U.S. subcontractors export-controlled technical data. Buyer and its U.S. subcontractors shall provide the parties to such export licenses and agreements copies of the export licenses and agreements, including any U.S. government provisos related to same. U.S. subcontractors shall cooperate and provide Customer with information required to apply for and maintain Customer's licenses and work with Customer on an appropriate export process in connection with the Work to be performed under this contract, including the appropriate flow of information and exports.

H. PERSONNEL QUALIFICATIONS

Seller shall ensure that its personnel (including subcontractor personnel) are fully qualified and have in place all the research, development, manufacturing, technological and management skills necessary to perform the Work.