



Section 3 : ADMINISTRATIVE CLAUSES

390. COMMERCIAL SPACE OPERATIONS SUPPORT AGREEMENT(CSOSA) – Allocation of Risks and Insurance (2/2/99).

(a) The following Articles shall apply with respect to the performance of this Subcontract involving commercial launch activities, not covered by a Department of Transportation license, which are being conducted at facilities owned or controlled by the Government.

(b) Definitions. For the purposes of these Articles the following definitions shall apply:

(1) Damage – Bodily injury to or death of any person, damage to or loss of any property, real or personal, loss of revenue or profits or other direct, indirect or consequential damages therefrom. Such damage shall include that caused by a release of or exposure to a hazardous substance, as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act.

(2) Liability – Any legal or equitable obligation, debt, or duty to any person, including, but not limited to (i) obligations pursuant to any Government treaty or imposed by any judgment by a court or other body of competent jurisdiction, (ii) administrative costs, (iii) litigation costs, including, but not limited to, attorney fees, and (iv) settlement payments. Liability includes legal obligations that are the result of an accident or environmental incident, legal obligations pursuant to any Government treaty, and any judgment by a court of competent jurisdiction.

(c) Allocation of Risk.

(1) Seller agrees that the government, its contractors, subcontractors, and their respective employees, are not responsible to Seller, its contractors or subcontractors, or the employees of any of them, regardless of fault or causation for any damage, liability, or financial loss that is incurred by Seller, its contractors or subcontractors or the employees of any of them, that arises from, or relates to, the performance of this Subcontract.

(2) Seller agrees to indemnify and hold Buyer, the government, their respective contractors, subcontractors, and employees harmless from all suits, claims, or demands by any person for any damage or liability that is incurred by Buyer, the government or their respective contractors, subcontractors, or employees, caused by Seller, its contractors or subcontractors, or the employees of any of them.

(3) The Seller expressly waives any immunity under industrial insurance, whether arising from any statute or other source, to the extent of the indemnity set forth above.

(4) The Seller agrees that, in lieu of requiring Seller to pay for damage to government property caused by Seller, its contractors or subcontractors, or the employees of any of them, the government may

require Seller to repair or replace the damaged government property at no cost to the government.

(5) Seller agrees that, for the purpose of enforcing Seller's obligations herein, the government, its contractors and subcontractors are third-party beneficiaries.

(d) Insurance.

(1) The Seller, at no additional cost to Buyer or the government, shall carry and maintain insurance throughout the period of performance to protect Buyer, the government, their respective contractors, subcontractors, and employees from the damage or liability for which Seller is liable or agrees to indemnify and hold Buyer, the government, and their respective contractors and subcontractors, and employees, harmless under this Subcontract. In addition to the above requirement, at a minimum, the Seller shall carry and maintain, and ensure that all its contractors and subcontractors carry and maintain, insurance of the types and minimum amounts set forth below:

(2) Commercial General Liability insurance with available limits of not less than five hundred thousand dollars (\$500,000) per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage and contractual liability.

(3) Workers' Compensation insurance in accordance with the applicable laws relating to workers' compensation with respect to all their respective employees working on or about the premises. If Buyer is required by applicable law to pay any workers' compensation premiums with respect to any employee of Seller, or any of its contractors or subcontractors, Seller shall reimburse Buyer for such payment.

(4) If licensed vehicles will be used in connection with this Subcontract, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed, or otherwise, with available limits of not less than two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per accident and twenty thousand dollars (\$20,000) property damage.

(5) Seller shall provide, within 30 days from commencement execution of this Subcontract, insurance certificates for Buyer's review and approval reflecting full compliance with the requirements set forth in paragraphs (d)(2) through (d)(4) above. Certificates shall be kept current and in compliance throughout the period of this Subcontract and shall provide for thirty (30) days advance written notice to Buyer in the event of cancellation or a material change in policy coverage. Failure of Seller or any of its contractors or subcontractors, thereof, to furnish Certificates of Insurance, or to procure and maintain the insurance required herein, or failure of Buyer to request such certificates, endorsements, or other proof of coverage shall not constitute a waiver of the respective Seller's, contractor's, or subcontractor's obligations hereunder.

(6) Any self-insured retention, deductibles, and exclusions in coverage in the policies required hereunder shall be assumed by, for the account of, and at the sole risk of Seller, its contractor or subcontractor which provides the insurance, and to the extent applicable shall be paid by the Seller, contractor, or subcontractor. In no event shall the liability of Seller, its contractor or subcontractor, thereof be limited to the extent of any of the minimum limits of insurance

required herein.

(7) Seller assumes, and shall ensure that all contractors and subcontractors thereof, and their respective employees, assume the risk of loss or destruction of, or damage to any property of such parties whether owned, hired, rented, borrowed, or otherwise. Seller waives, and shall ensure that any contractor or subcontractor thereof, and their respective employees, waive all rights of recovery against Buyer or the government for any such loss or destruction of, or damage to any property of Seller, its contractor or subcontractor, or their respective employees.

(8) Each insurance policy required under this Article (d) (except for workers' compensation) shall be endorsed to name Buyer and the government as additional insureds and shall renounce all rights of subrogation against Buyer and the government, except for:

(A) any damage, liability, or financial loss incurred by Seller, its contractors, subcontractors, or their respective employees, caused by intentional misconduct on the part of Buyer or government managerial personnel, or

(B) any damage or liability incurred by Buyer or the government, or their contractors and subcontractors, or the employees of any of them, caused by intentional misconduct on the part of Buyer or government managerial personnel.

(9) Seller agrees that all proceeds of insurance for a claim under the indemnity in Article (c) above shall be first applied to satisfy Seller's obligations to the indemnitees. Further, each such policy shall renounce all rights of subrogation against employees of the Buyer or the government except for any damage, liability, or financial loss incurred by Seller, its contractors or subcontractors, or the employees of any of them, that is caused by the intentional misconduct of employees of Buyer or the government. Any such policy right of subrogation against employees of Buyer or the government shall not limit the obligation of the Seller to indemnify and hold Buyer and the government harmless.

(10) Any right of subrogation against contractors or subcontractors of Buyer or the government, or their respective employees of such contractors or subcontractors, shall not limit the obligation of Seller under this Article to indemnify and hold harmless Buyer or the government and their employees. Further, any right of subrogation against government contractors or subcontractors is limited to any insurance that they carry, unless the damage or liability is caused by intentional misconduct.

(11) Seller shall immediately notify Buyer of any claim or action against, or damage suffered or incurred by Seller, arising from or related to performance of this Subcontract and provide Buyer with copies of all pertinent papers Seller receives regarding such claim, action or damage.

(12) Buyer and Seller agree to cooperate in obtaining relevant reports and other information in connection with the presentations by either party of any claim under insurance required by this Subcontract.