

METHANESAT FLIGHT SYSTEM AGREEMENT

BY AND BETWEEN

METHANESAT, LLC

AND

BALL AEROSPACE & TECHNOLOGIES CORP.

AGREEMENT NUMBER

September 19, 2019

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METHANESAT FLIGHT SYSTEM AGREEMENT

This METHANESAT FLIGHT SYSTEM AGREEMENT (the “Agreement”), dated as of September 19, 2019 (the “Effective Date”), is made by and between MethaneSAT LLC, a New York limited liability company with offices located at 123 Mission St., 28 Fl, San Francisco, CA 94105 (the “Customer”), and Ball Aerospace & Technologies Corp., a Delaware corporation with offices located at 1600 Commerce Street, Boulder, Colorado 80301 (the “Contractor”).

RECITALS

WHEREAS, Contractor is in the business of developing, manufacturing, and selling space instruments, spacecraft, operational ground support services, and mission operation support services;

WHEREAS, Environmental Defense Fund, Inc. and Contractor previously conducted a study to assess the feasibility of detecting methane gas emissions from space;

WHEREAS, Customer, as the prime contractor to Environmental Defense Fund, Inc., seeks to procure a remote-sensing instrument and bus designed to detect and monitor methane gas emissions from space;

WHEREAS, the Parties desire to enter into an agreement in which Customer shall purchase and procure from Contractor, and Contractor shall sell and provide to Customer, a remote-sensing instrument designed to detect and monitor methane gas emissions from space, as well as other integration services, operational ground support services and mission operation support services;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the value, receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Agreement, the following terms have the meanings set forth below:

“Action” means any legal claim, action, charge, grievance, lawsuit, or proceeding brought by a Party before any court of competent jurisdiction arising out of, or relating to, this Agreement.

“Actual Costs” means direct and indirect costs actually incurred and documented in relation to the Work, as determined in accordance with Contractor’s standard business practices, as documented in Contractor’s Business Process Library, and applicable accounting rules, and excluding any profit, margin, or other similar fees or expenses.

“Affiliate” means, with respect to a specified Party, any Person Controlling, Controlled by or under common Control with such Party.

“Background Intellectual Property” means any Intellectual Property that is: (i) owned or in-licensed by a Party prior to the Effective Date; (ii) owned or in-licensed by a Party after the Effective Date and not licensed, discovered, made, created, generated, developed, written, conceived or first reduced to practice by a Party, or on its behalf, individually or jointly, in the course of, arising out of, or as a result of

the performance of this Agreement; or (iii) discovered, made, created, generated, developed, written, conceived or first reduced to practice by a Party, or on its behalf, individually or jointly, in the course of, arising out of, or as a result of the performance of this Agreement based on or incorporating such Party's Intellectual Property that is owned or in-licensed by such Party prior to the Effective Date, excluding the MethaneSAT Specification and MethaneSAT Statement of Work.

"Breaching Party" shall have the meaning set forth in Section 16.2 of this Agreement.

"Bus" means the subsystems required to support the Instrument, which Customer shall procure separately and deliver to Contractor as Customer Furnished Equipment.

"Business Day" means any day that is not a Saturday, Sunday or any other day on which banks are required or authorized by Law to be closed in the state of Colorado. Unless specified as a "Business Day" in this Agreement, all references to "day" or "days" shall mean calendar days.

"Change Direction" shall have the meaning set forth in Section 11.1(a) of this Agreement.

"Change Proposal" shall have the meaning set forth in Section 11.1(a) of this Agreement.

"Change Request" shall have the meaning set forth in Section 11.2(a) of this Agreement.

"Confidential Information" means all confidential and proprietary information in any and every form, including, without limitation, written documentation, electronic media, and electronic means of transmittal, disclosed or made available by one Party to the other, including, without limitation, know-how, scientific, mathematical or technical information, designs, processes, procedures, manufacturing techniques, formulae, test data, business plans or strategies, confidential financial information, trade secrets, and other such information.

"Constructive Total Loss" shall have the meaning given to it in the launch and in-orbit insurance policy procured by Customer, as described in Section 9.3 of this Agreement.

"Contract Price" shall have the meaning set forth in Section 4.1 of this Agreement.

"Control" (or **"Controlling"** or **"Controlled by"**), with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or other agreement or otherwise.

"Customer Furnished Equipment" means property in the possession of, or directly acquired by, Customer and subsequently furnished to Contractor pursuant to this Agreement for the performance by Contractor of its obligations under this Agreement.

"Customer's Personnel" shall have the meaning set forth in Section 10.1(a) of this Agreement.

"Defect" shall have the meaning set forth in Section 7.2 of this Agreement.

"Deliverable(s)" shall have the meaning set forth in the MethaneSAT Statement of Work.

"Deliverable Data" shall have the meaning set forth in the MethaneSAT Statement of Work.

"Deliverable Item(s)" shall have the meaning set forth in the MethaneSAT Statement of Work.

"Deliverable Item Warranty Claim" shall have the meaning set forth in Section 14.1(a) of this Agreement.

"Deliverable Item Warranty Period" shall have the meaning set forth in Section 14.1(a) of this Agreement.

“Delivery Date(s)” means, with respect to any Deliverable, the delivery dates set forth in the MethaneSAT Statement of Work.

“Dispute” shall have the meaning set forth in Section 21.1 of this Agreement.

“Effective Date” shall have the meaning set forth in the Preamble to this Agreement.

“Excusable Delay” shall have the meaning set forth in Section 12.1 of this Agreement.

“Excusable Delay Event” shall have the meaning set forth in Section 12.1 of this Agreement.

“Exhibit(s)” means all exhibits, including any appendices or other attachments, to this Agreement, which are labeled as such and referenced in this Agreement.

“Export Control Laws” shall have the meaning set forth in Section 19.2 of this Agreement.

“Flight System” means a complete space-borne infrastructure comprised of the integrated Bus and Instrument.

“Foreground Intellectual Property” means any Intellectual Property, excluding all Background Intellectual Property, which is discovered, made, created, generated, developed, written, conceived or first reduced to practice by a Party, or on its behalf, individually or jointly, solely or exclusively in the course of, arising out of, or as a result of the performance of this Agreement, including the MethaneSAT Specification and MethaneSAT Statement of Work.

“Governmental Entity” means the United States, any state or other political subdivision thereof and any other foreign or domestic entity exercising executive, legislative, judicial, regulatory or administrative authority or functions of or pertaining to government, including any government authority, agency, department, board, commission, court, tribunal or instrumentality of the United States or any foreign entity, any state of the United States, or any political subdivision of any of the foregoing.

“IIRR Correction Notice” shall have the meaning set forth in Section 7.2 of this Agreement.

“Instrument” means the MethaneSAT instrument, as set forth and described in the MethaneSAT Specification.

“Intellectual Property” means all of the following as they exist in any jurisdiction throughout the world: (i) inventions (whether patentable or unpatentable and whether or not reduced to practice), discoveries, improvements, methods, issued patents, provisional patents, and patent applications, and any divisionals, continuations, continuations-in-part, renewals, reexaminations, substitutions, extensions, or reissues thereof; (ii) trademarks, service marks, trade dress, trade names, and Internet domain names (including, in each case, the goodwill associated therewith), whether registered or unregistered, and all registrations and applications for registration and renewal thereof; (iii) works of authorship, copyright registrations, and applications for copyright registration, and any extensions or renewals thereof; (iv) trade secrets and other forms and types of confidential or non-public business, financial, research or development, pricing and cost, or technical information, concepts, ideas, designs, processes, procedures, techniques, specifications, operating and maintenance manuals, drawings, methods, know-how, data, databases, formulas, compositions, methods, customer and supplier lists, business and marketing plans, proposals, and invention disclosures (whether or not patentable); (v) computer software, including all source code, object code, and documentation related thereto; and (vi) mask works or other forms of intellectual property, whether or not patentable, copyrightable or subject to mask work rights or other forms of protection.

“Intellectual Property Rights” means all common law and statutory Intellectual Property rights, including all rights in any patent, patent application and patent registration (including the right to sue for

past infringement), copyright, trademark, service mark, trade secret, mask work rights, moral rights, data rights and similar rights existing from time to time under the intellectual property Laws of the United States, any state or foreign jurisdiction or international treaty regime related to Intellectual Property.

“Intentional Ignition” shall have the meaning set forth in the Launch Services Agreement. For the avoidance of doubt, the Parties’ intent with respect to the meaning of “Intentional Ignition” under this Agreement is that the term “Intentional Ignition” correspond to the official time and event as indicated in the automatic sequence control equipment for the launch as the intentional ignition of the first stage engines of the Launch Vehicle.

“Launch” shall have the meaning set forth in the Launch Services Agreement. For the avoidance of doubt, the Parties’ intent with respect to the meaning of “Launch” under this Agreement is that the term “Launch” correspond to that point in the launch sequence of the Launch Vehicle that arrives after Intentional Ignition and beyond which a Terminated Ignition, with the Flight System remaining safely on the launch pad, cannot be performed or otherwise occur for the Launch Vehicle.

“Launch Provider” means the provider of Launch Services under the Launch Services Agreement.

“Launch Services” means those services provided by the Launch Provider pursuant to the Launch Services Agreement for launch of the Flight System.

“Launch Services Agreement” means the launch services agreement entered into by and between Customer and the Launch Provider for launch of the Flight System.

“Launch Vehicle” means the launch vehicle provided by the Launch Provider for launch of the Flight System pursuant to the Launch Services Agreement.

“Law” or **“Laws”** means any applicable federal, state, provincial, local, or foreign law, statute, rule, regulation, ordinance, permit, order, writ, injunction, judgment, or decree of any Governmental Entity.

“Loss(es)” means all losses, liabilities, damages, royalty payments and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, expert fees, litigation, settlement, judgment, interest, and penalties).

“MethaneSAT Mission” means deployment and operation of the complete MethaneSAT system, including the Flight System, launch services, ground system, and on-orbit operations, for the location and measurement of methane emissions from space.

“MethaneSAT Science Data” means any remote sensing data, related telemetry information and calibration data (whether confidential, proprietary or public) generated by the operation of the Flight System on orbit during the MethaneSAT Mission and subsequently processed by Customer as end-user MethaneSAT remote sensing data.

“MethaneSAT Specification” means a separate document that defines the technical specifications related to this Agreement, which is appended to this Agreement as Exhibit 3.

“MethaneSAT Statement of Work” means a separate document that defines the scope and Deliverables related to this Agreement, which is appended to this Agreement as Exhibit 2.

“Milestone Event(s)” shall have the meaning set forth in Section 4.2 of this Agreement.

“Milestone Payment(s)” shall have the meaning set forth in Section 4.2 of this Agreement.

“Milestone Payment Schedule” shall have the meaning set forth in Section 4.3 of this Agreement and is appended to this Agreement as Exhibit 1.

“Milestone Satisfaction Criteria” shall have the meaning set forth in Section 4.3(b) of this Agreement.

“Non-Disclosure Agreement” shall have the meaning set forth in ARTICLE XV of this Agreement and is appended to this Agreement as Exhibit 4.

“Non-Breaching Party” shall have the meaning set forth in Section 16.2 of this Agreement.

“Party” means Customer and Contractor individually, and **“Parties”** means Customer and Contractor together, as the case may be.

“Person” or **“Persons”** means an individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization, Governmental Entity or other legal individual or entity.

“PSR Correction Notice” shall have the meaning set forth in Section 7.2 of this Agreement.

“Term” shall have the meaning set forth in Section 16.1 of this Agreement.

“Terminated Ignition” shall have the meaning set forth in the Launch Services Agreement. For the avoidance of doubt, the Parties’ intent with respect to the meaning of “Terminated Ignition” under this Agreement is that the term “Terminated Ignition” correspond to that point in time when, following Intentional Ignition, all the first stage engines of the Launch Vehicle are shut down, purposely or accidentally, prior to Launch and the launch pad is officially declared safe by the Launch Provider.

“Termination Date” shall have the meaning set forth in Section 16.1 of this Agreement.

“Termination Notice” shall have the meaning set forth in Section 16.2 of this Agreement.

“Work” means all labor, services, and acts to be performed by Contractor in discharging its obligations under this Agreement, as further described in the MethaneSAT Statement of Work.

“Total Loss” shall have the meaning given to it in the launch and in-orbit insurance policy procured by Customer, as described in Section 9.3 of this Agreement.

ARTICLE II CONSTRUCTION AND INTEGRATION

Section 2.1 Construction.

(a) Any term not defined under ARTICLE I of this Agreement shall be defined by the context in which it is used.

(b) References to “applicable” Law or Laws with respect to a particular Person, thing, or matter shall include only such Law or Laws of any Governmental Entity that has jurisdiction over such Person, thing or matter.

(c) The words “include” and “including”, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) The terms “hereof”, “hereunder”, “herein” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded (for example, if any action is to be taken within two (2) days of a triggering event, and such event occurs on a Tuesday, then the action must be taken by no later than Thursday). If the last day of such period is not a Business Day, the period in question shall be extended so that it ends on the next succeeding Business Day.

Section 2.2 Integration.

(a) Each Party hereto has participated in the drafting of this Agreement, which each Party acknowledges is the result of extensive negotiations between the Parties, and consequently this Agreement shall be interpreted without reference to any rule or precept of Law to the effect that any ambiguity in a document be construed against the drafter.

(b) The documents listed below in this Section 2.2(b) of this Agreement, including any Exhibits, attachments, annexes, or schedules, constitute this Agreement and shall be deemed to constitute one fully integrated agreement between the Parties. In the event of any conflict or inconsistency among the provisions of the various documents of this Agreement, as listed below, such conflict or inconsistency shall be resolved by giving a descending level of precedence to such documents in the order set forth below:

- (i) The Terms and Conditions of this Agreement
- (ii) Exhibit 1 - Milestone Payment Schedule
- (iii) Exhibit 2 - MethaneSAT Statement of Work
- (iv) Exhibit 3 - MethaneSAT Specification
- (v) Exhibit 4 - Non-Disclosure Agreement No. 19-92689, dated as of September 19, 2019

ARTICLE III STATEMENT OF WORK; SPECIFICATION

Section 3.1 General.

On the terms and subject to the conditions set forth in this Agreement, Contractor shall provide, and Customer shall procure, the Work and Deliverables described in, and in accordance with, the MethaneSAT Statement of Work and the MethaneSAT Specification.

Section 3.2 Contractor Work Commitment.

Contractor shall commence the Work in compliance with the requirements of this Agreement and will apply its reasonable best efforts to perform the Work in order to achieve the Delivery Date for each Deliverable in accordance with the MethaneSAT Statement of Work and Section 5.1 of this Agreement.

Section 3.3 Launch Services.

Contractor shall maintain compatibility of the Instrument and Flight System with the candidate launch vehicles from which Customer plans to select the Launch Vehicle, in accordance with and as provided in the MethaneSAT Statement of Work and the MethaneSAT Specification

**ARTICLE IV
CONTRACT PRICE; MILESTONE PAYMENTS**

Section 4.1 Contract Price.

On the terms and subject to the conditions set forth in this Agreement, the firm fixed price to be paid by Customer to Contractor for the Work shall be U.S. dollars (USD) (the “**Contract Price**”). The Contract Price may be subject to adjustment pursuant to ARTICLE XI and ARTICLE XII of this Agreement.

Section 4.2 Milestone Payments.

Customer shall pay to Contractor certain milestone payments (the “**Milestone Payment(s)**”), in each case upon the occurrence of specified milestone events, as set forth in this Agreement and the MethaneSAT Statement of Work, and satisfaction of the applicable Milestone Satisfaction Criteria, as provided in the Milestone Payment Schedule (the “**Milestone Event(s)**”). Customer shall pay to Contractor the applicable Milestone Payment in accordance with Section 6.1(b) of this Agreement. Each Milestone Payment is payable only once, and no Milestone Payment shall be payable for subsequent or repeated achievements of any Milestone Event.

Section 4.3 Milestone Payment Schedule.

(a) The Milestone Payment Schedule sets forth the Milestone Payments applicable to each Milestone Event for the duration of this Agreement. The Milestone Payment Schedule is appended to this Agreement as Exhibit 1.

(b) The Milestone Payment Schedule includes the satisfaction criteria applicable to each particular Milestone Event (the “**Milestone Satisfaction Criteria**”). If, with respect to any Milestone Event, Customer does not respond in writing within ten (10) days after receipt of documentation for the applicable Milestone Satisfaction Criteria set forth in the Milestone Payment Schedule, then such Milestone Satisfaction Criteria shall be deemed satisfied and such Milestone Event shall be deemed approved by Customer.

(c) The Milestone Events set forth in the Milestone Payment Schedule represent estimated target completion dates of each Milestone Event, and may be revised by Contractor, where necessary in its reasonable judgment, by provision of written notice to Customer as soon as reasonably practicable after becoming aware of the need for any such revision; provided, however, that any such change in the target completion date of a Milestone Event shall not result in a change to the Contract Price as set forth in Section 4.1 of this Agreement or an adverse impact to the delivery schedule, including postponement of any Delivery Dates.

(d) Beginning six (6) months after the Effective Date of this Agreement, and reoccurring every six (6) months thereafter, Contractor shall be permitted to modify the Milestone Payment Schedule to reallocate the amounts due to be paid on any unpaid or upcoming Milestone Event, excluding the final Milestone for completion of on-orbit commissioning of the Flight System; provided, however, that (i) no such modification shall result in Customer owing to Contractor, at any given time, a larger aggregate total amount of Milestone Payments than would otherwise be owed at such time; and (ii) Contractor shall not be permitted to adjust the Contract Price set forth in Section 4.1 of this Agreement.

Section 4.4 Incomplete Performance

Following Customer's acceptance of the Flight System pursuant to Section 7.3(c), if Launch or on-orbit commissioning does not occur within twelve (12) months, or is unsuccessful for any reason, and such non-occurrence or lack of success is not substantially attributable to Contractor, Contractor shall be entitled to receive, and Customer shall pay, all remaining, yet unpaid, Milestone Payments.

ARTICLE V DELIVERABLES; DELIVERY DATES

Section 5.1 Deliverables.

Any and all Deliverables to be delivered from Contractor to Customer shall be identified in the MethaneSAT Statement of Work.

Section 5.2 Delivery Dates.

On the terms and subject to the conditions set forth in this Agreement, Contractor shall deliver to Customer each of the Deliverables on or before the applicable delivery dates (the "**Delivery Dates**") set forth in the MethaneSAT Statement of Work.

Section 5.3 Early Deliverables.

Nothing herein shall be construed as prohibiting Contractor from delivering to Customer any Deliverable in advance of its scheduled Delivery Date set forth in the MethaneSAT Statement of Work.

Section 5.4 Title and Risk of Loss.

(a) Unless otherwise agreed upon in writing by the Parties to this Agreement, title to each Deliverable Item delivered by Contractor to Customer, excluding the Instrument and Flight System, shall pass to Customer upon acceptance thereof by Customer pursuant to Section 7.3(a) of this Agreement. Risk of loss of or damage to any Deliverable Item delivered by Contractor to Customer, excluding the Instrument and Flight System, shall pass from Contractor to Customer upon arrival of such Deliverable Item at Customer's designated facility in accordance with the MethaneSAT Statement to Work.

(b) Title to the Instrument and risk of loss of or damage to the Flight System shall pass to Customer upon Intentional Ignition of the Launch Vehicle carrying the Flight System. Notwithstanding the foregoing, in case of a Terminated Ignition, title to the Instrument and risk of loss of or damage to the Flight System shall revert to Contractor upon Contractor securing the Flight System after the Launch Provider declares the launch pad safe, provided that, if the Flight System is, or is reasonably

determined to be, a Total Loss or Constructive Total Loss, title to the Instrument and risk of loss of or damage to the Flight System shall remain with Customer. If Contractor re-acquires title and risk of loss or damage as set forth in the immediately preceding sentence: (a) Contractor shall conduct a visual inspection of the Flight System, perform aliveness tests on the Bus and Instrument pending the results of the visual inspection, and provide Customer with a report on the condition of the Flight System, which shall include recommendations for repairs or replacement, as required, and Customer shall, within thirty (30) days following receipt of such report, direct Contractor pursuant to Section 11.1 of this Agreement as to how to proceed with any required or desired repairs (excluding to the Bus, which shall be Customer's responsibility) and/or pursuant to Section 5.5 of this Agreement with respect to any storage; and (b) title to the Instrument and risk of loss of or damage to the Flight System shall again pass to Customer upon the subsequent Intentional Ignition of the Launch Vehicle carrying the Flight System.

Section 5.5 Flight System Transportation and Storage

(a) Contractor shall arrange for the transportation of the Flight System for delivery to the launch site, as identified in the MethaneSAT Statement of Work for performance of the Launch Services, in accordance with the MethaneSAT Statement to Work. Before transportation of the Flight System, Contractor shall provide a suitable, environmentally controlled storage facility.

(b) If, for any reason not attributable to Contractor, shipment of the Flight System is delayed beyond the scheduled date set forth in the MethaneSAT Statement of Work, as may be adjusted pursuant to the terms hereof, then Customer may request that the Flight System be stored at Contractor's facilities subject to payment by Customer to Contractor of a storage fee equal to -

Dollars (\$.00 USD) per day of such storage. Such fee provides for the use of Contractor's storage facilities only and does not include any Actual Costs associated with Contractor's management, relocation, or maintenance of the Flight System while in storage. In case of any such storage, in addition to payment of the daily storage fee referenced above, Customer shall pay to Contractor an amount equal to the total of all such Actual Costs reasonably incurred by Contractor plus a profit of ten percent (10%) thereon within thirty (30) days after receipt by Customer from Contractor of an invoice therefor. For the avoidance of doubt, if shipment of the Flight System is delayed beyond the scheduled date set forth in the MethaneSAT Statement of Work, as may be adjusted pursuant to the terms hereof, for any reason attributable to Contractor, then Contractor shall store the Flight System at Contractor's facilities at no additional cost to Customer until the earlier of the conclusion of such delay or such time as Customer provides written instructions to Contractor to ship the Flight System to an alternative location.

ARTICLE VI INVOICES; PAYMENT TERMS; TAXES

Section 6.1 Invoicing, Payment Terms.

(a) With respect to each of Customer's payment obligations to Contractor arising under ARTICLE IV of this Agreement, Contractor shall submit invoices to Customer demanding payment for amounts due after the associated Milestone Event is approved or deemed approved by Customer pursuant to ARTICLE IV. All invoices submitted by Contractor to Customer shall be submitted to the following physical address, together with a soft copy to each of the e-mail addresses noted below:

MethaneSAT LLC
2060 Broadway St, Suite 300
Attn: Michelle Pluzynski, Senior Operations Manager, Office of Chief Scientist Environmental
Defense Fund
Boulder, CO 80302

invoices@methanesat.org
mpluzynsk@methanesat.org

(b) Subject to Section 6.1(c) below, each Milestone Payment shall be paid no later than thirty (30) days after the receipt by Customer of an invoice therefor, together with certification in a form reasonably acceptable to Customer that the associated Milestone Event has been achieved in accordance with the requirements of this Agreement, including applicable Milestone Satisfaction Criteria. Payment shall not be deemed an acceptance of any Deliverables by Customer. Any payments from Customer to Contractor pursuant to this Agreement shall be made via wire transfer or electronic funds transfer to the following bank account as applicable:

Wire Transfer

Bank of America
Attn: Ball Aerospace
New York, NY 10001
ABA: 026009593
Account: 4451079194

Electronic Funds Transfer (EFT)

Bank of America
Ball Aerospace
ABA # 111000012
Account 4451079194

(c) If, in Customer's good faith determination, an event, undertaking or requirement covered by an invoice relating to a particular Milestone Payment has not been fully completed in accordance with the requirements of this Agreement, including applicable Milestone Satisfaction Criteria, Customer shall so notify Contractor in writing within ten (10) days after receipt of such invoice. Such notification shall state in reasonable detail the Agreement requirements associated with the relevant Milestone Event and any such event, undertaking or requirement that has not been fully completed. Upon correction of the noted discrepancy(ies) and completion of all such outstanding events, undertakings and/or requirements in accordance with this Agreement, such invoice shall be reinstated for payment. Any Milestone Payment invoice that is not contested in accordance with this Section 6.1(c) within ten (10) days after receipt of such invoice, shall be deemed accepted by Customer.

Section 6.2 Late Payments.

Except in case of a payment that is contested pursuant to Section 6.1(c) above or otherwise subject to a good faith dispute pursuant to Section 6.5 of this Agreement, if any amount payable from Customer to Contractor under ARTICLE IV of this Agreement is not received by Contractor in full on or before the payment due date in accordance with Section 4.2 and Section 6.1(b) of this Agreement:

(i) Contractor may assess interest at nine percent (9%) per annum on the unpaid amount beginning on the date that is five (5) days after the date that Customer receives written notice from Contractor to cure such late payment and ending on the date that the amount is paid in full by Customer, including any and all interest due thereon; and

(ii) Contractor may, upon written notice to Customer, elect in its sole discretion to suspend performance of the Work, without penalty to Contractor. Except in the event of termination by Contractor in accordance with Section 16.2 of this Agreement, Contractor shall promptly resume its performance of the Work upon Contractor's receipt of all overdue payment amounts. Following Contractor's resumption of performance of the Work: (a) the Parties shall negotiate, as needed, an equitable adjustment to the Contract Price and Delivery Dates (to reflect, at minimum, a day-for-day adjustment) and any other affected terms of this Agreement; and (b) Customer shall pay to Contractor an amount equal to Actual Costs incurred by Contractor in connection with such Work stoppage and resumption of performance plus a profit of ten percent (10%) thereon within thirty (30) days after Customer's receipt from Contractor of an invoice therefor, together with supporting documentation.

Section 6.3 Attorneys' Fees.

If any Action is brought by Contractor against Customer to enforce a payment term set forth in ARTICLE IV of this Agreement, and Contractor is the prevailing party in such Action to enforce such payment term against Customer, Contractor shall be entitled to recover the Actual Costs incurred by it in bringing such Action, including reasonable attorneys' fees to the maximum extent permitted by applicable Law.

Section 6.4 Taxes; Tax Treatment.

The amounts payable from Customer to Contractor under ARTICLE IV of this Agreement do not include any sales or transfer taxes (or similar amounts payable), and Customer assumes all liability for the same, unless Customer has furnished Contractor with an exempt purchase or resale agreement. Any amounts payable under Section 6.2 and Section 6.3 of this Agreement shall be treated for federal and state tax purposes as an adjustment to the amount otherwise due to Contractor, unless otherwise required by Law.

Section 6.5 Payment Disputes.

Any dispute between the Parties regarding any payment obligation, including without limitation, whether Contractor successfully completed a Milestone Event, shall be subject to the procedures set forth in ARTICLE XXI of this Agreement. Notwithstanding the foregoing, no dispute with respect to any payment obligation under this Agreement shall relieve the disputing Party of its obligation to pay all other undisputed amounts due and owing under this Agreement or to continue to progress the Work in good faith. For the avoidance of doubt, failure to pay any amount subject to a good faith dispute shall not constitute a material breach under this Agreement unless the disputing Party continues to fail to pay such amount after such dispute is resolved by the Parties in favor of the other Party.

Section 6.6 Audit Rights.

Contractor shall provide Customer (through independent, third party auditors of international repute authorized by Customer and reasonably acceptable to Contractor and subject to a

customary nondisclosure agreement) with copies of Contractor's records that verify the accuracy of the charges and other amounts payable by Customer to Contractor on an Actual Costs basis under Sections [5.5, 6.2, 6.3, 9.3, 11.2 and 16.5] of this Agreement.

ARTICLE VII INSPECTION; DEFECTS; ACCEPTANCE

Section 7.1 Inspection.

Upon the delivery of each Deliverable Item from Contractor to Customer, Customer shall have a reasonable period of time to inspect and test the Deliverable Item, and acceptance shall occur in accordance with Section 7.3 of this Agreement.

Section 7.2 Notice of Defects.

(a) If any Deliverable Item, is not in compliance with the MethaneSAT Statement of Work, the MethaneSAT Specification, or any other term or condition of this Agreement (each a "**Defect**"), Customer shall notify Contractor in writing: (i) with respect to the Instrument and the Flight System, in accordance with Section 7.3(b) and Section 7.3(c) of this Agreement, respectively; and (ii) with respect to all other Deliverable Items, within ten (10) days after Customer becomes aware of such Defect.

(b) In case of Deliverable Items other than the Instrument and the Flight System, which are addressed in Section 7.3(b) and Section 7.3(c) of this Agreement, respectively:

(i) Any Defect shall be capable of being demonstrated by Customer to Contractor.

(ii) Contractor shall, promptly and no later than five (5) days after receipt of Customer's notification pursuant to Section 7.2(a) of this Agreement, notify customer in writing if Contractor disagrees with Customer as to the existence or nature of a Defect, in which case the Parties shall negotiate in good faith to determine what Defect exists, if any, and any action required to remedy such Defect.

(iii) Except to the extent Customer provides a written waiver to Contractor, Customer's failure to notify Contractor of any Defect shall not constitute a waiver of any rights of Customer or under this Agreement.

(iv) If a Defect exists, Customer shall provide Contractor an opportunity to replace, repair, or rework the Deliverable Item to cause such Deliverable Item to comply with the MethaneSAT Statement of Work, the MethaneSAT Specification, or any other term or condition of this Agreement. Contractor shall have a reasonable time to cure such Defect. Contractor shall fulfill the foregoing obligation at its own cost and expense, including all costs arising from charges for packaging, shipping, insurance, taxes, and other matters associated with curing such Defect, unless it is reasonably determined after investigation that Customer directly caused the Defect in question, in which case Customer shall be responsible for such costs and expenses.

Section 7.3 *Acceptance.*

(a) Deliverable Items. With respect to each Deliverable Item other than the Instrument and the Flight System, which are addressed in Section 7.3(b) and Section 7.3(c) of this Agreement, respectively, within thirty (30) days of delivery of such Deliverable Item, Customer shall provide Contractor written notice of its inspection and acceptance of such Deliverable Item, unless Customer has already provided Contractor written notice of a Defect in such Deliverable Item, in which case such thirty (30) day period shall apply as of the date Contractor re-delivers such Deliverable Item following the completion of remedial work, as described in Section 7.2(b) of this Agreement. If Customer does not provide written notice of its acceptance of a Deliverable Item in accordance with the foregoing sentence, such acceptance shall be presumed to occur upon the expiration of the applicable thirty (30) day period. Acceptance as provided in this Section 7.3(a) of this Agreement shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Agreement.

(b) Instrument. Customer's acceptance of the Instrument shall occur following Contractor's successful completion of the Instrument Integration Readiness Review, as set forth in the MethaneSAT Statement of Work. Acceptance as provided in this Section 7.3(b) of this Agreement shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Agreement. Acceptance of the Instrument shall occur upon any of the following:

(i) The Instrument Integration Readiness Review demonstrates compliance with the MethaneSAT Statement of Work and Customer notifies Contractor in writing of its acceptance of the Instrument Integration Readiness Review at the end of such review. Failure of Customer to provide such notification or to submit an IIRR Correction Notice pursuant to clause (ii) below at the end of the Instrument Integration Readiness Review shall be deemed to constitute acceptance of the Instrument Integration Readiness Review.

(ii) The Instrument Integration Readiness Review identifies Defects and Customer submits to Contractor a written request for correction or disposition of such Defects (an "***IIRR Correction Notice***") at the end of the Instrument Integration Readiness Review. Contractor shall promptly correct and/or disposition such Defects and, following such correction and/or disposition, promptly notify Customer that such correction and/or disposition has been completed and, where applicable, provide to Customer any associated relevant test data. Within five (5) days after receiving notice of completion of such correction and/or disposition, Customer shall notify Contractor in writing whether, acting reasonably, it accepts such correction and/or disposition, as applicable, or shall submit to Contractor another IIRR Correction Notice. Contractor shall be required to repeat this process until Customer provides Contractor with written notice of its acceptance of such correction and/or disposition, as applicable, provided that failure of Customer to notify Contractor of acceptance of such correction and/or disposition, as applicable, or to provide an IIRR Correction Notice at the end of the Instrument Integration Readiness Review or within the five (5) day period referenced above, as applicable, shall be deemed to constitute acceptance of the Instrument Integration Readiness Review.

(c) Flight System. Customer acceptance of the Flight System shall occur following Contractor's successful completion of the Pre-Ship Review, as set forth in the MethaneSAT Statement of Work. Acceptance as provided in this Section 7.3(c) of this Agreement shall be conclusive, except for

latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Agreement. Acceptance of the Flight System shall occur upon any of the following:

(i) The Pre-Ship Review demonstrates compliance with the MethaneSAT Statement of Work and Customer notifies Contractor in writing of its acceptance of the Pre-Ship Review at the end of such review. Failure of Customer to provide such notification or to submit a PSR Correction Notice pursuant to clause (ii) below at the end of the Pre-Ship Review shall be deemed to constitute acceptance of the Pre-Ship Review.

(ii) The Pre-Ship Review identifies Defects and Customer submits to Contractor a written request for correction or disposition of such Defects (a “**PSR Correction Notice**”) at the end of the Pre-Ship Review. Contractor shall promptly correct and/or disposition such Defects and, following such correction and/or disposition, promptly notify Customer that such correction and/or disposition has been completed and, where applicable, provide to Customer any associated relevant test data. Within five (5) days after receiving notice of completion of such correction and/or disposition, Customer shall notify Contractor in writing whether, acting reasonably, it accepts such correction and/or disposition, as applicable, or shall submit to Contractor another PSR Correction Notice. Contractor shall be required to repeat this process until Customer provides Contractor with written notice of its acceptance of such correction and/or disposition, as applicable, provided that failure of Customer to notify Contractor of acceptance of such correction and/or disposition, as applicable, or to provide a PSR Correction Notice at the end of the Pre-Ship Review or within the five (5) day period referenced above, as applicable, shall be deemed to constitute acceptance of the Pre-Ship Review.

Section 7.4 Inspection.

In no event shall Contractor be released from any of its warranty obligations pursuant to ARTICLE XIV of this Agreement as a result of any Deliverable Item having been accepted pursuant to this ARTICLE VII.

ARTICLE VIII CUSTOMER RESPONSIBILITIES

Section 8.1 General.

In addition to any duties or obligations set forth in this Agreement, Customer shall also execute and discharge such responsibilities set forth in MethaneSAT Statement of Work that are attributable to, and required by, Customer at no additional cost to Contractor.

Section 8.2 Customer Furnished Equipment.

(a) Customer shall furnish, at no additional cost to Contractor, all Customer Furnished Equipment set forth in the MethaneSAT Statement of Work on or before the delivery dates set forth therein. Customer shall be responsible for transporting and delivering Customer Furnished Equipment to Contractor’s facilities, and any costs associated with such transportation and delivery shall be borne exclusively by Customer.

(b) If Customer fails to deliver any Customer Furnished Equipment to Contractor within ten (10) days after the applicable delivery date set forth in the MethaneSAT Statement of Work, and such delay results directly in an adverse impact on Contractor's ability to perform the Work in accordance with this Agreement, such adverse impact shall be subject to equitable adjustment in accordance with Section 11.1 of this Agreement, provided that Contractor shall in any such case use reasonable efforts to mitigate such adverse impact through any means that it could reasonably be expected to utilize and shall communicate such mitigation efforts to Customer.

(c) Customer represents and warrants that any Customer Furnished Equipment delivered to Contractor in accordance with the MethaneSAT Statement of Work shall be free from defects, in good working condition, and suitable for the required purpose of the Customer Furnished Equipment as described in the MethaneSAT Statement of Work. Contractor, in its reasonable discretion, shall determine the adequacy of any Customer Furnished Equipment delivered to Contractor as it applies to the Work, including, without limitation, integration with the Instrument and operation of the Flight System.

(d) If Contractor discovers any defects in any Customer Furnished Equipment, and such defect causes the Customer Furnished Equipment not to conform to the MethaneSAT Statement of Work, Customer shall at its own expense, and at its sole option, either correct, repair, or replace, the defective Customer Furnished Equipment. If any defect in Customer Furnished Equipment results directly in an adverse impact on Contractor's ability to perform the Work in accordance with this Agreement, such impact shall be subject to equitable adjustment in accordance with Section 11.1 of this Agreement.

Section 8.3 Launch Services.

Customer shall be responsible for procuring the Launch Services, which Contractor shall support as set forth in the MethaneSAT Statement of Work. Customer shall provide to Contractor written notice of its selection of the Launch Vehicle, which shall be compatible with the requirements set forth in the MethaneSAT Statement of Work and the MethaneSAT Specification. Customer shall provide to Contractor a copy of the Launch Services Agreement after its execution and shall notify Contractor promptly of any changes relating to the Launch Services or Launch Services Agreement that may impact Contractor's ability to perform the Work in accordance with this Agreement, including, without limitation, any changes to the: (i) Launch Provider or Launch Vehicle, including Launch Vehicle interface details and requirements; and (ii) the launch site identified in the MethaneSAT Statement of Work for performance of the Launch Services, including the site location and safety, environmental and other support requirements. If any such change results directly in an adverse impact on Contractor's ability to perform the Work in accordance with this Agreement, such impact shall be subject to adjustment in accordance with Section 11.1 of this Agreement.

Section 8.4 Mission Operations.

Contractor shall be solely responsible for the post-Launch mission operations of the Flight System through on-orbit commissioning of the Flight System as set forth in the MethaneSAT Statement of Work. Following the successful completion of on-orbit commissioning activities, Customer shall assume responsibility for all post-commissioning mission operations of the Flight System. Customer shall promptly notify Contractor of any changes that may impact Contractor's ability to perform mission operations support. If any change regarding mission operations results directly in an adverse impact on Contractor's

ability to perform the Work in accordance with this Agreement, such impact shall be subject to adjustment in accordance with Section 11.1 of this Agreement.

Section 8.5 Licensing.

Customer shall be solely responsible for obtaining or causing a third-party contractor or services provider to obtain, the necessary licenses and approvals for launch and operation of the Flight System, including without limitation, licenses from the National Oceanic and Atmospheric Administration (NOAA), the Federal Aviation Administration (FAA), and the International Telecommunication Union (ITU). Contractor shall provide Customer with reasonable assistance in its efforts to obtain the necessary licenses and approvals, including by providing technical information requested by Customer.

**ARTICLE IX
INSURANCE**

Section 9.1 General.

(a) Contractor shall procure and maintain normal and customary property insurance (subject to normal and customary exclusions and deductibles) with financially sound and reputable insurance carriers, at no cost to Customer, on an “all-risks” basis, including coverage for earthquakes, floods and other natural disasters, against all Losses relating to: (i) Customer Furnished Equipment delivered to Contractor; and (ii) any and all parts of the Work, including the Instrument and, after integration of the Instrument with the Bus, the Flight System. Such insurance shall provide: (A) coverage in an amount not less than the full replacement value of each Deliverable Item, including the Instrument and the Flight System, and Customer Furnished Equipment; (B) coverage for all activities associated with performance of the Work at the facilities of Contractor and at any other facilities used or operated by Contractor for performance of the Work and, with respect to the Flight System, while at the launch site used for performance of the Launch Services; and (C) transit and integration coverage for the Flight System covering its transportation from Contractor’s facilities to the launch site and integration support of the Flight System into the Launch Vehicle payload faring. The policies for such insurance shall name Contractor as the named insured and loss payee and Customer as additional insured. Contractor shall cause each of its subcontractors to obtain and maintain insurance coverage that is similar to, and consistent with, the requirements set forth in this Section 9.1 of this Agreement.

(b) Each Party shall procure and maintain normal and customary commercial general liability insurance (subject to normal and customary exclusions and deductibles) with financially sound and reputable insurance carriers for an amount not less than the Contract Price.

Section 9.2 Waiver of Subrogation.

Each Party shall require its insurers to waive all rights of subrogation against the other Party and its Affiliates, contractors and subcontractors at any tier (including suppliers of any kind) and their respective directors, officers, employees, shareholders and agents that are involved in the performance of this Agreement.

Section 9.3 Launch and In-Orbit Insurance.

(a) This Agreement does not require, and the Contract Price does not include the cost for, procuring and maintaining launch and/or in-orbit insurance. Customer may, in its sole discretion, procure and maintain launch and/or in-orbit insurance for the Flight System.

(b) If requested by Customer, Contractor shall provide Customer with reasonable assistance in its efforts to procure and maintain launch and/or in-orbit insurance, including by: (a) providing a comprehensive presentation package on the Instrument and, to the extent relating to integration with the Instrument, the Flight System in form and substance suitable for presentation to space insurance brokers and underwriters; (b) supporting Customer with all necessary presentations (oral, written or otherwise), including participation in such presentations where requested by Customer; (c) providing, on a timely basis, all reasonable and appropriate technical information, data and documentation; (d) providing documentation and answers to insurer and underwriter inquiries and requests; and (e) seeking any agreements or approvals that are required for Customer's potential insurance providers to have access to all information required by such insurance providers. If applicable, Customer shall provide Contractor a certificate of launch and in-orbit insurance coverage at Contractor's request.

(c) Contractor shall cooperate with and provide reasonable and customary support to Customer in making and perfecting claims for insurance recovery under any launch and/or in-orbit insurance policy procured and maintained by Customer, including by providing any information that may be reasonably required to prepare and present any insurance claim, and as to any legal proceeding as may be brought by Customer in connection with any such claim for insurance recovery. Contractor shall be entitled to reimbursement of Actual Costs reasonably incurred in connection with the provision of such support or, alternatively, a lump sum amount to which the Parties have agreed, with such costs or agreed lump sum amount invoiced and paid in accordance with ARTICLE VI.

ARTICLE X ACCESS TO WORK

Section 10.1 Facilities.

(a) Contractor shall provide Customer, including Customer's duly authorized representatives ("**Customer's Personnel**"), reasonable access to all Work performed at Contractor's facilities during regular business hours or other such time as Work is being performed under this Agreement. Access to Customer's facilities shall be subject to Contractor's policies and procedures in effect at the time of access and shall not interfere with the performance of any Work. Customer's access to Work at any facility shall be coordinated in advance through Contractor's program office.

(b) Customer's Personnel visiting Contractor's facilities shall comply with: (i) Contractor's security regulations; (ii) all applicable Export Control Laws, as referenced in Section 19.2 of this Agreement; (iii) Contractor's safety and security procedures; and (iv) all applicable terms and conditions set forth in this Agreement regarding the use and disclosure of Confidential Information, as set forth in ARTICLE XV of this Agreement. Under no circumstances are Customer's Personnel permitted to remove any data, documents, materials, or other items from Contractor's facilities without Contractor's express written consent.

(c) If necessary, Customer's Personnel shall execute a standard non-disclosure agreement to access Contractor's facilities.

Section 10.2 Office for Use by Customer's Personnel.

Contractor shall provide to Customer, at no additional cost, one (1) dedicated office space located in Contractor's facilities for use by Customer's Personnel during the Term of this Agreement and temporary space in Contractor's facilities that can accommodate up to six (6) persons for use by Customer's Personnel during Instrument and Flight System test activities as set forth in the MethaneSAT Statement of Work. The dedicated office space and temporary space shall be outfitted with necessary furniture, supplies, and external internet access. No other electronic equipment, such as a personal desktop computer, laptop computer, monitors, or telephone shall be provided. Under no circumstances are Customer's Personnel permitted to access Contractor's network without Contractor's express written consent.

Section 10.3 Worker's Compensation and Employer's Liability.

Customer shall maintain adequate worker's compensation and employer's liability insurance covering all of Customer's Personnel who access Contractor's facilities pursuant to this Agreement for claims arising under any applicable Laws. Customer shall provide a certificate evidencing such insurance at Contractor's request.

Section 10.4 Indemnification.

Customer shall indemnify, defend, and hold harmless Contractor, its employees, directors, officers, and agents, from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) incurred by Contractor as a result of any claim, suit, action, or proceeding arising out of, or in connection with: (i) the negligent, reckless, or willful misconduct of Customer's Personnel; (ii) the injury or death of Customer's Personnel; or (iii) any property damage caused to Contractor's facilities by Customer's Personnel.

**ARTICLE XI
CHANGES IN SCOPE OF WORK; CUSTOMER STOP WORK RIGHT**

Section 11.1 Customer Directed Changes.

(a) From time to time, Customer may request to change the scope of Work to be performed by Contractor during the Term of this Agreement when such changes are determined to be necessary. As soon as practicable, Customer shall provide written notice to Contractor providing a detailed description of the requested change to the scope of the Work required under this Agreement (the "**Change Direction**"). Within fifteen (15) days after receipt of the Change Direction, Contractor shall provide a written proposal to Customer (the "**Change Proposal**"). The Change Proposal shall set forth any proposed changes to the MethaneSAT Statement of Work, the MethaneSAT Specification, the Contract Price set forth in Section 4.1 of this Agreement, or the Delivery Dates set forth in Section 5.2 of this Agreement that may be affected by the Change Direction. Within fifteen (15) days after receipt of the Change Proposal, Customer shall notify Contractor in writing of Customer's: (i) acceptance of the Change Proposal; (ii) conditional acceptance of the Change Proposal, subject to the Parties' negotiation of relevant amendments to the terms and conditions of this Agreement; or (iii) rejection of the Change Proposal.

(b) Contractor shall be under no obligation to comply with a Change Direction, or any other change directed by Customer to Contractor, unless this Agreement is modified by a written amendment duly executed by both Parties.

Section 11.2 Contractor Requested Changes.

(a) Contractor may request, during the Term of this Agreement, any change within the general scope of this Agreement. As soon as practicable, Contractor shall provide written notice to Contractor providing a detailed description of the requested change to the scope of the Work required under this Agreement (the “**Change Request**”). The Change Request shall set forth any proposed changes to the MethaneSAT Statement of Work, including without limitation any Delivery Date, the MethaneSAT Specification, or the Contract Price set forth in Section 4.1 of this Agreement. Within fifteen (15) days of receipt of the Change Request, Customer shall notify Contractor in writing of Customer’s: (i) acceptance of the Change Request; (ii) conditional acceptance of the Change Request, subject to the Parties’ negotiation of relevant amendments to the terms and conditions of this Agreement; or (iii) rejection of the Change Request.

(b) Contractor shall not be authorized to undertake any changes to the scope of Work required under this Agreement as set forth in the Change Request unless this Agreement is modified in writing and duly executed by both Parties.

Section 11.3 Customer Stop Work Right.

Customer may, by provision of written notice to Contractor, direct Contractor to stop performance of the Work under this Agreement. In case of any such Work stoppage, Contractor shall promptly resume its performance of the Work upon receipt of written instructions from Customer. Following Contractor’s resumption of performance of the Work: (a) the Parties shall negotiate, as needed, an equitable adjustment to the Contract Price and Delivery Dates (to reflect, at minimum, a day-for-day adjustment) and any other affected terms of this Agreement; and (b) Customer shall pay to Contractor an amount equal to Actual Costs incurred by Contractor in connection with such Work stoppage and resumption of performance plus a profit of ten percent (10%) thereon within thirty (30) days after Customer’s receipt from Contractor of an invoice therefor, together with supporting documentation.

ARTICLE XII EXCUSABLE DELAY

Section 12.1 Excusable Delay.

(a) Neither Party shall be considered in breach of this Agreement based on a delay in the performance of any of its duties or obligations hereunder that is caused directly by, or results directly from, an act of God, acts of a public enemy, insurrections, riots, embargoes, labor disputes, including strikes, boycotts, fires, explosions, floods, shortages of energy, or other unforeseeable events beyond its reasonable control and without its fault or negligence (each, an “**Excusable Delay Event**”, and the associated delay in performance of obligations hereunder, an “**Excusable Delay**”).

(b) The Party claiming an Excusable Delay shall provide written notice to the other Party promptly and in any case no later than three (3) days after becoming aware of the associated Excusable

Delay Event. Such written notice shall include a detailed description of the portion of the Work known or expected to be affected by such Excusable Delay Event. In all cases, the Party claiming an Excusable Delay shall use reasonable efforts to minimize the duration of, and mitigate the impact of, such Excusable Delay through the implementation of work-around plans and the use of alternative sources, or any other similar means that such Party may utilize or be expected to utilize, and shall communicate such plans, sources and/or means to the other Party promptly and in reasonable detail. The Party claiming an Excusable Delay shall also provide written notice to the other Party promptly upon the conclusion of the Excusable Delay Event and associated Excusable Delay.

(c) Without limiting Section 12.1(b) of this Agreement, failure to notify the other Party of an Excusable Delay shall not prevent a Party from claiming an Excusable Delay if the other Party has actual notice of such Excusable Delay Event by means of publicly and commonly available sources.

Section 12.2 Maximum Excusable Delay.

If the aggregate total duration of Excusable Delay(s) affecting the performance of a Party's obligations hereunder equals or exceeds, or is reasonably expected to equal or exceed, one hundred and twenty (120) days, the other Party may terminate this Agreement in accordance with Section 16.4 of this Agreement.

Section 12.3 Equitable Adjustment.

In case of an Excusable Delay Event under Section 12.1 of this Agreement, the Delivery Dates set forth in Section 5.2 of this Agreement shall be equitably adjusted on a day-for-day basis to reflect the duration of such Excusable Delay Event.

ARTICLE XIII INTELLECTUAL PROPERTY

Section 13.1 Ownership of Intellectual Property.

(a) Background Intellectual Property. As between Customer and Contractor, each of the Parties shall remain the sole and exclusive owner of all its Background Intellectual Property, whether or not disclosed by such Party in connection with this Agreement.

(b) Foreground Intellectual Property.

As between the Parties, the Parties shall jointly own all rights, title, and interest in all Foreground Intellectual Property, including the MethaneSAT Specification and MethaneSAT Statement of Work, with the exception of all MethaneSAT Science Data, which shall be solely owned by Customer and constitute Customer's Intellectual Property.

Except as provided in Section 13.3 or Section 13.4 of this Agreement, neither the performance of this Agreement, nor any terms and conditions set forth herein, shall be construed as granting any right, title, interest, or license of any kind in Intellectual Property from one Party to the other Party.

Section 13.2 Prohibited Uses.

On the terms and subject to the conditions set forth in this Agreement, Customer shall not:

- (i) Reverse engineer, decode, disassemble, redesign, decompile, adapt, or otherwise attempt to derive Contractor's Intellectual Property from any Deliverable, or any component thereof, delivered by Contractor to Customer under this Agreement;
- (ii) Develop any other secondary sources to manufacture any of Contractor's Intellectual Property derived from any Deliverable, or any component thereof, delivered by Contractor to Customer under this Agreement; or
- (iii) Intentionally, remove, modify, or obscure any copyright, trademark, or other proprietary notices from any Deliverable, or any component thereof, delivered by Contractor to Customer under this Agreement – except as a result of ordinary use of the Deliverable or combinations of the Deliverable with any other items.

Section 13.3 Intellectual Property Licenses.

(a) On the terms and subject to the conditions set forth in this Agreement, as between Customer and Contractor, Customer grants to Contractor a limited, non-exclusive, worldwide, irrevocable, non-assignable (except under the terms of Section 22.3), non-transferrable, non-sublicensable, royalty-free license to Customer's Background Intellectual Property and Customer's Foreground Intellectual Property solely for the purpose of Contractor's performance of its obligations under this Agreement.

(b) On the terms and subject to the conditions set forth in this Agreement, as between Customer and Contractor, Contractor grants to Customer a limited, non-exclusive, worldwide, irrevocable, non-assignable (except under the terms of Section 22.3), non-transferrable, non-sublicensable, royalty-free license to Contractor's Background Intellectual Property and Contractor's Foreground Intellectual Property as needed for the purpose of Customer's performance of its obligations under this Agreement or Customer's performance of the MethaneSAT Mission, including all integration, testing, launch, operation, maintenance, and repair of the Flight System.

Section 13.4 Future Licenses.

(a) Should Customer desire to use or license, for future applications outside the scope of this Agreement, any of Contractor's Intellectual Property in a manner that is not licensed to Customer hereunder, the Parties shall endeavor to negotiate in good faith and upon commercially reasonable terms such license agreement as appropriate for such future application.

(b) For the period beginning upon Launch and continuing for three (3) years thereafter, Contractor shall not, without Customer's prior written consent, sell to any government or commercial organization, wherever located, a space-based, remote-sensing instrument that is intended to accomplish the same technical performance as the MethaneSAT Mission and the design of which is based on, or substantially similar to, the MethaneSAT Specification. After expiration of such three (3) year period, should Contractor seek to use the MethaneSAT Specification for any purpose outside of Contractor's performance under this Agreement, Contractor shall provide advance written notification to Customer and the Parties shall work together in good faith on appropriate terms for such contemplated future use.

(c) For the avoidance of doubt, except as provided in Section 13.4(a) and Section 13.4(b) above, each Party shall be entitled to use and license any Foreground Intellectual Property outside of such Party's performance under this Agreement without the prior consent of the other Party.

Section 13.5 Engineering Changes.

Except as otherwise expressly set forth in writing by Contractor, non-recurring engineering charges and all charges of a similar nature which Customer may pay to Contractor for work performed in connection with this Agreement (including, but not limited to, tooling charges, preparation charges, drawing or design charges, set-up or fit-up charges, and any similar charges), if any, may represent only part of the cost thereof incurred by Contractor. Customer shall not acquire any right, title, or interest in, or license (either express or implied) to, Contractor's Intellectual Property, or any tooling or other tangible property, by virtue of any such charges relating this Agreement.

Section 13.6 Intellectual Property Indemnification.

(a) Contractor's Indemnification: Contractor shall indemnify, defend, and hold harmless Customer, its employees, directors, officers, and agents, and assigns, sublicensees and subcontractors (each, a "Customer Indemnified Party") from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) incurred by any Customer Indemnified Party as a result of any third party threat, claim, suit, action, or proceeding alleging that the design or any Customer Indemnified Party's use of the Deliverables, including the Instrument as a component of the Flight System, infringes, misappropriates or violates the Intellectual Property Rights of a third party that Contractor has or should have had knowledge of, except solely to the extent the infringement, misappropriation or violation arises from, or is based upon, any Customer Indemnified Party's unauthorized use, modification, or alteration of the Deliverables. If such a third party claim is made, threatened or appears likely, in addition to Contractor satisfying the foregoing indemnity obligations, Customer agrees to permit Contractor, at Contractor's sole discretion, to: (i) modify or replace the Deliverables, or component or part thereof, to make it non-infringing in a manner that substantially maintains the functionality of the Deliverable in accordance with the applicable MethaneSAT Statement of Work and/or MethaneSAT Specification; (ii) obtain the right (at no expense to any Customer Indemnified Party) for Customer to continue use of the Deliverables in a manner that conforms with the applicable MethaneSAT Statement of Work and/or MethaneSAT Specification; or (iii) modify the Deliverables in a manner that substantially maintains the functionality of the Deliverable in accordance with the MethaneSAT Statement of Work and/or MethaneSAT Specification, as applicable.

(b) Customer's Indemnification. Customer shall indemnify, defend, and hold harmless Contractor, its employees, directors, officers, and agents, and assigns (each, a "Contractor Indemnified Party") from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) incurred by any Contractor Indemnified Party as a result of any third party threat, claim, suit, action, or proceeding alleging that the design or any Contractor Indemnified Party's use of any Customer Furnished Equipment infringes, misappropriates or violates the Intellectual Property Rights of a third party, except to the extent the infringement, misappropriation or violation arises from, or is based upon, any Contractor Indemnified Party's unauthorized use, modification, or alteration of such Customer Furnished Equipment. If such a third party claim is made, threatened or appears likely, in addition to Customer satisfying the foregoing indemnity obligations, Contractor agrees to permit Customer, at Customer's sole discretion, to: (i) obtain for Contractor the right to use such Customer Furnished Equipment; or (ii) replace or modify such

Customer Furnished Equipment so that it becomes non-infringing and still satisfies all other requirements of the MethaneSAT Statement of Work and/or MethaneSAT Specification, as applicable.

(c) Entire Remedy. THE ENTIRE LIABILITY OF EITHER PARTY WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY IS SET FORTH IN THIS SECTION 13.6 OF THIS AGREEMENT, AND NEITHER PARTY SHALL HAVE ANY ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

ARTICLE XIV WARRANTY

Section 14.1 Warranty for Deliverables.

(a) Deliverables Items.

(i) Except for the delivery of the Instrument and the Flight System, which are addressed in Section 14.1(b) and Section 14.1(c) of this Agreement, the warranty period for each Deliverable Item delivered by Contractor to Customer under this Agreement shall begin on the date of shipment of the Deliverable Item and end on the date that is ninety (90) days after the date of delivery to Customer pursuant to this Agreement (the “**Deliverable Item Warranty Period**”).

(ii) Contractor warrants that, during the Deliverable Item Warranty Period, each Deliverable Item shall be free from defects in material or workmanship that would cause it not to be in conformity with the MethaneSAT Statement of Work or MethaneSAT Specification. This warranty shall not apply to any Deliverable Item: (A) that has been improperly altered, installed, or connected in any way other than in accordance with written instructions provided to Customer by Contractor; (B) upon which Contractor’s copyright, trademark, or other proprietary notice is removed, modified, or obscured in any way; (C) that has been modified, repaired, or reworked by any party other than Contractor without Contractor’s express written consent; or (D) that has not been maintained or stored in compliance with written instructions provided by Contractor to Customer.

(iii) In the event that Customer believes that any of the warranties set forth in Section 14.1(a) of this Agreement has been breached, Customer shall notify Contractor in writing within fifteen (15) days after the discovery of the alleged non-conforming Deliverable Item (the “**Deliverable Item Warranty Claim**”). The Deliverable Item Warranty Claim shall identify the Deliverable Item involved, state the reason that Customer believes the Deliverable Item is non-conforming, and include information concerning the operating condition of the Deliverable Item and a description of Customer’s use of the Deliverable Item. Any Deliverable Item returned from Customer to Contractor must be shipped by Customer, transportation prepaid, by the most practical method of shipment. Shipping costs will be credited by Contractor to Customer for all Deliverable Items found to be subject to warranty adjustment.

(iv) If Contractor determines that any returned Deliverable Item does not conform to the warranty set forth in Section 14.1(a) of this Agreement, Contractor shall, at Contractor’s sole discretion, replace, repair, or rework the defective or non-conforming

Deliverable Item and deliver to Customer, as soon as reasonably practicable, the replacement, or repaired or reworked, Deliverable Item, as applicable. In the event of replacement, repair, or rework of a Deliverable Item pursuant to the foregoing warranty, the warranty period provided under Section 14.1(a) of this Agreement for such Deliverable Item, as replaced, repaired or reworked, shall commence upon shipment of such Deliverable Item and shall run until the date that is ninety (90) days after the date of delivery of such Deliverable Item.

(b) Instrument.

(i) (Pre-Launch): From the completion of the Instrument Integration Readiness Review up to Launch of the Flight System, Contractor warrants that the Instrument delivered by Contractor to Customer shall comply with the requirements of the MethaneSAT Statement of Work and the MethaneSAT Specification and shall be free from Defects. If Customer becomes aware of a Defect relating to the Instrument, Customer shall so notify Contractor in writing within fifteen (15) days after the discovery of the alleged Defect. Contractor shall inspect the Instrument and determine the extent of the alleged Defect. At Contractor's sole discretion, Contractor shall replace, repair, or correct any identified Defect and, where applicable, provide to Customer any associated relevant test data. Except for the obligations set forth in Section 14.1(b)(ii) of this Agreement, the warranty and related remedies set forth in this Section 14.1(b)(i) of this Agreement shall immediately expire upon Launch of the Flight System.

(ii) (Post-Launch): Following Launch of the Flight System, Contractor expressly disclaims any warranties, express or implied, with regard to the Instrument. Contractor's duty to correct any Defects shall be limited to transmitting commands and/or transmitting software modifications in order to mitigate or eliminate any operational effects of the Defect relating to the Instrument. Contractor shall coordinate and consult with Customer concerning the resolution of any such Defects relating to the Instrument. Contractor's obligation to mitigate or eliminate any operational deficiencies under this Section 14.1(c)(ii) shall immediately expire upon successful completion of on-orbit commissioning of the Flight System.

(c) Flight System.

(i) (Pre-Launch): From the completion of the Pre-Ship Review up to the Launch of the Flight System, Contractor warrants that the Flight System, excluding any Customer Furnished Equipment, shall comply with the requirements of the MethaneSAT Statement of Work and the MethaneSAT Specification and shall be free from Defects. If Customer becomes aware of a Defect relating to the Flight System, excluding any Customer Furnished Equipment, Customer shall so notify Contractor in writing within fifteen (15) days after the discovery of the alleged Defect. Contractor shall inspect the Flight System and determine the extent of the alleged Defect. At Contractor's sole discretion, Contractor shall replace, repair, or correct any identified Defect and, where applicable, provide to Customer any associated relevant test data. Except for the obligations set forth in Section 14.1(c)(ii) of this Agreement, the warranty and related remedies set forth in this Section 14.1(c)(i) of this Agreement shall immediately expire upon Launch of the Flight System.

(ii) (Post-Launch): Following Launch of the Flight System, Contractor expressly disclaims any warranties, express or implied, with regard to the Flight System, including any Customer Furnished Equipment. Contractor's duty to correct any Defects shall be limited to transmitting commands and/or transmitting software modifications in order to mitigate or eliminate any operational effects of the Defect relating to the Flight System, excluding any Customer Furnished Equipment. Contractor shall coordinate and consult with Customer concerning the resolution of any such Defects relating to the Flight System, excluding any Customer Furnished Equipment. Contractor's obligation to mitigate or eliminate any operational deficiencies under this Section 14.1(c)(ii) shall immediately expire upon successful completion of on-orbit commissioning of the Flight System.

(d) Deliverable Data.

With respect to any Deliverable Data delivered under this Agreement, Contractor warrants that the Deliverable Data shall be free from material errors or omissions related to the operation of the Flight System through completion of the on-orbit commissioning of the Flight System.

(e) The warranties set forth in this Section 14.1 of this Agreement do not apply to Customer Furnished Equipment.

Section 14.2 Disclaimer.

THE WARRANTIES SET FORTH IN SECTION 14.1 OF THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY CONTRACTOR WITH REGARD TO THIS AGREEMENT. CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, THAT MAY OTHERWISE SUBSIST IN FAVOR OF CUSTOMER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM COURSE OF DEALING OR USAGE IN TRADE. THIS ARTICLE XIV OF THIS AGREEMENT CONSTITUTES CUSTOMER'S SOLE REMEDY AND CONTRACTOR'S SOLE LIABILITY FOR BREACH OF WARRANTY.

**ARTICLE XV
CONFIDENTIAL INFORMATION**

The Parties acknowledge that each Party to this Agreement has had, and may continue to have, access to Confidential Information of the other Party. The disclosure of any Confidential Information from one Party to the other shall be governed by the terms and conditions set forth in that certain Non-Disclosure Agreement executed by and between Customer and Contractor on September 19, 2019, (as amended from time to time, the "***Non-Disclosure Agreement***") which is appended to this Agreement as Exhibit 4. If the Non-Disclosure Agreement terminates for any reason without replacement, the terms and conditions of the Non-Disclosure Agreement shall continue with respect to any Confidential Information disclosed from one Party to the other in connection with this Agreement notwithstanding such termination.

ARTICLE XVI TERM; TERMINATION

Section 16.1 Term; Termination at End of Term.

The term of this Agreement commences on the Effective Date and continues until completion of all obligations hereunder (*i.e.*, upon Contractor's receipt of the final Milestone Payment for completion of on-orbit commissioning of the Flight System pursuant to the MethaneSAT Statement of Work and ARTICLE IV of this Agreement) or termination of this Agreement in accordance with this ARTICLE XVI of this Agreement (the "**Term**"). The date on which the Term of this Agreement expires or is otherwise terminated in accordance with this ARTICLE XVI of this Agreement, is referred to herein as the "**Termination Date**".

Section 16.2 Termination for Cause.

This Agreement may be terminated by either Party (the "**Non-Breaching Party**") solely in whole upon written notice from the Non-Breaching Party to the other Party (the "**Breaching Party**") identifying the basis for termination (the "**Termination Notice**"), if the Breaching Party:

(i) Fails to cure any material failure to perform, discharge, or fulfill its obligations under this Agreement, including any failure to observe or comply with any of the terms or conditions of this Agreement;

(ii) Engages in misappropriation of the Non-Breaching Party's Intellectual Property, improper disclosure of the Non-Breaching Party's Confidential Information, or willful misconduct, gross negligence, or fraud;

(iii) Is subject to liquidation or dissolution proceedings under applicable Law;
or

(iv) (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due, (C) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency Law that is not dismissed within sixty (60) days of filing, (D) makes or seeks to make a general assignment as part of an involuntary bankruptcy proceeding for the benefit of its creditors, or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.

Section 16.3 Right to Cure.

The Breaching Party shall have thirty (30) days, or any such longer period of time as the Non-Breaching Party may authorize in writing, to cure any of the terminating events described in Section 16.2 of this Agreement after receipt of the Termination Notice from the Non-Breaching Party. For purposes of any termination pursuant to Section 16.2 of this Agreement, the Termination Date shall be the date on which such cure period expires, provided that the Breaching Party has not cured the relevant terminating event prior to such date.

Section 16.4 Termination for Excusable Delay and Convenience.

This Agreement may be terminated: (a) by either Party, by provision of written notice to the other Party, if the aggregate total duration of Excusable Delay(s) affecting the performance of a Party's obligations hereunder equals or exceeds, or is reasonably expected to equal or exceed, one hundred and twenty (120) days; or (b) by Customer, by provision of written notice to Contractor, for any reason, including Customer's convenience. For purposes of any termination pursuant to this Section 16.4, the Termination Date shall be the date of receipt of the applicable written notice of termination.

Section 16.5 Effect of Termination.

(a) If Customer terminates this Agreement pursuant to Section 16.2 of this Agreement, Customer shall be entitled to:

(i) (A) in case of a termination for willful misconduct, gross negligence, or fraud by Contractor, a refund equal to the sum of all payments previously made to Contractor under this Agreement; or (B) in case of termination for any other reason, including without limitation, Contractor's failure to achieve the Delivery Date for a Deliverable Item in accordance with the MethaneSAT Statement of Work and Section 5.1 of this Agreement, as such Delivery Date may be adjusted pursuant to the terms of this Agreement, a refund equal to ten percent (10%) of the sum of all payments previously made to Contractor under this Agreement; it being understood that in either case: (x) Contractor shall make payment of any such refund within thirty (30) days after receipt of an invoice from Customer therefor; and (y) ownership of any or all items described in the following clause (ii) that are the subject of any such refund shall remain or revert to Contractor; and

(ii) to retain and/or obtain any or all items of Work, including Deliverable Items, or hardware, including title thereto, that would have been incorporated into Deliverable Items but for such termination (including all Work-in-progress, parts and materials, inventories and associated subcontractor licenses and warranties (to the extent Contractor is permitted to transfer such licenses and warranties by the terms of its relevant subcontracts)). Any such items of Work that Customer seeks to obtain (*i.e.*, items that are not already in Customer's possession) shall be shipped DAP Customer's facility in the contiguous United States (as notified by Customer to Contractor), in accordance with INCOTERMS® 2010 of the International Chamber of Commerce ICC Publication no. 715EF, within sixty (60) days after receipt of payment from Customer of a mutually agreed price associated with such items. Customer shall return to Contractor, at Contractor's expense, any Deliverable Items that have already been delivered to Customer, but Customer does not wish to retain.

(b) If Contractor terminates this Agreement pursuant to Section 16.2 or Section 16.4 of this Agreement, or if Customer terminates this Agreement pursuant to Section 16.4 of this Agreement, Contractor:

(i) shall not place any further orders or subcontracts for materials, services or facilities to the extent that they relate to performance of the Work, shall terminate all pre-existing orders and subcontracts to the extent that they relate to performance of the Work, and shall settle

all outstanding liabilities and all claims arising out of such termination of orders and subcontracts; and

(ii) (A) shall stop performance of the Work and retain possession and title to items of Work not yet delivered to Customer and for which any payments due to Contractor have not been received from Customer, provided that, if Customer has paid for any of the items of Work not yet delivered to Customer, Contractor shall offset against the amount calculated pursuant to the following sub-clause (B) an amount equivalent to the value of such items; (B) shall be entitled to an amount equal to the Actual Costs incurred by Contractor in terminating orders and subcontracts and other contracts with suppliers relating to performance of the Work, plus a profit of ten percent (10%) thereon, minus the total amount of all payments already made by Customer to Contractor pursuant to this Agreement and, if applicable, the amount equivalent to the value of the items of Work not yet delivered to Customer but for which Customer has already paid, as described in sub-clause (A) above; provided that, if the total amount already paid to Contractor under this Agreement exceeds the amount calculated pursuant to the sub-clause (B) above, Contractor shall refund the amount in excess to Customer.

As applicable, Customer shall pay to Contractor the amount calculated pursuant to clause (ii)(B) above within thirty (30) days after receipt of an invoice from Contractor therefor, and Contractor shall make payment to Customer of any refund owed to Customer pursuant to this Section 16.5(b) within thirty (30) days after the date of Contractor's notice of termination provided pursuant to Section 16.2 or 16.4 of this Agreement (or, if applicable, Customer's notice of termination provided pursuant to Section 16.4 of this Agreement).

(c) Upon expiration or termination of this Agreement pursuant to Section 16.1, Section 16.2 or Section 16.4 of this Agreement and subject to Section 22.7 of this Agreement, neither Party shall have any further obligations under this Agreement following the Termination Date, and neither Party shall have any claim against the other Party, and each Party shall waive and release any claims against the other Party, arising from this Agreement, under any theory, for any damages or relief, without prejudice to any pre-existing claims.

ARTICLE XVII REPRESENTATIONS AND WARRANTIES OF CUSTOMER

Customer represents and warrants to Contractor, as of the Effective Date, as follows:

Section 17.1 Organization.

Customer is duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation and is qualified or registered to do business and in good standing in each jurisdiction where such qualification or license is required, except where the failure to so qualify or be so registered would not have a material adverse effect on Customer's ability to consummate the transactions contemplated by, and discharge its obligations under, this Agreement. Customer has all requisite corporate power and authority to carry on its business as currently conducted.

Section 17.2 Authorization of Transaction.

Customer has all requisite corporate power and authority to execute, deliver and perform this Agreement. All corporate acts required to authorize the execution and delivery this Agreement have been taken by Customer. This Agreement constitutes, upon the Effective Date, a valid and legally binding obligation of Customer enforceable in accordance with its terms and conditions, except as enforceability may be limited by applicable Laws.

Section 17.3 Noncontravention.

The execution, delivery and performance by Customer of this Agreement, and the consummation by Customer of the transactions contemplated hereby, do not: (i) violate any Law to which Customer is subject; or (ii) conflict with or result in a breach of any provision of the bylaws of Customer.

Section 17.4 Availability of Funds.

Customer has access to immediately available funds in a quantity sufficient to pay the Contract Price as set forth in Section 4.1 of this Agreement, and to perform all of its obligations pursuant to, and to consummate the transactions contemplated by, this Agreement.

Section 17.5 Insolvency.

Customer is not the subject of any pending, rendered or threatened insolvency proceedings of any character. Customer has not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any such insolvency proceedings. Customer will not become insolvent as a result of entering into this Agreement and consummating the transactions contemplated hereby.

Section 17.6 No Other Representations and Warranties.

Customer makes no representation or warranty, express or implied, except as expressly set forth in this Agreement.

**ARTICLE XVIII
REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

Contractor represents and warrants to Customer, as of the Effective Date, as follows:

Section 18.1 Organization.

Contractor is duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation and is qualified or registered to do business and in good standing in each jurisdiction where such qualification or license is required, except where the failure to so qualify or be so registered would not have a material adverse effect on Contractor's ability to consummate the transactions contemplated by, and discharge its obligations under, this Agreement. Contractor has all requisite corporate power and authority to carry on its business as currently conducted.

Section 18.2 Authorization of Transaction.

Contractor has all requisite corporate power and authority to execute, deliver and perform this Agreement. All corporate acts required to authorize the execution and delivery this Agreement have been taken by Contractor. This Agreement constitutes, upon the Effective Date, a valid and legally binding obligation of Contractor enforceable in accordance with its terms and conditions, except as enforceability may be limited by applicable Laws.

Section 18.3 Noncontravention.

The execution, delivery and performance by Contractor of this Agreement, and the consummation by Contractor of the transactions contemplated hereby, do not: (i) violate any Law to which Contractor is subject; or (ii) conflict with or result in a breach of any provision of the bylaws of Contractor.

Section 18.4 Insolvency.

Contractor is not the subject of any pending, rendered or threatened insolvency proceedings of any character. Contractor has not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any such insolvency proceedings. Contractor will not become insolvent as a result of entering into any of this Agreement and consummating the transactions contemplated hereby.

Section 18.5 No Other Representations and Warranties.

Contractor makes no representation or warranty, express or implied, except as expressly set forth in this Agreement.

**ARTICLE XIX
APPLICABLE LAWS**

Section 19.1 Compliance with Laws.

Each Party shall comply with all Laws attendant upon the performance of this Agreement. Both Parties shall be responsible, at no additional cost to the other Party, for procuring all approvals, bonds, certificates, insurance, inspections, licenses, and permits, if any, that such Laws may require for the performance of this Agreement.

Section 19.2 Export Controls.

Each Party shall comply with all applicable U.S. export control and economic sanctions Laws including, but not limited to, the requirements of: (1) the International Traffic in Arms Regulations (22 C.F.R. 120-130), as amended; (2) the Export Administration Regulations (15 C.F.R. 730-774), as amended; (3) the Office of Foreign Assets Control Regulations (31 C.F.R. 501-598), as amended; and (4) Department of Defense Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure (collectively, the “**Export Control Laws**”). To the extent information exchanged between the Parties is subject to any Export Control Law, the receiving Party shall not export, re-export, transfer, disclose, or otherwise make accessible any such information, including to foreign persons employed by,

associated with, or under contract with the receiving Party, without the authority of an export license, agreement, exemption, or exception in accordance with applicable Export Control Laws.

ARTICLE XX
CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY; INTER-PARTY WAIVER OF
LIABILITY FOR LAUNCH

NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY OTHER PERSON OR ENTITY CLAIMING THROUGH THE OTHER PARTY) FOR ANY LOST PROFITS, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION, LOST REVENUES, PROFITS, SAVINGS, BUSINESS) OR LOSS OF RECORDS OR DATA, ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES.

THE AGGREGATE LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT FOR ANY AND ALL CLAIMS, LOSSES, LIABILITIES, COSTS, OR DAMAGES WHATSOEVER ARISING OUT OF OR RESULTING FROM THIS AGREEMENT SHALL NOT EXCEED THE CONTRACT PRICE, EXCEPT FOR IN CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR IN RELATION TO LIABILITIES ARISING UNDER ARTICLE XIII OR ARTICLE XV. THIS ARTICLE XX OF THIS AGREEMENT SHALL TAKE PRECEDENCE OVER ANY CONFLICTING ARTICLE, TERM, CONDITION, OR REQUIREMENT SET FORTH IN THIS AGREEMENT.

Each Party hereby agrees to be bound by the no-fault, no-subrogation inter-party waiver of liability and related indemnification provisions required by the Launch Provider with respect to the Launch Services and/or any and all activities occurring at the launch site and to cause their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the Launch Services and/or the activities occurring at the launch site and any other person having an interest in the Flight System (including customers of Customer) to accede to such waiver and indemnification terms, which in every case shall include claims against the Launch Provider, either Party and their respective contractors and subcontractors at any tier (including suppliers of any kind) that are involved in the performance of this Agreement. 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 waiver and indemnification terms. Each of 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 Launch Services and/or any and all activities occurring at the launch site and any other person having an interest in the Flight System (including customers of Customer) through such Party to use reasonable efforts 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 paragraph of this ARTICLE XX. Each Party shall indemnify and hold harmless the other Party with respect to any claim for losses, damages or other liabilities resulting from a failure on the part of the indemnifying Party to comply with its obligations under this paragraph of this ARTICLE XX.

ARTICLE XXI DISPUTES; GOVERNING LAW

Section 21.1 Disputes.

The Parties shall attempt to resolve any and all disputes, controversies, or claims arising out of, or relating to, this Agreement, or the breach, termination, or invalidity thereof (each, a “**Dispute**”), informally, in a timely and cost-effective manner, pursuant to the procedures set forth below:

(a) If, during the course of the Work, a Party believes it has a Dispute with the other Party, the disputing Party shall give written notice thereof, which notice will describe the Dispute and may recommend corrective action to be taken by the other Party. Contractor’s program manager shall promptly consult with Customer’s program manager in an effort to reach an agreement to resolve the Dispute.

(b) If agreement cannot be reached within ten (10) days of receipt of written notice, either Party may request that the Dispute be escalated, and the respective positions of the Parties shall be forwarded to an executive level higher than that under clause (a) above for resolution of the Dispute.

(c) If agreement cannot be reached within twenty (20) days of receipt of written notice, either Party may request that the Dispute be escalated, and the respective positions of the Parties shall be forwarded to the Chief Executive Officer (CEO) or equivalent of each Party for resolution of the Dispute.

(d) If (i) agreement cannot be reached as provided in clauses (a), (b) or (c) above within a total of thirty (30) days after receipt of the written notice described in clause (a) above, or (ii) a Party determines in good faith that amicable resolution through continued negotiation of the Dispute does not appear likely, either Party may initiate an Action on the terms and subject to the conditions of this Agreement.

Section 21.2 Governing Law.

This Agreement shall be governed by, construed, and enforced in accordance with the Laws of the State of New York, without regard to its conflict of law provisions. The 1980 United Nations Convention on Contracts for the International Sale of Goods, and its related instruments, shall not apply to this Agreement.

Section 21.3 Waiver of Jury Trial.

To the maximum extent permitted by applicable Law, each Party hereby irrevocably waives any right it may have to a trial by jury with respect to any Action arising out of, or relating to, this Agreement.

ARTICLE XXII MISCELLANEOUS

Section 22.1 Notices.

Any notices required under this Agreement shall be given in writing and shall be delivered in person or by registered or certified U.S. mail, postage prepaid, return receipt requested, commercial

overnight courier, facsimile, or electronic mail. Any notice shall be effective only upon delivery. For any notice given by electronic mail, delivery shall mean receipt of a confirmation message that the submitted electronic notice was delivered to the recipient.

If to Customer:

MethaneSAT, LLC
Attn: Cassandra Ely, Director
123 Mission St., 28 Fl
San Francisco, CA 94105
Phone: 415-902-1566
Email: cely@methanesat.org

If to Contractor:

Ball Aerospace & Technologies Corp.
Attn: Neil Shives, Contract Manager
1600 Commerce Street
Boulder, CO 80301
Phone: 303-939-4151
Email: nshives@ball.com

Section 22.2 Expenses.

Except as expressly provided in this Agreement, each of the Parties, and their respective Affiliates, will bear its own costs and expenses (including legal, accounting and investment banking fees and expenses) incurred in connection with this Agreement, whether or not such transactions are consummated.

Section 22.3 Assignment; Successors and Assigns.

Neither this Agreement, nor any of the rights, interests or obligations provided by this Agreement, may be assigned by either Party (whether by operation of law or otherwise) without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided, however, that: (i) either Party may assign this Agreement to any entity that acquires all or substantially all of such Party's assets; (ii) either Party may assign this Agreement pursuant to a change of control of such Party; and (iii) upon written notice to Contractor, Customer may assign this Agreement to an Affiliate of Customer. Subject to the preceding sentence, and except as otherwise expressly provided herein, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 22.4 Non-Solicitation.

During the Term of this Agreement and continuing for one (1) year after the Termination Date, neither Party shall directly or indirectly, for its own account or for the account of others, urge, induce, entice or in any manner whatsoever solicit any employee directly involved in the activities conducted pursuant to this Agreement to leave the employment of the other Party or any of its Affiliates. For avoidance of doubt, nothing in this Section 22.4 of this Agreement shall prohibit either Party from hiring an employee

of the other Party: (i) if an employee of a Party initiates contact with the other Party or any of its Affiliates with regard to possible employment; or (ii) through general solicitations of employment not specifically targeted at employees of a Party or any of its Affiliates, including responses to general advertisements.

Section 22.5 Amendment; Waiver.

This Agreement entered into by the Parties may be amended by a written instrument executed and delivered by Customer and Contractor. No agreement extending or waiving any provision of this Agreement will be valid or binding unless it is in writing and is executed and delivered by or on behalf of the Party against which it is sought to be enforced.

Section 22.6 Severability.

Whenever possible, each provision of this Agreement entered into by the Parties will be interpreted in such manner as to be effective and valid under Law, but if any provision of this Agreement is held to be prohibited by or invalid under Law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

Section 22.7 Survival.

The rights and obligations set forth in the following clauses shall survive for a period five (5) years following the completion, expiration, or termination of this Agreement:

ARTICLE I (Definitions)

ARTICLE V Section 5.4 (Title and Risk of Loss)

ARTICLE VI (Invoices; Payment Terms; Taxes)

ARTICLE VIII (Customer Responsibilities)

ARTICLE X Section 10.4 (Indemnification)

ARTICLE XIII (Intellectual Property)

ARTICLE XIV (Warranty)

ARTICLE XV (Confidential Information)

ARTICLE XVI (Term; Termination)

ARTICLE XIX (Applicable Laws)

ARTICLE XX (Consequential Damages; Limitation of Liability; Inter-Party Waiver of Liability for Launch)

ARTICLE XXI (Disputes; Governing Law)

ARTICLE XXII Section 22.4 (Non-Solicitation)

ARTICLE XXII Section 22.13 (Non-Recourse)

Section 22.8 Counterparts.

This Agreement entered into by the Parties may be executed by facsimile transmission or electronic mail (as a Portable Document Format (PDF) file) and in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party, it being understood that both Parties need not sign the same counterpart. Signatures delivered by facsimile transmission or electronic mail (as a Portable Document Format (PDF) file) to the other Party hereto shall have the same force and effect as any other delivery of a manually signed counterpart of this Agreement.

Section 22.9 Descriptive Headings.

The descriptive headings of this Agreement entered into by the Parties are inserted for convenience only and will not constitute a part of this Agreement.

Section 22.10 No Third-Party Beneficiaries.

This Agreement entered into by the Parties shall not confer any rights or remedies upon any Person or entity other than the Parties hereto and their respective successors and permitted assigns.

Section 22.11 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior and contemporaneous understandings, agreements or representations by or between the Parties, whether written or oral, with respect to the subject matter hereof.

Section 22.12 Exhibits.

The Exhibits attached to this Agreement are made a part of this Agreement as if set forth fully herein.

Section 22.13 Non-Recourse.

This Agreement entered into by the Parties may only be enforced against, and any claim or cause of action based upon, arising out of, or related to this Agreement may only be brought against, the entities that are expressly named as Parties hereto and their permitted successors and assigns and then only with respect to the specific obligations set forth herein or therein with respect to such Party. Except to the extent named a Party to this Agreement, or a successor or assign, no past, present or future director, officer, employee, incorporator, stockholder, agent, attorney or Affiliate of any of the foregoing will have any liability (whether in contract, tort, equity or otherwise) for any one or more of the representations, warranties, agreements or other obligations or liabilities of any one or more of Customer or Contractor under this Agreement (whether for indemnification or otherwise).

Section 22.14 Public Announcement.

The Parties will cooperate in the development and release of any press releases, advertising, publication, media, promotional or professional materials, or any other public announcement relating to this Agreement to be issued at such time as mutually agreed by the Parties. Neither Party will issue any

press release, advertising, publication, media, promotional or professional materials, or any other public announcement relating to the subject matter of this Agreement prior to such mutually agreed date without the prior written consent of the other Party, provided that either Party may make any public disclosure it believes in good faith is required by Law or any listing agreement concerning its publicly-traded securities, in which case the disclosing Party will advise the other Party, and seek the other Party's consent if practicable, prior to making such disclosure.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement on the date first written above.

CUSTOMER:

METHANESAT, LLC

By:  Digitally signed by Steven P. Hamburg
DN: cn=Steven P. Hamburg, o=MethaneSAT,
email=shamburg@methanesat.org, c=US
Date: 2019.09.19 09:29:40 -07'00'

Name: Steven P. Hamburg

Title: Executive Manager SATMamt I I C

CONTRACTOR:

BALL AEROSPACE & TECHNOLOGIES CORP.

By: 

Name: Makenzie Lystrup, Ph.D.

Title: Vice President and General Manager, Civil Space