**PAYLOAD SERVICES AGREEMENT BETWEEN**

**CELESTIS, INC. AND**

**XTRAORDINARY INNOVATIVE SPACE PARTNERSHIPS, INC. (XISP-Inc.)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Payload Services Agreement (the “Agreement”) is made and entered into this \_\_th day of \_\_\_\_\_, 2021 (“Effective Date”) by and between Celestis, Inc., a Texas corporation with its offices at 3801 Kirby Drive, Suite 540,

Houston, TX 77098 (hereinafter referred to as “Customer”) and Xtraordinary Innovative Space Partnerships, Inc., with its offices at 8012 Macarthur Boulevard, Cabin John, MD 20818-1608, U.S.A (hereinafter referred to as “XISP-Inc.”).

*W I T N E S S E T H THAT:*

WHEREAS, Customer desires to participate in XISP-Inc.’s “Alpha Cube Sat Mission”, the parameters and scope of services of which are set forth in the attached Exhibit B and incorporated by reference herein (“Alpha Cube Sat Scope of Services”), for the purpose of transporting Customer’s payload, (“Payload” or “Customer Payload”), to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ aboard XISP-Inc.’s Alpha Cube Sat (“Spacecraft”), subject to the terms and conditions hereof; and

WHEREAS, XISP-Inc. desires to transport Customer Payload to \_\_\_\_\_\_\_\_\_\_\_\_\_\_, and provide services as specified in the Alpha Cube Sat Scope of Services in Exhibit B, subject to the terms and conditions hereof;

NOW THEREFORE, the Parties hereto agree as follows:

# SECTION 1. DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms on attached Exhibit A.

# SECTION 2. RESPONSIBILITIES

* 1. **XISP-Inc. Responsibilities.** XISP-Inc. shall use commercially reasonable efforts (i) to arrange Launch Services for the Customer from a third party Launch Service Provider, as contemplated herein, and consistent with Exhibit B, and (ii) to perform payload integration, transportation, and delivery services as defined herein and described in the Alpha Cube Sat Scope of Services ((i) and (ii) collectively, “XISP-Inc. Services” or “Services”). Subject to Section 3.4, XISP-Inc. bears no responsibility for the performance or outcome of Launch Services, which are provided by and are the sole responsibility of the Launch Service Provider; however, XISP-Inc. shall use commercially reasonable efforts to communicate any known delays in, changes to, termination of, or failure of Launch Services to Customer. XISP-Inc. Services shall be considered complete upon the Intentional Ignition of the Launch Vehicle, if not. Additional XISP-Inc. Services may be provided only by mutual written agreement of the Parties.
	2. **Customer Responsibilities.** Customer shall provide XISP-Inc. with Customer’s Payload in accordance with the requirements set forth in the Alpha Cube Sat Scope of Services. Customer understands that XISP-Inc. will be under contract with the Launch Service Provider for Launch Services and that the XISP-Inc. Services provided under this Agreement are dependent upon and subordinate to the successful execution of contractual and performance obligations set forth in the agreement between XISP-Inc. and the Launch Service Provider. Customer understands and assumes responsibility for the significant risk of impact to its own customers and business if Launch Services and/or XISP-Inc. Services are not performed as expected.

# SECTION 3. SCHEDULE AND SERVICES

* 1. **Launch Date.** XISP-Inc.’s Alpha Cube Sat is manifested to be launched as part of the Geometric Energy Corporation Geometric-1 RideShare mission aboard a SpaceX Falcon 9 scheduled for launch no earlier than June 2022. Although it is XISP-Inc.’s intention to honor the flight dates once scheduled, there is always the possibility of flight postponement or cancellation.
	2. **Payload/Payload Option.** Customer agrees to purchase one-quarter kilogram (0.25 kg) of mass, consisting of pre-packaged human remains (“cremains”). Payload volume/packaging constraints will be supplied by XISP-Inc. once the mission integration analysis for the payload is complete. Customer certifies that the Payload is completely inert and has no support requirements from XISP-Inc. or the Launch Provider, and may be configured for ballast, radiation protection or other mission related objectives. The payload will become an integral part of the mission to be used for a number of purposes including but not necessarily limited to radiation shielding, thermal management, and spacecraft balance.Customer will retain the option to purchase an additional one-quarter kilogram (0.25 kg) up to Launch minus nine (9) months at the same prices and terms as set forth for the original Payload.
	3. **Delivery.** Customer shall deliver a test version of the Payload to XISP-Inc. no later than the later of (a) \_\_\_\_\_\_\_\_\_\_ (\_\_\_) days before Launch Date, or (b) \_\_ days after XISP-Inc. notifies Customer in writing of the confirmed Launch Date, in accordance with the specifications set forth in the Alpha Cube Sat Scope of Services. The test version shall be the same size and form factor as the final version of the Payload. Customer will send to XISP-Inc. the final version of the Payload no later than \_\_ days prior to Launch Date.
	4. **Payload Specific Problems.** Customer acknowledges that: (a) delay in the delivery of the Payload by Customer, (b) non-conformance of the Payload to the specifications set forth in the Alpha Cube Sat Scope of Services, and (c) Customer’s failure to comply with the terms of this Agreement or Applicable Law in any material aspects may prevent the launch of the Payload and, unless expressly specified herein, neither XISP-Inc. nor the Launch Service Provider shall be liable for any expenses, liabilities, costs or damages incurred by Customer as a result of the failure to launch the Customer’s Payload. In such case, XISP-Inc. may proceed to conduct the Launch at its discretion and retain all amounts paid by Customer, without further obligation or liability to Customer or by Customer to XISP-Inc.

# SECTION 4. PRICE, PAYMENT AND TAXES

* 1. **Price.** The Firm Fixed Price (“FFP”) for XISP-Inc. Services shall be Two Hundred Thousand U.S. Dollars ($200,000.00) per 0.25 kg. The Customer shall pay XISP-Inc. the Contract Price in four (4) installments in accordance with the following schedule, and subject to Section 4.2 hereunder. All payments are considered fully earned by XISP-Inc, on receipt and are not refundable, except as provided for herein.

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| **Installment**1 | **Amount**$20,000 (10% of FFP) | **Due Date** Five days after Effective Date  |
| 2 | $40,000 (20% of FFP) | Upon successful completion of ACS Critical Design Review (CDR) as certified by XISP-Inc.  |
| 3 | $100,000 (50% of FFP) | Upon successful completion of spacecraft integration and delivery to the Geometric-1 Launch Integration Contractor Maverick Space |
| 4 | $40,000 (20% of FFP) | Upon “Mission Success,” defined as the Alpha Cubesat traveling beyond 250,000 miles from Earth as certified in accordance with the NASA CubeQuest Challenge Deep Space Derby rules or such other measures deemed mutually acceptable to the parties to this agreement. |
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* 1. **Late Fees.** Any payment not received by the due date due to the Customer’s failure set forth herein shall be subject to late fees at a rate equal to the lesser of: (i) one twentieth of one percent (0.05%) of the outstanding amount per week; or (ii) the maximum amount permitted by applicable law. Customer shall remit all late fees to XISP-Inc. within ten (10) days following written request from XISP-Inc.
	2. **Taxes.** The price for the services under this Agreement excludes all taxes, duties, transportation, insurance and all other costs and charges associated with the performance of the XISP-Inc. Services provided. Customer shall be responsible for payment of all taxes (other than taxes on the income of XISP-Inc.) and duties which may be required and which become due by reason of performance of the services provided under this Agreement. Customer shall comply with all requirements of such laws, including payment of any interest or penalties related to or arising from such taxes and duties. Should XISP-Inc. be subject to the payment of any taxes or tariffs directly related to the deliveries to be made within the scope of this Agreement, the corresponding amounts will be separately invoiced and added to the Agreement.

# SECTION 5. TERM

The term of this Agreement shall be for the period commencing with the Effective Date and ending one month after Mission Success, unless terminated earlier by one of the Parties.

# SECTION 6. TERMINATION

* 1. **Mutual Agreement.** This Agreement may be terminated by mutual consent of the Parties in writing signed by duly authorized representatives of each Party.
	2. **Automatic Termination Due to Rejection by Launch Services Provider.** In the event the Customer Payload is removed from the Launch Vehicle by the Launch Service Provider for reasons other than those set forth in Section 3.3 above, XISP-Inc. shall promptly refund to Customer all amounts paid by Customer hereunder, and the Agreement shall be automatically terminated.
	3. **Customer’s Right to Terminate.** Provided Customer is not then in default of a material provision of this Agreement, Customer may terminate this Agreement upon thirty (30) days of prior written notice to XISP-Inc., as follows:
		1. **Termination for Convenience.** At Customer’s convenience and for any reason, subject to a termination for convenience fee retained by XISP-Inc. equal to one hundred percent (100%) of all amounts paid by Customer under this Agreement, which amounts XISP-Inc. shall retain without further obligation or liability to Customer.
		2. **Termination for Cause.** In the event of a material breach by XISP-Inc. of its obligations under this Agreement, and if after having been given written notice of the same by Customer, XISP-Inc. fails to cure such material breach within ninety (90) days of receipt of such notice, Customer shall have the right to obtain a refund of all payments made under this Agreement in connection with the affected XISP-Inc. Services, such right to be elected by Customer in writing and within thirty (30) days following the conclusion of such ninety (90) day period.
		3. **Termination for Mission Delay.** In the event that XISP-Inc. fails to pass CDR by \_\_\_\_\_[date], or the Launch is delayed past \_\_\_\_\_\_ [date], Customer shall have the right to Terminate this Agreement and XISP-Inc. agrees to refund ninety percent (90%) of all money paid by Customer up to the date of Termination.

# XISP-Inc.’s Right to Terminate.

* + 1. **Termination for Convenience**. At XISP-Inc.’s convenience and for any reason, XISP-Inc. may terminate this Agreement provided XISP-Inc. returns all monies paid to XISP-Inc. by the Customer through the date of termination.
		2. **Termination for Cause**. Provided XISP-Inc. is not then in default of a material provision of this Agreement, XISP-Inc. shall have the right to terminate this Agreement and retain all payments made and all payments owed by Customer hereunder without further obligation or liability to Customer, if Customer fails to comply with any material provision of this Agreement (including any payment obligation hereunder), after Customer is given written notice of non-compliance and: (i) a thirty (30) day period to cure such non-compliance, in the event the non-compliance involves a payment obligation; or (ii) a ninety (90) day period to cure such non-compliance, in the event the non-compliance does not involve a payment obligation.
	1. **Exclusive Remedy.** The rights and remedies granted to the Parties under this Section 6 shall constitute the Parties’ sole and exclusive remedy for termination, which occurs in accordance with the terms of this Section 6.

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# SECTION 7. TITLE, SHIPPING AND RISK OF LOSS

* 1. **Title.** Title to the Customer’s Payload shall remain with the Customer throughout the term of the agreement and shall never pass to XISP-Inc.
	2. **Packaging and Shipping.** Customer shall be solely liable for packing and shipping Customer’s Payload to XISP-Inc. and shall be liable for all costs associated therewith. Customer Payload shall be packed and shipped in accordance with the requirements of this Agreement and all applicable laws, including but not limited to, U.S. Department of Transportation regulations and customary commercial practices. It is the Customer’s sole responsibility to obtain any required permits, licenses, transport insurance, authorizations and shipment documents necessary for the transport of the Customer Payload. It is the Customer’s sole responsibility to pay any applicable duties, fees or taxes associated with shipment of the Customer Payload.

# SECTION 8. LICENSES AND COMPLIANACE WITH GOVERNMENT REQUIREMENTS

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* 1. **Licenses, Permits and Clearances.** Each Party (or its proxy) shall be responsible for obtaining all licenses, authorizations, clearances, approvals and permits (“Licenses”) necessary to carry out its obligations under this Agreement. Each Party agrees to provide reasonable assistance to the other Party as necessary to obtain such Licenses. Customer shall be ultimately responsible for obtaining all Licenses required to launch and operate the Payload, and agrees to provide all necessary cooperation and documentation necessary for XISP-Inc. and Launch Service Provider to obtain any applicable Licenses in order to carry out XISP-Inc. Services and Launch Services, respectively. XISP-Inc. and Customer agree to provide each other with any information and execute any documentation needed to obtain such Licenses, pursuant to applicable U.S. laws and regulations (including the AECA and the CSLA). In the event that either Party is unable to obtain a License as a result of the actions or inactions of the other Party, such actions or inactions of the other Party shall be deemed to be a material breach of this Agreement by that Party.

In addition, XISP-Inc. shall work with the Launch Service Provider to seek Federal Aviation Administration (FAA) Office of Commercial Space Transportation (AST) approval for the inclusion of Customer’s Payload on the Launch Vehicle. If, for whatever reason, Launch Service Provider and/or XISP-Inc. are not successful in securing AST approval or an FAA license or permit for the inclusion of Customer’s Payload, the Payload shall not be flown, XISP-Inc. shall retain all amounts paid by Customer under this Agreement, and the Agreement shall be terminated, without further obligation or liability to Customer.

* 1. **Compliance with Government Requirements.** Customer shall comply with all national, federal, state and local laws and regulations, and all Licenses issued in connection with the performance of this Agreement.

# SECTION 9. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

* 1. **Intellectual Property.** Each Party shall retain ownership of any Inventions or other intellectual property developed by the Party in the performance of this Agreement. To the extent applicable, each Party will treat as proprietary the other party’s Inventions and intellectual property, and not disclose them, in whole or in part, to any outside party. Each Party shall retain the rights to the Inventions and other intellectual property it holds as of the Effective Date. The Parties do not intend to jointly develop any Inventions hereunder.
	2. **Confidential Information.** XISP-Inc. and Customer each agree to retain in confidence all Proprietary Information of the other Party. Each Party agrees to: (a) preserve and protect the confidentiality of the other Party’s Proprietary Information; (b) refrain from using the other Party’s Proprietary Information, except as necessary for the performance of its obligations under this Agreement; (c) disclose the Proprietary Information only to its directors, officers, employees and agents as is reasonably required in connection with the exercise of such Party’s rights and performance of its obligations under this Agreement and subject to a binding non-disclosure agreement that is at least as protective as this Section 9; and (d) not disclose Proprietary Information to any third party, provided, however, that each Party may disclose Proprietary Information of the other Party that is: (i) already in the public domain through no fault of the disclosing Party; (ii) discovered or created by the receiving Party without reference to the Proprietary Information of the disclosing Party; (iii) otherwise made known to the receiving Party through no wrongful conduct of the receiving Party or the entity providing the information to the receiving Party; or (iv) required to be disclosed by judicial or other governmental action, order or regulation. The confidentiality obligations of this Section 9 shall survive the expiration or termination of this Agreement for a period of three (3) years.

**9.2 Publicity**. The Parties will work together in good faith to define and implement a publicity strategy that is beneficial to all parties. XISP-Inc would be pleased to cooperate and collaborate with Celestis, Inc to find a means of identifying the ACS spacecraft and its memorial payload that will be incorporated in the ACS spacecraft and can be a part of the Celestis, Inc. memorial program as deemed appropriate.

XISP-Inc would be pleased to cooperate and collaborate with Celestis, Inc to find a means of signifying mission success that can be a part of the Celestis, Inc. memorial program as deemed appropriate.

Notwithstanding the foregoing, XISP-Inc. may make reference to the Agreement and disclose the nature and physical aspects of Customer’s Payload as needed in order to obtain (i) necessary approvals, including without restriction, FAA approval, other regulatory approvals, Launch Site approval, consent of the Launch Service Provider, and (ii) any necessary technical solutions for the inclusion of Customer’s Payload in the Launch Vehicle.

# SECTION 10. DESTRUCTION OF THE LAUNCH VEHICLE AND PAYLOAD.

The Launch Range safety official is authorized to destroy the Launch Vehicle and Payload, without liability to either Party or either Party’s Related Third Parties, if, in the Launch Range safety official’s sole discretion, such destruction is necessary to prevent personal injury or damage to property.

Customer agrees that XISP-Inc. shall be held harmless for decisions and/or actions taken by the Launch Service Provider and/or XISP-Inc., including but not limited to the following: (i) Launch Schedule adjustments or postponements within one hundred twenty (120) days of the Launch Period,

(ii) Performance of the Launch even though the Customer Payload is defective, (iii) De-mounting of the Payload and/or its replacement with a weighted object having similar mass and balance to the Payload (“Mass Dummy”), (iv) Destruction of the Customer Payload if after ignition this action is deemed necessary by the Launch Service Provider, or (v) Undertakings made by, or as consequence of direct communication between Customer and the Launch Service Provider without XISP-Inc. consent.

# SECTION 11. INSURANCE

* 1. **Launch Insurance.** XISP-Inc. is not responsible for obtaining third party launch liability insurance, but will ascertain that the Launch Service Provider has satisfied (at no cost to Customer) third party launch liability insurance requirements in the amounts and consistent with applicable United States federal regulations and statutes governing commercial space launch. XISP-Inc. will further ascertain that the Launch Service Provider has named as additional insureds (among others), XISP-Inc., XISP-Inc.’s Related Third Parties directly involved in Launch Activities, Customer, and Customer’s Related Third Parties directly involved in Launch Activities. Such insurance shall cover death, bodily injury, property loss and damage to third parties for such launch activities as are prescribed by the CSLA and the terms of the launch license issued to the Launch Service Provider pursuant thereto (“Launch Activities”). Third-party launch liability insurance does not cover any loss or damage to the Payload or any Customer property, equipment, or personnel (or the property, equipment, or personnel of Customer’s Related Third Parties). The additional purchase of insurance coverage, including but not limited to insurance coverage for the Payload, Customer property, equipment, and personnel (and the property, equipment, or personnel of Customer’s Related Third Parties) is the sole responsibility of and expense to be assumed by the Customer. If such additional insurance coverage is purchased by Customer prior to the Launch Date, such insurance shall contain an express waiver of subrogation as to the Launch Service Provider, XISP-Inc. and their Related Third Parties. Copies of any such Customer policies shall be provided to XISP-Inc. upon request.
	2. **Excess Third Party Liability for Launch Activities.** To the extent not covered by third party launch liability insurance or eligible for coverage by the United States Government pursuant to the CSLA XISP-Inc. shall not be liable to third parties for any death, injury, loss or damage arising from the Launch Activities caused by the Launch Service Provider or their respective equipment (including the Launch Vehicle, or parts or components thereof), and Customer shall be exclusively liable to third parties for any death, injury, loss or damage arising from the Launch activities caused by Customer or its equipment (including the Payload or parts or components thereof).

**11.3 Insurance Cooperation.** Subject to compliance with applicable law, XISP-Inc. shall cooperate with Customer’s efforts to obtain and maintain, and to file and settle any claims under launch insurance for the Payload, including without limitation, preparing an industry-standard insurance briefing package, responding to insurers’ questions, delivering requested information regarding the Spacecraft, Launch Vehicle and the Launch Range, conducting insurance briefings and facilitating site inspections as required to obtain and maintain such insurance.

# SECTION 12. CROSS-WAIVERS; INDEMNIFICATION

* 1. **Waivers**. Each Party hereby agrees not to sue or otherwise bring a claim against the other Party, such Party’s Related Third Parties, the Launch Service Provider, the Launch Service Provider’s Related Third Parties, any Secondary Payload Customers or their Related Third Parties, and/or the

U.S. Government or its contractors or subcontractors for any injury, death, property loss or damage (including loss of or damage to the Payload, Spacecraft, Secondary Payloads, Launch Vehicle, or other financial loss), sustained by it or its employees, officers, directors or agents, arising directly out of activities included in the performance of the Launch Services and XISP-Inc. Services contemplated by this Agreement.

* 1. **Extension of Waivers.** Each Party hereby agrees to extend the waiver of claims and release of liability herein to their respective contractors, subcontractors and insurers, requiring them to waive (in writing) the right to sue or otherwise bring a claim against the other Party or that Party’s Related Third Parties, the Launch Service Provider, the Launch Service Provider’s Related Third Parties, any Secondary Payload Customers or their Related Third Parties, and/or the U.S. Government or its contractors or subcontractors for any injury, death, property loss or damage (including loss of or damage to the Payload, Spacecraft, Secondary Payloads, Launch Vehicle, or other financial loss) sustained by them or any of their employees, officers, directors or agents, arising in any manner out of or in connection with activities relating to the performance of this Agreement.
	2. **Indemnification.** Each Party (“Indemnifying Party”) hereby agrees that it shall indemnify and hold harmless the other Party (“Indemnified Party”) from and against any liability or expense, including attorneys’ fees, resulting from (i) any suit or claim by the Indemnifying Party’s Related Third Parties for any injury, death, property loss or damage (including loss of or damage to the Customer Payload, Spacecraft, Secondary Payloads, Launch Vehicle, or other financial loss) sustained by such Related Third Party or any of its employees, officers, directors or agents, arising in any manner out of or in connection with activities relating to the performance of this Agreement; and (ii) any suit or claim by a third party arising out of or related to an allegation that the design, manufacture or operation of the Spacecraft (by XISP-Inc. and its Related Third Parties) or Payload (by Customer and its Related Third Parties), or any corresponding support equipment, infringes any third party's intellectual property rights.

The Indemnified Party agrees to notify the Indemnifying Party promptly in writing of any such claim, and the Indemnifying Party has the right to control the defense of any such claim and all related settlement negotiations, provided the defense shall be reasonably estimated to minimize the liability of the Indemnifying Party hereunder to the extent consistent with the legitimate business interests of the Indemnified Party. The Indemnifying Party shall have full rights to dispose of such action and to enter into any monetary compromise or settlement; provided, however, that Indemnifying Party shall not settle or compromise any claims involving the action insofar as they relate to, or arise out of, the same facts as those which give rise to the claim for which indemnification is due hereunder without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

The Parties shall cooperate fully with one another in connection with the defense, compromise, or settlement of any such claim, including without limitation, making available to the other all pertinent information and witnesses within its own control.

* 1. **Applicability.** The obligation to waive claims shall apply to the Parties’ contractors, subcontractors and insurers (at every tier) that are involved in activities relating to the performance of this Agreement. The waivers shall apply regardless of the theory of liability, whether based in contract, tort, equity or otherwise, including negligence, product liability, strict liability, or any other theory of liability. Each Party agrees to obtain insurance as it deems necessary to cover death, injury, loss or damage for which it has waived the right to sue or bring a claim against the other Party, and each Party agrees to obtain a waiver of subrogation rights from any insurer providing such insurance coverage. Nothing in this Section 12 shall preclude either Party from suing or otherwise bringing a claim against its own Related Third Parties. The Parties agree to memorialize certain of the rights and obligations described in this Section 12 in an agreement advised or required by the appropriate U.S. regulatory authorities, to include execution of the form of cross-waivers referenced in attached Exhibit C.

# SECTION 13. LIMITATION OF LIABILITY

* 1. **General.** Spacecraft, equipment, facilities, technical information, and XISP-Inc. Services provided under this Agreement are provided “as is”. XISP-Inc. makes no express or implied warranty as to the condition of such Spacecraft, equipment, facilities, technical information, or services, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting product, or that the Spacecraft, equipment, facilities, technical information, or services provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately owned rights of others.
	2. **NO CONSEQUENTIAL DAMAGES.** NEITHER XISP-INC., CUSTOMER, THE LAUNCH SERVICE PROVIDER, NOR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, ASSIGNEES, SUCCESSORS IN INTEREST, CONTRACTORS OR SUBCONTRACTORS AT ANY TIER (INCLUDING SUPPLIERS OF ANY KIND), AGENTS OR CUSTOMERS (COLLECTIVELY HEREINAFTER REFERRED TO AS “AFFILIATES”) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OTHER DAMAGES RESULTING FROM THE USE OF ANY OF THE GOODS OR SERVICES TO BE PROVIDED HEREUNDER, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR LOST REVENUES OR PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, EQUITY OR OTHERWISE, INCLUDING NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY.
	3. **LIMITATION OF LIABILITY.** XISP-INC.’S TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT HOWSOEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, EQUITY OR OTHERWISE, INCLUDING NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, SHALL IN NO EVENT EXCEED THE AMOUNTS RECEIVED BY XISP-INC. FROM CUSTOMER FOR THE XISP-INC. SERVICES DURING WHICH SUCH LIABILITY AROSE. CUSTOMER’S TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT HOWSOEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, EQUITY OR OTHERWISE, INCLUDING NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, SHALL IN NO EVENT EXCEED THE FFP FOR THE XISP-INC. SERVICES DURING WHICH SUCH LIABILITY AROSE. CUSTOMER SHALL BE EXCLUSIVELY LIABLE FOR ANY DAMAGE TO THE PAYLOAD AND PAYLOAD-RELATED EQUIPMENT FROM MANUFACTURE THROUGH DELIVERY, INTEGRATION, LAUNCH, ON-ORBIT, LANDING AND/OR ROVING OPERATIONS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 12.1, CUSTOMER SHALL BE RESPONSIBLE FOR PROCURING ALL INSURANCES RELATED TO THE PAYLOAD (WITH EXPRESS WAIVERS OF SUBROGATION AS TO THE LAUNCH SERVICE PROVIDER, XISP-INC. AND ITS RELATED THIRD PARTIES).
	4. **DISCLAIMER OF WARRANTIES.** NEITHER XISP-INC., THE CUSTOMER, THE LAUNCH SERVICE PROVIDER, NOR ANY OF THEIR AFFILIATES SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES AND GOODS TO BE PROVIDED HEREUNDER. XISP-INC., THE LAUNCH SERVICE PROVIDER, AND THEIR AFFILIATES HEREBY DISCLAIM WITH RESPECT TO CUSTOMER, ITS AGENTS AND CUSTOMERS UNDER ANY CUSTOMER CONTRACTS, AND CUSTOMER EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF XISP-INC., THE LAUNCH SERVICE PROVIDER, AND THEIR AFFILIATES AND ALL RIGHTS, CLAIMS AND REMEDIES AGAINST XISP-INC., THE LAUNCH SERVICE PROVIDER, AND THEIR AFFILIATES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY FAILURE, DELAY IN DEPLOYMENT, CANCELLATION OF, NON-CONFORMANCE OR DEFECT IN THE LAUNCH, SPACEFLIGHT OR OPERATIONS OR ANY PRODUCTS OR SERVICES PROVIDED BY XISP-INC. AND/OR THE LAUNCH SERVICE PROVIDER, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY UNDER ANY TORT, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, NEGLIGENCE (INCLUDING ANY NEGLIGENCE OF XISP-INC., THE LAUNCH SERVICE PROVIDER, OR THEIR AFFILIATES), STRICT LIABILITY, AGREEMENT OR OTHER LEGAL OR EQUITABLE THEORY; AND (D) AND OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. NO REPRESENTATION OR AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE, WHETHER OR NOT CONTAINED IN THIS CONTRACT, SHALL BE DEEMED TO BE A WARRANTY BY XISP-INC., THE LAUNCH SERVICE PROVIDER, OR THEIR AFFILIATES.

Customer shall execute a contract with each of its agents or customers that contains the following language, with XISP-Inc. named: NEITHER XISP-INC., THE LAUNCH SERVICE PROVIDER, NOR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, ASSIGNEES, SUCCESSORS IN INTEREST, CONTRACTORS OR SUBCONTRACTORS AT ANY TIER (INCLUDING SUPPLIERS OF ANY KIND), AGENTS OR CUSTOMERS (COLLECTIVELY HEREINAFTER REFERRED TO AS “AFFILIATES”) SHALL BE LIABLE FOR ANY DAMAGES WHATSOEVER INCURRED BY ANY PARTY RELATING TO ANY LAUNCH FAILURE OR DELAY, INCLUDING ANY LOSS OR DAMAGE TO CUSTOMER’S PAYLOAD. NEITHER XISP-INC., THE LAUNCH SERVICE PROVIDER, NOR ANY OF THEIR AFFILIATES SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES RESULTING FROM THE USE OF ANY OF THE GOODS OR SERVICES TO BE PROVIDED HEREUNDER. NEITHER XISP-INC., THE LAUNCH SERVICE PROVIDER, NOR ANY OF THEIR AFFILIATES SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES AND GOODS TO BE PROVIDED HEREUNDER. XISP-INC., THE LAUNCH SERVICE PROVIDER, THEIR AFFILIATES, HEREBY DISCLAIM WITH RESPECT TO THE CUSTOMER AND EACH OF SUCH CUSTOMERS EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF XISP-INC., THE LAUNCH SERVICE PROVIDER, AND THEIR AFFILIATES AND CUSTOMERS AND ALL RIGHTS, CLAIMS AND REMEDIES AGAINST XISP-INC., THE LAUNCH SERVICE PROVIDER, AND THEIR AFFILIATES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY FAILURE, DELAY IN DEPLOYMENT, CANCELLATION OF, NON-CONFORMANCE OR DEFECT IN THE LAUNCH, SPACEFLIGHT OR OPERATIONS OR ANY PRODUCTS OR SERVICES PROVIDED BY XISP-INC. AND/OR THE LAUNCH SERVICE PROVIDER, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY UNDER ANY TORT, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, NEGLIGENCE (INCLUDING ANY NEGLIGENCE OF XISP-INC., THE LAUNCH SERVICE PROVIDER, OR THEIR AFFILIATES), STRICT LIABILITY, AGREEMENT OR OTHER LEGAL OR EQUITABLE THEORY; AND (D) OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. NO REPRESENTATION OR AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE, WHETHER OR NOT CONTAINED IN THIS CONTRACT, SHALL BE DEEMED TO BE A WARRANTY BY XISP-INC., THE LAUNCH SERVICE PROVIDER, OR THEIR AFFILIATES.

* 1. **Application.** The limitations set forth in this Section 13 shall apply even if the Parties have been advised of the possibility of such losses or damages, and notwithstanding any failure of essential purpose of any limited remedy set forth in this Agreement. The Parties acknowledge that the amounts payable hereunder are based in part on the limitations set forth in this Section 13 and that such limitations are a bargained-for and essential part of this Agreement.

# SECTION 14. POINTS OF CONTACT

**14.1 Correspondence/Notices.** All notices required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficient in all respects if sent by e-mail, mail or courier, addressed as follows (or to such other addressee as notified in writing to the other Party):

If to XISP-Inc.:

Xtraordinary Innovative Space Partnerships, Inc. - XISP-Inc.

8012 Macarthur Boulevard,

Cabin John, MD 20818-1608

Attention: Gary P. Barnhard (301) 229-8012 Voice

(301) 320-5025 Fax

(301) 509-0848 Cell

Email: gary.barnhard@xisp-inc.com

 If to the Customer:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The effective date of notice shall be the date upon which any communication is hand-delivered or, if such communication is sent by mail or by electronic transmission, the date upon which such communication is delivered. For purposes of binding each Party under provisions of this Agreement, the Authorized Representative of XISP-Inc. shall be Gary Barnhard and the Authorized Representative of Customer shall be Charles M. Chafer, each of whom shall have the authority to bind the Party they represent. Each Party may change or add to its list of Authorized Representatives by giving notice to the other Party (signed by the notifying Party’s then-current Authorized Representative).

**14.3 Communication with Launch Service Provider.** XISP-Inc. shall act on behalf of Customer in the arrangement of Launch Services supplied by the Launch Service Provider for the launch under contract, or any rescheduling thereof. This includes all correspondence, co-ordination and dealings with the Launch Service Provider necessary in order to perform launch services in the Agreement. Customer accepts that all necessary correspondence with the Launch Service Provider for Customer Payload on this specific Launch or any rescheduling thereof will be done through XISP-Inc., and Customer and its associates will keep from direct communication with the Launch Service Provider, unless written consent from XISP-Inc. is requested and granted beforehand. Direct communication between Customer and the Launch Service Provider regarding Customer Payload on this Launch or any rescheduling thereof, without the consent of XISP-Inc., falls outside the scope of the Agreement, and XISP-Inc. is not accountable for the consequence of such undertakings.

# SECTION 15. MISCELLANEOUS

!

* 1. **Non-Exclusivity.** This Agreement is not exclusive. XISP-Inc. intends to enter into similar Agreements for the same or similar purpose with other private or public entities, subject to Section 2.3.
	2. **Confidentiality.** Customer and XISP-Inc. agree to maintain the confidentiality of this Agreement including its pricing, terms and any incentives (“Confidential Terms”) unless disclosure is required by law. Customer shall not post or publicly display these Confidential Terms without the prior written consent of XISP-Inc.
	3. **Complete Agreement.** This Agreement, including the exhibits and other provisions incorporated herein, constitutes the entire agreement between the Parties and merges and supersedes all previous agreements, communications and representations, oral or written, express or implied, with respect to the subject matter hereof.

Customer acknowledges that it has thoroughly examined all schedules, exhibits, specifications, drawings, data, information and riders which may be attached hereto and referenced herein as part of this Agreement. Customer further acknowledges that it has available to it all required specifications, drawings and data incorporated in this Agreement, and that such specifications, drawings and data are complete and adequate to enable Customer to perform all work herein in accordance with all technical specifications, requirements documents and delivery schedules set forth herein.

Either the Customer or XISP-Inc. may propose changes to the Alpha Cube Sat Scope of Services, provided that no such changes shall be executed unless the Customer and XISP-Inc. have agreed in writing to the change and to any resulting adjustment in the FFP. Nothing in this Agreement shall be modified without a written modification executed by both Parties.

* 1. **Disputes.** Both parties to this agreement acknowledge that actions taken under this agreement constitute a good faith effort to enable the successful accomplishment of the ACS mission including the delivery of the Celestis payload.  If events occur which interfere with the same, the parties to this agreement agree to negotiate an amicable solution if one can be found, or if necessary to suspend and obviate any further execution of this agreement.In the event a dispute arising under the Agreement cannot be resolved, this Agreement and its performance by the Parties shall be governed by and construed in accordance with the laws of the State of Texas, U.S.A., without regard to provisions on the conflicts of laws. The provisions of the United Nations Convention for the International Sale of Goods shall not be applicable to this Agreement. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be litigated exclusively in the State and Federal courts located in the State of Texas, U.S.A. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature. Each Party hereby waives any right it may have to assert the doctrine of forum non conveniens, to object to venue with respect to any proceeding brought in accordance with this paragraph, or to assert any defense of sovereign immunity in any legal action, suit, proceeding or other claim arising under this Agreement.

The Parties further stipulate that the State and Federal courts located in Texas shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. Any final judgment rendered against a Party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law. In the event that either party must resort to legal action to enforce its rights under this Agreement, the prevailing party shall be entitled to all its attorneys' fees, and any other costs incurred.

* 1. **Relationship of the Parties.** This Agreement, and all work performed hereunder, shall not cause or imply that there exists between the Parties hereto any partnership, joint venture, or other combined business organization, and the respective rights and obligations of the Parties shall be only those expressly set forth here. Neither Party has any authority hereunder to assume or create any obligation or responsibility, express or implied on behalf of, or in the name of, the other Party, or to bind the other Party in any way whatsoever.
	2. **Employees.** It is understood and agreed that the employees furnished by XISP-Inc. and Customer to perform the work hereunder shall be deemed to be XISP-Inc. and Customer’s employees exclusively; that said employees shall be paid by each party separately for all services in connection with this Agreement and that XISP-Inc. and Customer separately shall be responsible for all obligations and reports covering social security, employment insurance, workers’ compensation, income tax and other reports and deductions required by State or Federal law.
	3. **Order of Precedence.** The following attachments are incorporated into this Agreement by reference and shall be an integral part of this Agreement: (a) Exhibit A, Defined Terms; (b) Exhibit B, Alpha Cube Sat Scope of Services; and (c) Exhibit C, Form of Cross-Waiver. In the event of conflict between the terms and conditions of this Agreement and any of its attachments, the terms and conditions of this Agreement shall govern. In the event of a conflict among the attachments, the sequence shall be as follows, in descending order of precedence: (a) Exhibit A, Defined Terms; (b) Exhibit C, Form of Cross-Waiver; and (c) Exhibit B, Alpha Cube Sat Scope of Services.
	4. **Severability.** The invalidity, in whole or in part, of any term herein shall not affect the validity or enforceability of any other provision herein. If any terms of this agreement are declared or found to be illegal, unenforceable or void, the Parties shall negotiate in good faith to agree upon a substitute term that is legal and enforceable and as nearly as possible consistent with the intentions underlying the original term. If the remainder of this agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be valid and enforceable.
	5. **Survival.** The following clauses shall survive completion of and/or termination, in any manner whatsoever, of this Agreement:

|  |  |
| --- | --- |
| **Clause Reference** | **Clause Title** |
| 5 | Term |
| 6 | Termination |
| 8 | Licenses and Compliance with Government Regulations |
| 9 | Intellectual Property and Confidential Information |
| 11 | Insurance |
| 12 | Cross-Waivers; Indemnification |
| 13 | Limitation of Liability |
| 15 | Miscellaneous |

* 1. **Assignment.** Subject to compliance with applicable law, either Party may assign, delegate or otherwise transfer this Agreement, or any rights or obligations under this Agreement, to any successor by way of merger, acquisition or sale of all or substantially all of the assets relating to the performance of this Agreement. XISP-Inc. or its successor may also assign all or part of the right to receive payments under this Agreement. Any assignment, delegation, or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the Parties’ respective successors and permitted assigns.
	2. **Execution.** This Agreement may be executed in several counterparts, including by facsimile or other electronic means, each of which may be deemed an original, and all of which together shall constitute a single instrument. The Parties agree that if this Agreement is transmitted electronically, neither party will contest the validity of this Agreement or any attachment thereto, on the basis that this Agreement contains an electronic signature.
	3. **Waiver.** The failure of either Party to exercise any right granted in this Agreement or to require the performance of any term of this Agreement (or the waiver by either Party of any breach of this Agreement) shall not prevent a subsequent exercise or enforcement of, or be deemed a waiver of any subsequent breach of, the same or any other term of this Agreement.

[Signature Page to Follow]

**IN WITNESS WHEREOF,** the Parties to this Agreement have caused this Agreement to be executed as of the date and year set forth above.

# Xtraordinary Innovative Space Partnerships, Inc. CELESTIS, INC.

By: By:

Name: Gary Pearce Barnhard, CEO Name: Charles M. Chafer

Date:

Date:

# EXHIBIT A – DEFINED TERMS

“***AECA***” means the Arms Export Control Act of 1976, as amended, 22 U.S.C. § 2778, and the regulations promulgated thereunder; including: ITAR and the regulations for the Importation of Arms, Ammunition and Implements of War, 27 C.F.R. Part 447.

“***Agreement***” shall have the meaning set forth in the introductory paragraph.

***“Announcement”*** shall have the meaning set forth in Section 4.1 of the Agreement.

“***Applicable Law***” shall mean any state, federal, agency laws including but not limited to FAA, FCC, NASA and NOAA licensing requirements, and EAR and ITAR regulations, as well as intergovernmental treaties, such as the Convention on Registration of Objects Launched into Outer Space, open for signature on January 14, 1975.

“***XISP-Inc. Services***” means those services described in the Alpha Cube Sat Scope of Services to be performed by XISP-Inc. Services do not include, and XISP-Inc. is not responsible for Launch Services, which are provided by, and are the sole responsibility of the Launch Service Provider.

“***XISP-Inc.***” shall have the meaning set forth in the introductory paragraph.

***“Base Exchange Rate*** “shall have the meaning set forth in Section 4.7 of the Agreement.

“***CSLA***” means the Commercial Space Launch Act of 1988, as amended, 49 U.S.C. §§ 70101-70121 and the regulations issued pursuant thereto, including: the Commercial Space Transportation Regulations, 14 C.F.R. Parts 400-460.

“***Customer***” shall have the meaning set forth in the introductory paragraph.

“***EAR***” means the Export Administration Regulations administered by the Bureau of Industry and Security, U.S. Department of Commerce, 15 C.F.R. Parts 730-744, in effect under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707, pursuant to Executive Order 13222 of August 17, 2001.

***“Exchange Rate”*** shall have the meaning set forth in Section 4.7 of the Agreement.

***“FFP”*** shall have the meaning set forth in Section 4.1 of the Agreement.

“***Intentional Ignition***” means when the ignition command is given causing ignition of the first stage engines of the Launch Vehicle.

“***Integration Services***” means those services described in the Alpha Cube Sat Scope of Services to be performed by XISP-Inc.

“***Inventions***” mean all ideas, designs, concepts, techniques, inventions, discoveries, works of authorship, modifications, improvements, or derivative works, regardless of patentability.

“***ITAR***” means the International Traffic in Arms Regulations administered by the Directorate of Defense Trade Controls, U.S. Department of State, 22 C.F.R. Parts 120-130, pursuant to the AECA.

“***Launch***” means Intentional Ignition, for the purpose of Payload carriage followed by either (a) Lift-Off or (b) Launch Failure.

“***Launch Activities***” shall have the meaning set forth in Section 11 of the Agreement. “***Launch Date***” shall have the meaning set forth in Section 3.1 of the Agreement.

“***Launch Failure***” means that, due to causes primarily attributable to the Launch Vehicle and Launch Vehicle-related events that occur at any time from Intentional Ignition until separation of the Primary and Secondary Payloads from the Launch Vehicle, the Payload is destroyed, permanently lost or unable to be physically separated from the Launch Vehicle.

“***Launch Range***” means the space flight operations center with jurisdiction over the Launch Site, which coordinates and control space transportation assets and activities.

“***Launch Service(s)***” means those services described in the Alpha Cube Sat Scope of Services to be performed by the Launch Service Provider.

“***Launch Service Provider***” means a third party who is engaged by XISP-Inc. to provide Launch Services and who is responsible for providing the Launch Vehicle, integration, and launch from designated Launch Site to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as described in the Alpha Cube Sat Scope of Services.

“***Launch Site***” means the Launch Service Provider’s launch facility to be determined by the Launch Service Provider.

“***Launch Vehicle***” shall mean the launch vehicle of the Launch Service Provider under contract with XISP-Inc. for Launch Services.

“***Licenses***” shall have the meaning set forth in Section 8 of the Agreement.

“***Lift-Off***” means release of the hold-down restraints and physical separation of the Launch Vehicle from the launch pad.

“***Parties***” shall mean Customer and XISP-Inc. “***Party***” shall mean Customer or XISP-Inc.

“***Payload***” or “***Customer’s Payload***” shall mean the cremated human remains of Customer’s clients, or clients’ loved ones to be transported to \_\_\_\_\_\_\_\_\_\_\_\_\_\_ in accordance with the parameters set forth in the Alpha Cube Sat Scope of Services.

“***Proprietary Information***” means all non-public confidential, proprietary and trade secret information and materials, whether in written, oral, electronic or other format, including all business, technical and other information that is marked as “Confidential” or “Proprietary” or that a reasonable person would assume to be confidential based upon the subject matter of such information or the manner in which it was disclosed.

“***Related Third Parties***” means (a) the Launch Service Provider’s, Payload Customer’s and Secondary Payload Customers’ respective contractors and subcontractors involved in the performance of this Agreement and their respective directors, officers, employees, and agents; (b) the Launch Service Provider’s, XISP-Inc.’s, Payload Customer’s and secondary payload customers’ respective directors, officers, employees, and agents; and (c) any entity or person with any valid interest in the Payload, Spacecraft, the Secondary Payloads, the Launch Vehicle or the ground support equipment.

“***Secondary Payload***” means a spacecraft, satellite, rover, or fixed payload, other than Customer, that is manifested to launch on the same mission as Customer.

“***Secondary Payload Customer***” means any customer of XISP-Inc., other than Customer, that has a Secondary Payload manifested to launch on the same mission as Customer.

“***Alpha Cube Sat Scope of Services***” shall have the meaning set forth in the Recitals of the Agreement.

“***Spacecraft***” means the XISP-Inc. Alpha Cube Sat.

“***Terminated Ignition***” means Intentional Ignition not followed by Lift-Off.

# EXHIBIT B – ALPHA CUBE SAT SCOPE OF SERVICES

**EXHIBIT C – FORM OF CROSS-WAIVER**

**Form of Cross-Waiver Required by the U.S. Licensing Authority**

*Waiver of Claims and Assumption of Responsibility for Licensed Launch, including Suborbital Launch*

THIS AGREEMENT is entered into this day of , by and among [Licensee] (the “Licensee”), [Customer] (the “Customer”) and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the “Parties”), to implement the provisions of section 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the “Regulations”). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site]. In consideration of the mutual releases

and promises contained herein, the Parties hereby agree as follows:

# Definitions

***Contractors and Subcontractors*** means entities described in §440.3 of the Regulations.

***Customer*** means the above-named Customer on behalf of the Customer and any person described in

§440.3 of the Regulations.

***License*** means License No. issued on , by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

***Licensee*** means the Licensee and any transferee of the Licensee under 49 U.S.C. Subtitle IX, ch. 701.

***United States*** means the United States and its agencies involved in Licensed Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 49U.S.C. Subtitle IX, ch. 701— Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 49 U.S.C. Subtitle IX, ch. 701, or the Regulations, respectively.

# Waiver and Release of Claims

1. Licensee hereby waives and releases claims it may have against Customer and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.
2. Customer hereby waives and releases claims it may have against Licensee and the United States, and against their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.
3. The United States hereby waives and releases claims it may have against Licensee and Customer, and against their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

# Assumption of Responsibility

1. Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury or Property

Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

1. The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

# Extension of Assumption of Responsibility and Waiver and Release of Claims

1. Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.
2. Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and the United States, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee and the United States, and the respective Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.
3. The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee and Customer, and against the respective Contractors and Subcontractors of each, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

# Indemnification

1. Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities.
2. Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, and the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors and Subcontractors, or any person on whose behalf Customer enters into this Agreement, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities. (c) To the extent provided in advance in an appropriations law or to the extent there is enacted

additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee and Customer and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

# Assurances Under 49 U.S.C. 70112(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in section 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii)claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c)of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January1, 1989) above such amount, and are payable pursuant to the provisions of 49 U.S.C.70113 and section 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding

$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of the Regulations.

# Miscellaneous

1. Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.
2. Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Licensee and Customer and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.
3. In the event that more than one customer is involved in Licensed Activities, references herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.
4. This Agreement shall be governed by and construed in accordance with United States Federal law. [Signature Page to Follow]

*In witness whereof,* the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

EXECUTED: Licensee By:\_ Its:

Customer

By:\_ Its:

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By:\_ Its:

Associate Administrator for Commercial Space Transportation