



4. The flight software and intellectual property assets at issue in this Complaint are collectively referred to herein as the “subject IP,” and include (1) all background IP assets<sup>1</sup>; (2) all “IP Assets” as defined in the TRV Contract; (3) all IP assets developed under the TRV Contract; and (4) all software subject to the Flight Software Contract, together with (5) all related deliverables and integration and flight test support.

5. Although ownership of the subject IP (or, in the case of the Licensed Background IP, a valid and enforceable license) has been conveyed to Plaintiff, Defendant has failed to deliver to Plaintiff the subject IP and services it has been obligated to provide pursuant to the terms of the two contracts, and has thereby materially breached its obligations under both contracts.

6. Plaintiff has complied with its payment and other obligations under both contracts.

7. Plaintiff has made payments to Defendant totaling \$3,217,598 for Defendant to create and deliver the subject IP to Plaintiff for Plaintiff’s exclusive ownership and use, except in accordance with the terms of a license granted to Defendant pursuant to Section 3.1 of the TRV Contract.

8. Instead of delivering to Plaintiff the subject IP, Defendant has undertaken instead to use the \$3,217,598 from Plaintiff as its working capital, and to use the subject IP as if it were still owned by Defendant.

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<sup>1</sup> The background IP assets that were in existence prior to the development of the TRV (or were demonstrably first produced outside of the project team responsible for development of the TRV), and therefore retained by Defendant under the TRV Contract, are subject to a license back to Plaintiff. These assets are defined in the TRV Contract as the “Background IP Assets.” For the sake of clarity, the background IP assets at issue in this Complaint that Defendant was obligated to deliver to Plaintiff, are referred to herein as the “Licensed Background IP.”

9. Defendant is now using the subject IP for the purpose of furthering the development of its own separate business opportunities, including opportunities for NASA funding and contracting, in breach of the TRV and Flight Software Contracts.

10. Plaintiff has been harmed by Defendant's breaches and misappropriation of trade secrets, and seeks relief including (1) injunctive relief to prohibit Defendant from disclosing and using the subject IP for its own purposes, (2) a declaratory judgment to the effect that Plaintiff owns or, in the case of the Licensed Background IP, licenses the subject IP, and (3) an award of damages, pre-judgment interest, and attorneys' fees and costs.

### **THE PARTIES**

11. Plaintiff Moon Express, Inc. ("Plaintiff") is a Delaware corporation with its principal place of business at 100 Space Port Way, Cape Canaveral, Florida 32920.

12. Defendant Intuitive Machines, LLC ("Defendant") is a Texas limited liability company with its principal place of business at 3700 Bay Area Blvd., Suite 100, Houston, Texas 77058. Upon information and belief, no members of Defendant limited liability company are residents of the states of Delaware or Florida.

### **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) because there is complete diversity of citizenship between the parties and because the matter in controversy exceeds, exclusive of interest and costs, the \$75,000 sum specified by 28 U.S.C. § 1332(a).

14. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the parties have consented to venue in the Delaware courts. The parties have further consented to the personal jurisdiction of this Court and have provided that Delaware law applies.

## FACTS

15. Plaintiff is in the business of designing and manufacturing spacecraft, and seeks to become the first private company to land an unmanned probe on the Moon, with a continuing commercial robotic lunar transportation business including the return of materials to Earth.

16. Defendant is in the business of designing, testing and manufacturing spacecraft components and developing software for controlling the flight of spacecraft.

17. The Flight Software Contract. The parties entered into the Flight Software Contract on or about April 1, 2015.

18. The Flight Software Contract is reflected in a series of documents and communications in which the parties agreed (1) that Defendant would develop and deliver certain flight software for Moon Express spacecraft and lander systems, and (2) that Plaintiff would make a series of payments to Defendant in accordance with a specified schedule, against achievement by Defendant of certain specified performance milestones.

19. The Flight Software Contract contemplated three “phases” of software development and delivery, *i.e.*, Phase A, Phase B and Phase C.

20. For Phase A, and upon the issuance of Plaintiff’s Authorization to Proceed (“ATP”), Defendant was required to develop and deliver certain flight software referenced by the parties as “ME Terrestrial Flight Test FSW on BBB,” together with “appropriate deliverables and integration support,” including the following specific software “deliverables:”

- a. Morpheus code base running on BBB (due immediately upon ATP)
- b. Morpheus FSW in CFS architecture
- c. 6-DoF Morpheus Trick Terrestrial Test Sim

- d. Integrated EDGE 3-D visualization graphics
- e. Potential ITOS/Galaxy integration
- f. Custom CFS app development for ME terrestrial testing
- g. Custom ME I/O application development
- h. Custom sim model development for ME terrestrial testing
- i. Test and verification tool suite modified for ME
- j. Simulation and analysis support
- k. Avionics and FSW integration support
- l. Flight test support

21. The foregoing Phase A “deliverables” are specified in greater detail in Defendant’s proposal to Plaintiff (“Moon Express SW Proposal, March 2015”).

22. As set forth in Defendant’s proposal entitled “IM Proposal: Deliverables (March 2015 SW \_ R6),” the Flight Software Contract specified that the completion of Phase A was to be “Test FSW Flying Tethered on BBB Processor,” i.e., the successful testing of the subject Flight Software on Plaintiff’s prototype lunar lander, using the software in the hardware of Plaintiff’s BBB-based avionics system<sup>2</sup> on board its prototype lander, while the lander was flying tethered on Earth.

23. Defendant has not delivered software capable of performing the testing required to complete Phase A.

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<sup>2</sup> “BBB” stands for Beaglebone Black, a hardware development platform used by Plaintiff.

24. In accordance with the terms of the Flight Software Contract, Plaintiff paid Defendant \$1,125,000 in cash at the beginning of Phase A, on or about May 20, 2015, and undertook an obligation to make a series of payments to Defendant, against achievement by Defendant of certain specified performance milestones.

25. Plaintiff is in compliance with its contractual obligations under the Flight Software Contract, and has not been obligated to make additional payments to Defendant because Defendant has not delivered the required software and because Phase A of the Flight Software Contract has not been completed.

26. Defendant was obligated to transfer possession to Plaintiff of the foregoing Phase A “deliverables” and related integration support.

27. Defendant has not delivered to Plaintiff either the Phase A deliverables or the integration support that it was required to deliver.

28. Accordingly, Defendant is in material breach of its contractual obligations under the Flight Software Contract.

29. The TRV Contract. The parties entered into the TRV Contract, formally titled the “Master Purchase, Development, and Manufacturing Agreement,” on or about October 6, 2015.

30. Under the TRV Contract, as amended, the parties agreed (1) that Defendant would design, develop, test and manufacture a demonstrator TRV vehicle, including a successful flight to and from the International Space Station and, at Plaintiff’s option, up to five (5) additional TRV vehicles, (2) that Defendant would transfer and convey, unencumbered, specified intellectual property to Plaintiff, and (3) that Plaintiff would make a series of payments to Defendant, against achievement by Defendant of certain specified performance milestones.

31. Defendant represented to Plaintiff in the TRV Contract and otherwise that it was “ready, willing and able” to undertake its obligation to perform such tasks in accordance with the terms of the TRV Contract. Contrary to its representations, however, Defendant was not ready, willing and able to undertake to perform its obligations under the TRV Contract.

32. In accordance with the terms of the TRV Contract, Plaintiff made a series of payments to Defendant in the total amount of \$2,092,598, and has complied with all of its contractual obligations.

33. Despite repeated written and verbal notice of its failures to perform, Defendant has breached its contractual obligations to Plaintiff under the TRV Contract in the following respects:

a. **Initial Conveyance of Licensed Background IP and “IP Assets.”**

Under the TRV Contract, Defendant was required to convey to Plaintiff all Licensed Background IP and “IP Assets” (as defined therein) within 7 days of signing the TRV Contract, *i.e.*, by October 13, 2015. To date, Plaintiff has received only a small portion of the Licensed Background IP and “IP Assets” that Defendant has been obligated to deliver to Plaintiff under the TRV Contract, some of which has not been “unencumbered” as required.

b. **Delivery of Developed IP Assets:** Under the TRV Contract, Defendant has been required to deliver to Plaintiff all “IP Assets” as soon as they were developed by Defendant, including all manufacturing, assembly and test documentation generated in the course of the “Development Services” specified in Schedule 1 to the TRV Contract. The “Developed IP Assets” include, but are not limited to, all of the documentation listed in Schedule 2 to the TRV Contract. To date, Defendant has failed to deliver all of the “Developed IP Assets” to Plaintiff.

c. **CASIS Agreement Transfer:** Under the TRV Contract, Defendant was required to request of CASIS, a third-party provider of payload transportation to the International Space Station, by October 20, 2015, that CASIS cooperate to transfer and assign to Plaintiff Defendant's rights and obligations under its "TRV Flight Agreement" with CASIS, and to take "all reasonable actions to ensure that CASIS agrees to said transfer." Defendant has failed to take the steps it was required to take to ensure such transfer, which to date has not been made.

d. **Monthly Program Review Meeting & Delivery of IP.** Under the TRV Contract, Defendant has been obligated to provide Plaintiff with project status updates at monthly program review meetings, to provide technical and schedule data, to provide all TRV documentation, and to provide all designs, software, test results and other relevant materials as requested by Plaintiff. Defendant has failed to provide such information and intellectual property as required, and has failed to provide any substantial monthly documentation, data, test results or an integrated master schedule as required, despite repeated requests for such information and intellectual property. The only substantive documents delivered by IM to ME to date have been:

- Nov TRV Low Alt Test Flight Test Plan & Checklists
- Avionics & Attitude Integrity Report (PPT)
- OML Evaluation (graphics – 1 PPT & 2 png files)
- TRV CDR Agenda
- PSRP TRV Deploy timeline overview.pptx
- TRV-ISS recontact Hazard analysis PSDP.pdf
- TRV Mission Design, Timeline & Vehicle Overview.pptx
- FAA License flow diagram.pptx
- TRV-8-master-5.8.STEP

These documents have not fulfilled Defendant's contractual obligations. Defendant has failed to transfer the majority of the current and substantive TRV development information and intellectual property to Plaintiff that Plaintiff paid to receive.

e. **Marketing & Vehicle Markings.** Under the TRV Contract, any TRVs and related packaging or marketing materials are required to be marked exclusively with Plaintiff's trademarks and logos. No other trademarks or markings, including those of Defendant, may appear on the TRVs. Defendant is not permitted to market the TRV as its own product or creation, or to market the TRV at all. Defendant breached its contractual obligations in this regard in a number of ways, including by failing, despite repeated requests from Plaintiff, to take down its web marketing of the TRV as Defendant's own product, by showing a branded video of drop tests of the TRV on Defendant's website, and by displaying Defendant's logos on test vehicles during drop tests being filmed by The Discovery Channel.

f. **Failure to Provide Assurances.** Despite Plaintiff having paid more than \$2 million to Defendant under the TRV Contract alone, and having made repeated requests for Defendant to comply with its contractual obligations and to provide assurances of future performance, Defendant has only partially provided the Licensed Background IP and Developed IP Assets, has not demonstrated an intent to satisfy its contractual obligations, and has otherwise failed to provide requested assurances that it will perform its obligations under the TRV Contract.

34. As a result of Defendant's non-compliance with its contractual obligations, Plaintiff has been contractually entitled to withhold any further payments. Plaintiff elected to withhold payments for Defendant's November invoice of \$241,000 and subsequent invoices because of Defendant's failure to comply with its obligations under the TRV Contract.

35. In January, 2016, Plaintiff made a good faith payment of Defendant's November invoice in the amount of \$241,000 in conjunction with an amendment to the TRV Contract. Defendant has failed to perform its obligations despite the payment and amendment.

36. Under the TRV Contract, the Licensed Background IP was to be delivered and conveyed to Plaintiff by October 13, 2015. The Licensed Background IP includes, but is not limited to, (1) Defendant's "As-Conceived Design Documentation," (2) Defendant's "Initial TRV Proposal to CASIS," and (3) Defendant's "Preliminary Design Review Data Package," with the associated systems architecture and subsystem content. Most of these Licensed Background IP assets have not been delivered by Defendant to Plaintiff.

37. Under the TRV Contract, the "As-Built Design Documentation" that Defendant has been obligated to deliver and convey to Plaintiff includes, but are not limited to, the following:

- (1) Vehicle Performance Specification
- (2) Flight Software Source Code and Object Code
- (3) CAD files for the integrated Vehicle Design
- (4) IM designed Printed Circuit Board Design Layouts
- (5) Complete design and documentation for every sub-system
- (6) Final Vehicle Analysis Reports
  - (1) Vehicle Thermal Analysis Report
  - (2) Vehicle Stress/Loads Analysis Report
  - (3) Trajectory Analysis Report
  - (4) Vehicle Aero-thermal Analysis
- (7) Operational Procedures covering Pre-Flight through Post-Landing
- (8) Post-Flight Mission Report for the first TRV flight

Most of this documentation has not been delivered by Defendant to Plaintiff, and that which has been delivered of the above is incomplete.

38. Under the TRV Contract, the subject “IP Assets” that Defendant has been obligated to deliver and convey to Plaintiff include, but are not limited to, the following:

- (1) Preliminary Flight Software Source Code and Object Code
- (2) Conceptual design CAD files for the integrated Vehicle Design
- (3) Flight Dynamics Controllability Assessment Report submitted to CASIS
- (4) Drop Test Vehicle Design
- (5) Hardware Software Integration Test Bed
- (6) Orbit & Entry trajectory visualization

Most of these “IP Assets” have not been delivered by Defendant to Plaintiff, and that which has been delivered of the above is incomplete.

39. The scope of the IP information that Defendant has been contractually obligated to deliver to Plaintiff to date was contemplated under the TRV Contract to be in the range of a terabyte of data. Plaintiff has received only a fraction of this amount.

40. The files transmitted by Defendant to Plaintiff to date have predominantly been overview or summary documents that lack the requisite details. In particular, Defendant has not provided any working software source code or details of avionics designs.

41. Under the TRV and Flight Software Contracts, the subject IP to be delivered to Plaintiff was to include the know-how of reproducing the vehicle, i.e., the “what” (the derived TRV engineering design), and to the extent reasonable, the “why” (the engineering rationale). The subject IP does not just include Defendant’s results or conclusions, but also its derivation rationale, leading to the “what” of the engineering design. Accordingly, Defendant has been obligated under both the TRV and Flight Software Contracts to provide the underlying data, analysis and documentation behind the TRV and Flight Software engineering that other

engineers could then understand, recreate and modify. Defendant has failed to deliver such underlying data, analysis and documentation.

42. The “Development Services Deliverables” specified in the TRV Contract that Defendant has been required to deliver have included the following:

- (1) Critical Design Review Package – CDR + 2 weeks
- (2) Drop Test Article – Drop test complete + 3 weeks
- (3) 1st TRV Mission from ISS to Vandenberg AFB, including launch and on-orbit operations. Target date November, 2016.
- (4) 1st TRV vehicle (Post-Flight + 30 days)
- (5) Mission Report (Post-Flight + 30 days)
- (6) As Built Design Products (Post-Flight + 45 days)
  - a) Vehicle Performance Specification
  - b) Flight Software Source & Object Code
  - c) CAD files for the integrated Vehicle Design
  - d) IM designed Printed Circuit Board Design Layouts
  - e) Final Vehicle Analysis Reports
    - i. Vehicle Thermal Analysis Report
    - ii. Vehicle Stress/Loads Analysis Report
    - iii. Trajectory Analysis Report
    - iv. Vehicle Aero-thermal Analysis

With some exceptions, Defendant has failed to deliver to Plaintiff the “Development Services Deliverables.”

43. Defendant’s work stoppage. On January 8, 2016, Plaintiff released a payment to Defendant in good faith for the period of performance (“POP”) ending Dec 19, 2015, following Defendant’s written acknowledgement that certain critical Licensed Background IP due from

Defendant under the TRV Contract was indeed still owed to Plaintiff. Plaintiff made the payment in anticipation of a TRV Contract amendment that was executed on January 18, 2016, providing Defendant with certain additional protections for the “Special Background IP” that Defendant had not yet delivered to Plaintiff in workable form.

44. Nevertheless, on February 6, 2016, without any prior notice to Plaintiff or discussion with Plaintiff, Defendant notified Plaintiff that Defendant had decided to stop work on the TRV Contract and Phase A of the Flight Software Contract, contending that Defendant was entitled to stop work due to a lack of payment by Plaintiff as follows:

- a. “\$266K for the POP Dec 20 - Jan 19”
- b. “\$254K for the POP Jan 20 - Feb 19”

Contrary to Defendant’s February 6 notice, Plaintiff did not owe the payments alleged, and Defendant was not entitled to stop work under the terms of the TRV Contract or under the terms of the Flight Software Contract.

45. Defendant’s decision to stop work has been in breach of the TRV Contract and in breach of the Flight Software Contract, and has been contrary to industry standards. Stopping work while Defendant remains in non-compliance with its contractual obligations has also been a breach of the parties’ good faith arrangement for interim payment and accommodations on “Special IP.”

46. Certain “Special IP” delivered by Defendant to Plaintiff on or about January 20, 2016, contained unworkable instructions with errors that Defendant has acknowledged. Defendant was obligated to provide a revised version of this “Special IP” with workable

instructions without errors, but failed to do so. Because of Defendant's work stoppage, Plaintiff was forced to invest its own time and resources for nearly one month into correcting the errors.

47. Defendant's disparagement and disclosure of confidential information. Defendant has been obligated under the TRV and Flight Software Contracts to not disclose confidential information or to make any statements to third parties regarding Plaintiff of a defamatory or derogatory nature. It has also been obligated not to reveal any details of the subject contracts or contract payment issues, and has been obligated to ensure that any notices or communications to suppliers and/or NASA are of a neutral nature.

48. Any negative or defamatory or derogatory communications to NASA or others could substantially harm Plaintiff's reputation or corporate opportunities, and could cause irreparable harm to Plaintiff. Defendant is in breach of its obligations under both contracts to refrain from such communications to third parties in the following respects:

- a. Defendant has informed NASA personnel of its stop work decision with respect to the TRV Contract.
- b. Defendant has informed NASA personnel that Defendant and Plaintiff are involved in a dispute concerning their contractual relationship, and that each side has "lawyered up."
- c. Defendant has informed NASA personnel that it disputes Plaintiff's rights to the TRV.

## **CAUSES OF ACTION**

### **COUNT I – BREACH OF CONTRACT**

49. Plaintiff reasserts Paragraphs 1 through 48 as if fully set forth herein.

50. The TRV and Flight Software Contracts were and are valid and enforceable contracts supported by adequate consideration.

51. Plaintiff performed all conditions and obligations required to be performed by it under the TRV and Flight Software Contracts.

52. Defendant materially breached its obligations under the TRV and Flight Software Contracts without justification.

53. Defendant's breaches of its obligations have caused damage to Plaintiff in amounts to be proven at trial, but are alleged to exceed \$2,092,598 for Defendant's breaches of the TRV Contract, and are reasonably believed to exceed \$30 Million, including consequential damages, for Defendant's breaches of the Flight Software Contract, for which Plaintiff seeks an award of damages in an amount to be determined at trial.

**COUNT II – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

54. Plaintiff reasserts Paragraphs 1 through 53 as if fully set forth herein.

55. Implied in the TRV and Flight Software Contracts are covenants of good faith and fair dealing, pursuant to which Defendant agreed to provide Plaintiff with the subject IP as it became available, together with all associated engineering information, documentation, integration support and other information necessary to fulfill the purpose of the agreements and the parties' intentions and reasonable expectations when they entered into them.

56. To the extent that the terms of the TRV and Flight Software Contracts did not expressly provide for the delivery of all subject IP as it became available, together with all associated engineering information, documentation, integration support and related information – including, without limitation, the relevant technical and schedule data; the designs, software, and

test results requested by Plaintiff; the working software source code and details of avionics designs; and the engineering rationale behind the TRV and flight software engineering so that it could be replicated and modified – Defendant was obligated to provide such information to Plaintiff in order to fulfill the purpose of the TRV and Flight Software Contracts and the parties' intentions and reasonable expectations when they entered into them.

57. Defendant has failed to deliver to Plaintiff all subject IP as it became available, together with all associated engineering information, documentation, integration support and related information – including, without limitation, the relevant technical and schedule data; the designs, software, and test results requested by Plaintiff; the working software source code and details of avionics designs; and the engineering rationale behind the TRV and flight software engineering so that it could be replicated and modified. Accordingly, Defendant has breached the implied covenant of good faith and fair dealing inherent in the TRV and Flight Software Contracts.

58. Plaintiff has been damaged by Defendant's breach of its covenant of good faith and fair dealing for which Plaintiff seeks an award of damages in an amount to be proven at trial.

### **COUNT III – UNJUST ENRICHMENT**

59. Plaintiff reasserts Paragraphs 1 through 58 as if fully set forth herein.

60. Defendant has been enriched by utilizing the \$3,217,598 received from Plaintiff for development and delivery of the subject IP as working capital, and by integrating the subject IP owned by Plaintiff into Defendant's own products and business operations rather than satisfying its contractual obligations and delivering the subject IP to Plaintiff.

61. Defendant has been further enriched by web marketing the TRV as its own product, by showing a branded video of drop tests of the TRV on Defendant's website, and by displaying Defendant's logos on test vehicles during drop tests being filmed by The Discovery Channel.

62. Plaintiff has lost business and will continue to lose business from Defendant's use of the \$3,217,598 received from Plaintiff without delivering the subject IP to Plaintiff in return; from Defendant's integration of the subject IP into its own business operations; and from Defendant's marketing of the TRV as its own product.

63. Plaintiff has further lost goodwill and will continue to lose goodwill with its customers and potential customers, with its suppliers and potential supplies, and with NASA, CASIS and other third parties, as a result of Defendant's use of Plaintiff's funds and failure to provide the subject IP; Defendant's integration of the subject IP into its own business operations; and Defendant's marketing of the TRV as its own product.

64. Defendant has no lawful justification for its enrichment at Plaintiff's expense as set forth above.

65. Plaintiff has no adequate remedy at law.

66. As a result of Defendant's breaches, Defendant has been unjustly enriched, for which Plaintiff seeks an award of damages in an amount to be proven at trial.

67. Defendant must disgorge all profits derived from its retention of Plaintiff's payments, integration of the subject IP into its own business operations, and wrongful marketing of the TRV as its own product.

**COUNT IV – MISAPPROPRIATION OF TRADE SECRETS PURSUANT TO  
6 DEL. C. § 2001, ET SEQ.**

68. Plaintiff reasserts Paragraphs 1 through 67 as if fully set forth herein.

69. The subject IP represents confidential, proprietary and trade secret information that Plaintiff has acquired from Defendant in exchange for payments to Defendant in the amount of \$3,217,598. The parties' contractual relationship provides for the communication of intellectual property in both directions: upon Defendant's development and delivery of the subject IP to Plaintiff, Plaintiff grants a non-exclusive royalty-free license to Defendant for use of the subject IP (subject to the terms of the TRV Contract). To the extent that Defendant has delivered a portion of the subject IP, Plaintiff has communicated such IP back to Defendant in the form of a limited license.

70. Defendant has expressly acknowledged in Section 7.8 of the TRV Contract and elsewhere that the subject IP constitutes trade secret information and that Defendant has taken reasonable steps to maintain the confidentiality of the subject IP. To the extent that Plaintiff has received portions of the subject IP, Plaintiff has taken reasonable steps to maintain their confidentiality, including by maintaining the IP on an encrypted and password-protected thumb drive that is kept under lock and key and is accessible only to certain senior engineers, and by otherwise controlling access to the subject IP on Plaintiff's encrypted and password-protected servers.

71. Despite Plaintiff's payment for, and ownership or license of, the subject IP, and Defendant's contractual obligation to deliver all of the subject IP to Plaintiff, Defendant has retained the subject IP for its own use and has integrated the subject IP into its products and business operations.

72. Furthermore, upon information and belief, Defendant disclosed critical portions of the subject IP to Rice University students who were competing in a recent challenge sponsored by Defendant to develop a “mobile app that would allow people to track TRV from jettison from the International Space Station through landing” (according to Defendant’s website).

73. As the result of Defendant’s misappropriation, Plaintiff has suffered and continues to suffer immediate and irreparable harm that cannot be adequately compensated solely by an award of damages, including that Plaintiff’s trade secrets will continue to be exploited by Defendant.

74. The potential harm from issuing the injunctive relief prayed for herein would not outweigh the substantial loss of valuable trade secrets that Plaintiff will suffer if Defendant’s unlawful conduct is permitted to continue to destroy Plaintiff’s ability to control its own trade secrets.

75. Defendant has acted willfully and maliciously to misappropriate Plaintiff’s confidential trade secrets, as evidenced by, *inter alia*, Defendant’s use of the subject IP in its own business and refusal to deliver the subject IP to Plaintiff despite Plaintiff’s good faith payments to Defendant in excess of \$3.2 million and repeated demands for delivery of the subject IP.

76. Plaintiff has also suffered monetary damages and will continue to be damaged by the actions of Defendant described above. Plaintiff is therefore entitled to damages caused by Defendant’s misappropriation, including actual damages, amounts by which Defendant has been unjustly enriched by its misconduct, exemplary damages, and attorneys’ fees.

**COUNT V – CONVERSION**

77. Plaintiff reasserts Paragraphs 1 through 76 as if fully set forth herein.

78. Despite Plaintiff's payment of \$3,217,598 to acquire the subject IP from Defendant, Defendant has failed to deliver the subject IP to Plaintiff, but instead has retained the subject IP for its own purposes and integrated it into Defendant's products and business operations.

79. Plaintiff owns the subject IP (with the limited exception of the Licensed Background IP), which has been unlawfully converted by Defendant.

80. Defendant's conversion has been willful and malicious.

81. Plaintiff has suffered damages as a result of Defendant's conversion of Plaintiff's property.

82. As a result of Defendant's conversion of the subject IP owned by Plaintiff, Plaintiff is entitled to damages in an amount to be determined at trial, including punitive damages resulting from Defendant's willful and malicious acts.

**COUNT VI – INJUNCTIVE RELIEF**

83. Plaintiff reasserts Paragraphs 1 through 82 as if fully set forth herein.

84. The TRV and Flight Software Contracts prohibit Defendant from (1) using or applying the subject IP in competition with Plaintiff, (2) using the subject IP other than "for use with subsystems and components," (3) communicating or acting in a manner toward third parties to disparage Plaintiff or to negatively impact Plaintiff's reputation and business opportunities, (4) placing any markings on TRV contract products or otherwise marketing itself to imply that it is

the owner or manufacturer of TRV-related products, and (5) disclosing Plaintiff's confidential information.

85. Defendant has breached its contractual obligations under both the TRV and Flight Software Contracts, and has otherwise acted so as to reasonably create uncertainty as to whether it will act in further disregard of its obligations.

86. Accordingly, Plaintiff is entitled to injunctive relief, including preliminary and permanent injunctions, to prohibit Defendant from:

a. Using any of the subject IP in its business, or selling or otherwise disposing of the subject IP.

b. Communicating to NASA, CASIS or other third parties, or otherwise acting in a manner, so as to convey the impression that Defendant owns or has a right to use the subject IP, or to disparage or defame Plaintiff, or to otherwise negatively impact the Plaintiff's reputation or business opportunities, or to disclose Plaintiff's confidential information;

c. Placing any content on its website, or in any other marketing materials, to suggest that it is the owner of the subject IP (with the limited exception of the Licensed Background IP) or any product subject to the TRV Contract; and

d. Marking, or allowing to be marked, any product subject to the TRV Contract so as to imply that it is the owner of such product.

87. Plaintiff is further entitled to an accounting of Defendant's use and marketing of the subject IP and of the profits derived therefrom.

#### **COUNT VII – DECLARATORY JUDGMENT**

88. Plaintiff reasserts Paragraphs 1 through 87 as if fully set forth herein.

89. By reason of the foregoing, there exists a substantial, bona fide justiciable controversy which flows out of a definite and concrete assertion of rights, and involving the legal or equitable relation of the parties having adverse interests of sufficient immediacy to warrant a declaratory judgment.

90. Plaintiff seeks a declaratory judgment (i) that the relevant terms of the TRV and Flight Software Contracts are as alleged by Plaintiff; (ii) that Defendant is in breach of both contracts in the manner alleged by Plaintiff, (iii) that Defendant is prohibited from disclosing the subject IP or using any of the subject IP in furtherance of its business; (iv) that Plaintiff has a valid and enforceable license pursuant to the TRV Contract in the Licensed Background IP; and (v) that Plaintiff otherwise is the owner of all of the subject IP.

91. The Court's determination would have the immediate and practical effect of influencing the parties' current conduct, specifically regarding whether Defendant may continue to use the subject IP in furtherance of its business.

92. Plaintiff has no adequate remedy at law.

### **JURY DEMAND**

Plaintiffs respectfully demands a trial by jury for all claims herein that are triable by jury.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment providing for the following relief:

1. Preliminary and permanent injunctive relief requiring Defendant to refrain from acting in any manner inconsistent with its obligations under the Flight Software and TRV Contracts, including using, selling, or otherwise disposing of any of the subject IP, communicating in a derogatory or negative manner to third parties such as NASA and CASIS,

allowing or causing marketing efforts to suggest or imply that Defendant is the owner of any intellectual property or product that is subject to the Flight Software or TRV Contracts (with the limited exception of the Licensed Background IP), and disclosing confidential information.

2. An award of damages, including consequential damages, for Defendant's breaches of the Flight Software and TRV Contracts, misappropriation of trade secrets, unjust enrichment and conversion, all in amounts to be proven at trial;

3. A Declaratory Judgment as needed to clarify and confirm that Plaintiff owns or, in the case of the Licensed Background IP, licenses the subject IP; and to clarify and confirm Defendant's obligations under the TRV and Flight Software Contracts, including its obligation not to use the subject IP.

4. An award of pre- and post-judgment interest.

5. An award of Plaintiff's attorneys' fees and costs of suit pursuant to paragraph 11.15 of the TRV Contract, 6 *Del. C.* § 2004, and applicable law.

6. Such other and further relief as the Court deems to be warranted.

Dated this 11 day of May, 2016.

**PUBLIC VERSION FILED: JUNE 21, 2016**

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