

**SPACE ACT AGREEMENT
BETWEEN
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
AND
KISTLER AEROSPACE CORPORATION AND ROCKETPLANE LIMITED, INC.
FOR
COMMERCIAL ORBITAL TRANSPORTATION SERVICES DEMONSTRATION
(COTS)**

BACKGROUND

A. NASA has established the Commercial Crew/Cargo Project Office at the Johnson Space Center as part of the Exploration Systems Mission Directorate. The objectives of the Commercial Crew/Cargo Project are to:

- implement U.S. Space Exploration policy with an investment to stimulate commercial enterprises in space,
- facilitate U.S. private industry demonstration of cargo and crew space transportation capabilities with the goal of achieving reliable, cost effective access to low-Earth orbit, and
- create a market environment in which commercial space transportation services are available to Government and private sector customers.

B. RpK is developing orbital and suborbital space transportation vehicles, including the Kistler K-1, a reusable launch vehicle capable of taking payloads to orbit and of taking cargo to and from space. Among other things, RpK expects that the K-1 will be capable of taking cargo to and from the International Space Station. RpK also expects to develop the capability for the K-1 to carry humans to and from space. To date, RpK and its predecessors have spent substantial amounts on the K-1 program, has generated significant data, and has either been granted or has pending applications for a number of patents related to the K-1 program.

C. This SAA represents NASA and RpK's commitment to conducting the initial development and demonstration phase of the Commercial Crew/Cargo Project. Specifically, RpK's innovative approach to meeting the goals of the project is outlined in Appendix 1.

ARTICLE 1. AUTHORITY

This Agreement is entered into by the National Aeronautics and Space Administration, located at 4th and E Streets, SW, Washington, D.C. (hereinafter referred to as "NASA" or Government), and Kistler Aerospace Corporation and Rocketplane Limited, Inc.¹, (collectively referred to as

"RpK" or "Participant") with a place of business at 4300 Amelia Earhart Lane, Oklahoma City, Oklahoma. NASA's authority to enter into this Agreement is in accordance with the authority set forth in Sections 203(c)(5) and 203(c)(6) of the National Aeronautics and Space Act of 1958, as amended and NPR 1050.1G. This Agreement will be implemented by NASA at the Lyndon B. Johnson Space Center in Houston, Texas.

ARTICLE 2. PURPOSE

A. The purpose of this Agreement is to conduct the initial development and demonstration phase of the Commercial Orbital Transportation Services (COTS) Project. Under this Agreement, RpK will receive milestone payments from NASA to develop and demonstrate vehicles, systems, and operations needed for RpK to perform earth to orbit space flight demonstrations of the following capabilities:

Capability A: External cargo delivery and disposal – delivers cargo (payloads) that operate directly in the space environment to a LEO test bed and provides for its safe disposal;

Capability B: Internal cargo delivery and disposal – delivers cargo (payloads) that operates within a volume maintained at normal atmospheric pressure to a LEO test bed and provides for its safe disposal;

Capability C: Internal cargo delivery and return – delivers cargo (payloads) that operate within a volume maintained at normal atmospheric pressure to a LEO test bed and provides for its safe return to Earth; and

Capability D (Option): Crew transportation – delivers crew to a LEO test bed and provides for safe return to Earth.

B. As part of the demonstrations, NASA will provide the ISS as the orbital destination and active test bed if the ISS visiting vehicle requirements are satisfied.

C. The scope of the demonstrations, as applicable, involves the development and operation of an end-to-end space transportation system of services including ground operations and integration, launch, rendezvous, proximity operations, docking or berthing, orbital operations, reentry, and safe disposal or return.

ARTICLE 3. RESPONSIBILITIES

A. RpK shall:

- (1) Conduct the COTS Demonstrations according to the milestones identified in Appendix 2 (Milestones and Success Criteria) and consistent with the visiting vehicle requirements of the CI-IIRD including providing all required deliverables;

- (2) Lead a quarterly project status briefing; and
- (3) Designate at least one seat on each review board described in Appendix 2 for a NASA representative.

B. NASA shall:

- (1) Provide milestone payments to RpK upon successful completion of each milestone, subject to limitations noted below;
- (2) Provide the ISS as the orbital destination and active test bed if the ISS visiting vehicle requirements are satisfied. NASA will provide associated technical expertise to facilitate proximity operations, specifically rendezvous and docking, with the International Space Station;
- (3) Provide relevant NASA data/information necessary for participant to provide for Visiting Vehicle Integration (VVI) requirements consistent with the CI-IIRD;
- (4) Participate in the quarterly project status review; and
- (5) Appoint a NASA representative to participate in each review board described in Appendix 2, who shall have concurrence authority on aspects of the space transportation system design, engineering, operations, which affect the ISS or human rating for flight of NASA crew members.

C. Within 30 days of commencement of work by RpK under this Agreement, NASA and RpK shall jointly develop a Management Interface Plan that articulates the insight and oversight arrangements that will enable management of both RpK and NASA to execute their responsibilities under this Agreement and to third parties, including with respect to NASA, to Partner States (as defined below), and with respect to RpK, to its shareholders and other constituents.

ARTICLE 4. SCHEDULE AND MILESTONES

The scheduled major Milestones and acceptance criteria for each Milestone for the COTS Demonstrations are identified in Appendix 2 to this Agreement.

ARTICLE 5. FINANCIAL OBLIGATIONS

A. NASA's Obligations:

- (1) The Government's liability to make payments to RpK is limited to only those funds obligated annually under this Agreement or by amendment to the Agreement. NASA may obligate funds to the Agreement incrementally.

B. Acceptance and Payment for Milestones.

- (1) RpK shall notify the NASA Key Personnel at least 30 days prior to the completion of any Milestone to arrange for the NASA Technical Contact or designee to witness the event or accept delivery of documents. NASA shall have 30 calendar days to determine whether the Milestone event meets its corresponding acceptance criteria as described in Appendix 2 of this Agreement and shall notify RpK of NASA's acceptance or non-acceptance. Disagreement about the successful accomplishment of a Milestone shall be deemed a Dispute and resolved in accordance with Article 19 of this Agreement.
- (2) RpK shall be able to submit an invoice requesting payment upon the accomplishment and acceptance by NASA of the milestone as identified and described in Appendix 2 of this Agreement. RpK shall submit an original and one (1) copy of all invoices to the NASA Administrative Contact listed in this Agreement for review. After receipt and review of the invoice, the NASA Administrative Contact will prepare a written determination of Milestone completion and authorize payment. Subject to change only through written Agreement modification, payment shall be made via electronic funds transfer to the address set forth below:
 - (3) The following information shall be included on each invoice:
 - Agreement Number
 - Invoice Number
 - A description of Milestone event
 - Terms of Payment
 - Payment Office
 - Amount of the fixed contribution claimed
 - (4) Financial Records and Reports: Except as otherwise provided in this Agreement, RpK's relevant financial records associated with this Agreement are not subject to examination or audit by NASA.
 - (5) Comptroller General Access to Records: The Comptroller General, at its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to and involve transactions relating to, the Agreement for a period of three (3) years after the Government makes the final payment under this Agreement. This paragraph only applies to any record that is

created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in arrangements in excess of \$5,000,000.00, which RpK has entered into for the execution of the Milestone events in this Agreement.

ARTICLE 6. DISSEMINATION OF PUBLIC INFORMATION

A. NASA or RpK may, consistent with Federal law and this Agreement, release general information regarding its participation in this Agreement as desired. RpK agrees that all press releases resulting from activities conducted under this Agreement will be reviewed and concurred on by the NASA JSC Director of Public Affairs prior to release. Such approval will not be unreasonably withheld.

B. RpK agrees the words "National Aeronautics and Space Administration" or the letters "NASA" will not be used in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, RpK agrees that any proposed use of the NASA name or initials shall be submitted by RpK in advance to the NASA Administrative Contact, who will submit the proposed use to the JSC Director of Public Affairs for review and approval. Such approval shall not be unreasonably withheld. Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. RpK agrees that any proposed use of such emblems/devices shall be submitted in advance to the NASA Administrative Contact, who will submit the proposed use the NASA JSC Director of Public Affairs for review and approval in accordance with such regulations.

C. NASA does not endorse or sponsor any commercial product, service, or activity. NASA's participation in this Agreement and/or supply of goods (i.e., equipment, facilities, technical information) and services under this Agreement does not constitute endorsement by NASA. RpK agrees that nothing in this Agreement will be construed to imply that NASA authorizes, supports, endorses, or sponsors any product or service of RpK resulting from activities conducted under this Agreement, regardless of the fact that such product or service may employ NASA-developed technology.

ARTICLE 7. NASA FURNISHED INFORMATION AND SERVICES

A. NASA may, at its discretion, make a determination to provide Government Furnished Property or Services and associated technical expertise to facilitate proximity operations, specifically autonomous rendezvous and docking, with the International Space Station. If NASA determines that such property and services are required, the parties will modify this Agreement to add a description of NASA responsibilities.

B. There is no Government Furnished Property or Services furnished under this Agreement except for those that may be provided in Article 7.A. However, RpK has the ability to enter into separate Space Act agreements with NASA Centers to use NASA resources in performance of this Agreement. The terms and conditions of other Space Act agreements will govern the use of NASA resources not being provided under this Agreement. With all its subcontractors/partners,

including NASA Centers, RpK will be responsible for ensuring timely, accurate work, and replacing such subcontractors/partners, in order to meet Milestones.

ARTICLE 8. NONEXCLUSIVITY

This Agreement is not exclusive; accordingly, NASA may enter into similar Agreements for the same or similar purpose with other U.S. private or public entities.

ARTICLE 9. PARTICIPANT ANNUAL CERTIFICATIONS

A. RpK shall annually certify for itself, and obtain from its subcontractor/partners certifications of the following to the COTS Administrative Contact:

- (1) RpK or any of its subcontractors/partners are not presently debarred, suspended, proposed for debarment, or otherwise declared ineligible for award of funding by any Federal agency.
- (2) RpK or any of its subcontractors/partners have not been convicted or had a civil judgment rendered against it within the last three (3) years for fraud in obtaining, attempting to obtain, or performing a Government contract.
- (3) RpK or any of its subcontractors/partners receiving \$100,000 or more in NASA funding for work performed under this Agreement must certify that they have not used any appropriated funds for lobbying purposes prohibited by 31 U.S.C. 1352.
- (4) RpK is an eligible participant as defined in Section 4.2 of the COTS announcement.

RpK shall provide copies of the subcontractor/partner certifications to NASA annually.

ARTICLE 10. LIABILITY AND RISK OF LOSS

A. If the FAA licenses or permits apply to activities under this Agreement, FAA license(s) or permit(s), including cross-waivers and insurance requirements, for COTS demonstrations conducted by RpK under this Agreement will govern allocation of risks and liability of the U.S. government – including NASA – and RpK.

B. If and to the extent the FAA license(s) or permit(s) do not apply to activities under this Agreement, the following cross-waiver will apply. Under no circumstances will NASA be liable for indemnification of third-party claims:

- (1) Purpose: The objective of this Article is to establish a cross-waiver of liability by the Parties and their related entities in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the COTS demonstrations.
- (2) For the purposes of this Article:

- (a) The term "Partner State" includes each contracting party for which the Agreement Among The Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America Concerning Cooperation on the Civil International Space Station (ISS) (signed January 29, 1998; hereinafter the "Intergovernmental Agreement") has entered into force or become operative (pursuant to Sections 25 and 26, respectively, of the Intergovernmental Agreement), or any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the MOU between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.
- (b) The term "related entity" means:
- (i) a contractor or subcontractor of a Party or a Partner State at any tier;
 - (ii) a user or customer of a Party or a Partner State at any tier; or
 - (iii) a contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.
- (c) The term "damage" means:
- (i) bodily injury to, or other impairment of health of, or death of, any person;
 - (ii) damage to, loss of, or loss of use of any property;
 - (iii) loss of revenue or profits; or
 - (iv) other direct, indirect or consequential damage.
- (d) The term "launch vehicle" means an object or any part thereof intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.
- (e) The term "Party" means a Party to this Agreement.
- (f) The term "payload" means all property to be flown or used on or in a launch vehicle or the ISS.
- (g) The term "Protected Space Operations" means all launch vehicle activities, ISS activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the IGA, MOUs concluded pursuant to the IGA, and implementing arrangements includes, but is not limited to:

- (i) research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, the ISS, or a payload, as well as related support equipment and facilities and services; and
- (ii) all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

“Protected Space Operations” also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. “Protected Space Operations” excludes activities on Earth which are conducted on return from the ISS to develop further a payload's product or process for use other than for ISS related activities in implementation of the IGA.

(3) Cross Waiver of Liability:

- (a) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in subsections (3)(a)(i) through (3)(a)(iv) below based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims against:
 - (i) another Party;
 - (ii) a Partner State other than the United States of America;
 - (iii) a related entity of any entity identified in subparagraphs (3)(a)(i) or (3)(a)(ii) above; and
 - (iv) the employees of any of the entities identified in subsections (3)(a)(i) through (3)(a)(iii) above.
- (b) In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability as set forth in subsection (3)(a) above to its related entities by requiring them to:
 - (i) waive all claims against the entities or persons identified in subsections (3)(a)(i) through (3)(a)(iv) above; and
 - (ii) require that their related entities waive all claims against the entities or persons identified in subsections (3)(a)(i) through (3)(a)(iv) above.

- (c) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (which entered into force on September 1, 1972), where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- (d) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:
 - (i) claims between a Party and its related entities or between its related entities;
 - (ii) claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to this Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of such natural person;
 - (iii) claims for damage caused by willful misconduct;
 - (iv) intellectual property claims;
 - (v) claims for damage resulting from a failure of a Party to extend the cross-waiver of liability to its related entities, pursuant to subsections (a) and (b) above; and
 - (vi) claims by or against a Party arising out of the other Party's failure to meet its contractual obligations as set forth in the Agreement.
- (e) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (f) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. 70101 et seq) is applicable.

ARTICLE 11. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

RpK shall not use any funds provided under this Agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

ARTICLE 12. INTELLECTUAL PROPERTY AND DATA RIGHTS - RIGHTS IN DATA

A. General.

- (1) "Related Entity" as used in this Article, means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or RpK that is assigned, tasked, or contracted with to perform specified NASA or RpK activities under this Agreement.
- (2) "Data," as used in this Agreement, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, software and documentation thereof, and data comprising commercial and financial information.
- (3) "Proprietary Data," as used in this Article, means Data embodying trade secrets or comprising commercial or financial information that is privileged or confidential.
- (4) The Data rights set forth herein are applicable to employees of RpK and employees of any Related Entity of RpK. RpK shall ensure that its employees and employees of any Related Entity that perform RpK activities under this Agreement are aware of the obligations under this Article and that all such employees are bound to such obligations.
- (5) Data exchanged between NASA and RpK under this Agreement will be exchanged without restriction as to its disclosure, use, or duplication except as otherwise provided in this Article.
- (6) No preexisting Proprietary Data will be exchanged between the parties under this Agreement unless specifically authorized in this Article or in writing by the owner of the Proprietary Data.
- (7) In the event that Data exchanged between NASA and RpK include a restrictive notice that NASA or RpK deems to be ambiguous or unauthorized, NASA or RpK may inform the other party of such condition. Notwithstanding such a notice, as long as such notice provides an indication that a restriction on use or disclosure was intended, the party receiving such Data will treat the Data pursuant to the requirements of this clause unless otherwise directed in writing by the party providing such Data.
- (8) Notwithstanding any restriction on use, disclosure, or reproduction of Data provided in this clause, the parties will not be restricted in the use, disclosure, or reproduction of Data provided under this Agreement that: (a) is publicly available at the time of disclosure or thereafter becomes publicly available without breach of this Agreement; (b) is known to, in the possession of, or developed by the receiving party independent of carrying out the receiving party's responsibilities under this Agreement and independent of any disclosure of, or without reference

to, Proprietary Data or otherwise protectable Data hereunder; (c) is received from a third party having the right to disclose such information without restriction; or (d) is required to be produced by the receiving party pursuant to a court order or other legal requirement.

- (9) If either NASA or RpK believes that any of the events or conditions that remove restriction on the use, disclosure, or reproduction of the Data apply, NASA or RpK will promptly notify the other party of such belief prior to acting on such belief, and, in any event, will notify the other party prior to an unrestricted use, disclosure, or reproduction of such Data.
- (10) Disclaimer of Liability: Notwithstanding any restriction on use, disclosure, or reproduction of Data provided in this Article, NASA will not be restricted in, nor incur any liability for, the use, disclosure, or reproduction of any Data not identified with a suitable restrictive notice in accordance with paragraphs B and G of this Article or of any Data included in Data which RpK has furnished, or is required to furnish to the U.S. Government without restriction on disclosure and use.
- (11) RpK may use the following, or a similar, restrictive notice as required by paragraphs B and G of this Article. In addition to identifying Proprietary Data with such a restrictive notice, RpK should mark each page containing Proprietary Data with the following, or a similar, legend: "PROPRIETARY DATA – use and disclose only in accordance with notice on title or cover page."

Proprietary Data Notice

These data herein include *<enter as applicable: "Background Data" or "Data Produced by Participant under a Space Act Agreement">* in accordance with the Data Rights provisions under Space Act Agreement *<provide applicable identifying information>* and embody Proprietary Data. In accordance with the Space Act Agreement, NASA will use reasonable efforts to maintain the data in confidence and limit use, disclosure, and reproduction by NASA and any Related Entity of NASA (under suitable protective conditions) in accordance with restrictions identified in the Space Act Agreement *<may list specific restrictions listed in the Agreement>*.

- (12) Except for inventions made under this Agreement, NASA obtains no rights in pre-existing Data, provided such Data is identified with a suitable restrictive notice.
- B. Data First Produced by RpK under this Agreement.
- (1) Data first produced by RpK in carrying out RpK's responsibilities under this Agreement, including but not limited to technical data related to inventions made under this Agreement, will be furnished to NASA upon request and such Data

will be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) during the term of this Agreement only for evaluating RpK's performance under this Agreement. If RpK considers any such Data to be Proprietary Data, and such Data is identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence.

- (2) Upon a successful completion by RpK of all Milestones under this Agreement, NASA shall not assert rights in such Data or use such Data for any purpose except that NASA shall retain the right to: (1) maintain a copy of such Data for archival purposes; and (2) use or disclose such archived Data by or on behalf of NASA for Government purposes in the event NASA determines that:
 - (a) Such action is necessary because RpK, its assignee, or other successor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of inventions or software related to such Data;
 - (b) Such action is necessary because RpK, its assignee, or other successor, having achieved practical application of inventions or software related to such Data, has failed to maintain practical application of such inventions;
 - (c) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by RpK, its assignee, or other successor; or
 - (d) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by RpK, its assignee, or successor.
- (3) In the event NASA terminates this Agreement in accordance with Article 17.B., Termination for Failure to Perform, NASA shall have the right to use or disclose Data first produced by RpK in carrying out RpK's responsibilities under this Agreement by or on behalf of NASA for Government purposes.
- (4) The parties will negotiate rights in Data in the event of termination for any other reason, including expiration of this Agreement before completion of all Milestones or termination by NASA under Article 17.C., Unilateral Termination.

C. Data First Produced by NASA under this Agreement.

- (1) As to Data first produced by NASA (or any Related Entity of NASA) in carrying out NASA responsibilities under this Agreement that would be Proprietary Data if it had been obtained from RpK, such Data will be appropriately marked with a restrictive notice and maintained in confidence for the duration of this Agreement, with the express understanding that during the aforesaid restricted period such Data may be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for carrying out NASA responsibilities under this Agreement.

- (2) Upon a successful completion by RpK of all Milestones under this Agreement, NASA shall not use such Data for any purpose except that NASA shall retain the right to: (1) maintain a copy of such Data for archival purposes; and (2) use or disclose such archived Data by or behalf of the NASA for Government purposes in the event NASA determines that:
 - (a) Such action is necessary because RpK, its assignee, or other successor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of inventions or software related to such Data;
 - (b) Such action is necessary because RpK, its assignee, or other successor, having achieved practical application of inventions or software related to such Data, has failed to maintain practical application of such inventions;
 - (c) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by RpK, its assignee, or other successor; or
 - (d) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by RpK, its assignee, or successor.
- (3) In the event NASA terminates this Agreement in accordance with Article 17.B., Termination for Failure to Perform, NASA shall have the right to use or disclose Data first produced by NASA in carrying out NASA's responsibilities under this Agreement by or on behalf of NASA for Government purposes.
- (4) The parties will negotiate rights in Data in the event of termination for any other reason, including expiration of this Agreement before completion of all Milestones or termination under Article 17.C., Unilateral Termination.

D. Publication of Results.

- (1) Recognizing that section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. §2473), as amended, requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, and that the dissemination of the results of NASA activities is one of the considerations for this Agreement, NASA will coordinate proposed publication of results with RpK in a manner that allows RpK a reasonable amount of time to review and comment on proposed publications.
- (2) Consistent with other obligations in this Article, NASA agrees that it will not publish any results without first receiving permission from RpK.

E. Data Disclosing an Invention.

In the event Data exchanged between NASA and RpK discloses an invention for which patent protection is being considered, the furnishing party specifically identifies such Data, and the

disclosure and use of such Data is not otherwise limited or restricted herein, the receiving party agrees to withhold such Data from public disclosure for a reasonable time (presumed to be 1 year unless mutually agreed otherwise) in order for patent protection to be obtained.

F. Data Subject to Export Control.

Technical data, whether or not specifically identified or marked, that is subject to the export laws and regulations of the United States and that is provided to RpK under this Agreement will be treated as such, and will not be further provided to any foreign persons or transmitted outside the United States without proper U.S. Government authorization, where required.

G. Background Data.

- (1) In the event RpK furnishes NASA with Data developed at private expense that existed prior to, or was produced outside of, this Agreement, and such Data embody Proprietary Data, and such Data is so identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence and such Data will be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for evaluating RpK's performance under this Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by RpK.
- (2) The parties agree that within 30 days of execution by NASA of this Agreement RpK may provide NASA with a list of Background Data that embodies Proprietary Data, and NASA shall have 60 days following such delivery to object to such designation. Absent objection by NASA, such data shall constitute Background Data. With respect to Data that NASA objects to being considered Background Data, the parties will attempt to agree upon the portion of such Data, if any, that constitutes Background Data. All Background Data shall be appropriately marked as Proprietary Data.

H. Handling of Data.

- (1) In the performance of this Agreement, RpK and any Related Entity of RpK may have access to, be furnished with, or use the following categories of Data:
 - (a) Proprietary Data of third parties that the U.S. Government has agreed to handle under protective arrangements; and/or
 - (b) U.S. Government Data, the use and dissemination of which, the U.S. Government intends to control.
- (2) Data provided by the U.S. Government under the Agreement.
 - (a) At the time of execution of this Agreement, the parties agree that the following Proprietary Data of third parties will be provided to RpK with the express understanding that RpK will use and protect such Data in accordance with this Article: None

- (b) Within 30 days following execution of this Agreement, the parties may agree upon a list of U.S. Government Data to be provided to RpK (with the express understanding that RpK will use and protect such U.S. Government Data in accordance with this Article), and append such list to this Agreement.
 - (c) At the time of execution of this Agreement, the parties agree that the following software and related Data will be provided to RpK under a separate Software Usage Agreement with the express understanding that RpK will use and protect such related Data in accordance with this Article. Unless RpK has entered into a license, consistent with 37 C.F.R. Part 404, for software provided under this Agreement, upon completion of activities under this Agreement, such related Data will be disposed of as instructed by NASA: None.
- (3) With respect to such Data specifically identified in this Agreement or specifically marked with a restrictive notice, RpK agrees to:
- (a) Use, disclose, or reproduce such Data only to the extent necessary to perform the work required under this Agreement;
 - (b) Safeguard such Data from unauthorized use and disclosure;
 - (c) Allow access to such Data only to its employees and any Related Entity that require access for their performance under this Agreement;
 - (d) Except as otherwise indicated in (3)(c) above, preclude access and disclosure of such Data outside RpK's organization;
 - (e) Notify its employees who may require access to such Data about the obligations under this Article, obtain written affirmation from all such employees that they have received such notification, administer a monitoring process to ensure that such employees comply with such obligations, and ensure that any Related Entity performs the same functions with respect to its employees; and
 - (f) Return or dispose of such Data, as NASA may direct, when the Data is no longer needed for performance under this Agreement.

I. Oral and visual information.

If information that RpK considers to be Proprietary Data is disclosed orally or visually to NASA, NASA will have no duty to limit or restrict, and will not incur any liability for, any disclosure or use of such information unless (1) RpK orally informs NASA before initial disclosure that such information is considered to be Proprietary Data, and (2) RpK reduces such information to tangible, recorded form that is identified and marked with a suitable restrictive notice as required by paragraphs B and G above and furnishes the resulting Data to NASA within 10 days after such oral or visual disclosure.

ARTICLE 13. INTELLECTUAL PROPERTY AND DATA RIGHTS – INVENTION AND PATENT RIGHTS

A. Definitions.

- (1) “Administrator,” as used in this Article, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.
- (2) “Patent Representative” as used in this Article means the NASA Johnson Space Center Patent Counsel. Correspondence with the Patent Representative under this clause will be sent to the address below:

Patent Counsel
NASA Johnson Space Center
Mail Code AL
2101 NASA Parkway
Houston, TX 77058

- (3) “Invention,” as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S.C.
- (4) “Made,” as used in relation to any invention, means the conception or first actual reduction to practice of such invention.
- (5) “Practical application,” as used in this Agreement, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention, software, or related Data is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public or to the Federal Government on reasonable terms.
- (6) “Related Entity” as used in this Article, means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or RpK that is assigned, tasked, or contracted with to perform specified NASA or RpK activities under this Agreement.

B. Allocation of principal rights.

- (1) Presumption of title.
 - (a) Any invention made under this Agreement shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) (42 U.S.C. § 2457(a)) of the National Aeronautics and Space Act of 1958 (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting such invention RpK submits to

the Patent Representative a written statement, containing supporting details, demonstrating that the invention was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

- (b) Regardless of whether title to such an invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver as described in paragraph B.(3) and paragraph I, RpK may nevertheless file the statement described in paragraph B.(1)(a) of this Article. The Administrator (or his designee) will review the information furnished by RpK in any such statement and any other available information relating to the circumstances surrounding the making of the invention and will notify RpK whether the Administrator has determined that the invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.
- (2) Property rights in inventions. Each invention made under this Agreement for which the presumption of paragraph B.(1)(a) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by the Administrator of NASA unless the Administrator waives all or any part of the rights of the United States to RpK's invention, as provided in paragraph B.(3) of this clause.
- (3) Waiver of rights.
- (a) The NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for waiver of rights to any invention or class of inventions made or that may be made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.
 - (b) NASA has determined that to stimulate and support the capability of a United States commercial provider to provide space and orbital transportation services to the public and the Federal Government, the interest of the United States would be served by waiving to RpK, in accordance with provisions of 14 C.F.R. Part 1245, Subpart 1, rights to inventions made by RpK in the performance of work under this Agreement. Therefore, upon petition submitted by RpK, as provided in 14 C.F.R. Part 1245, Subpart 1, either prior to execution of the Agreement or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under this Agreement, NASA will waive such rights to RpK. If such a petition is not submitted, RpK may petition for waiver of rights to an identified invention within eight months of first disclosure of invention in accordance with paragraph E.(2) of this clause or within such longer period as may be

authorized in accordance with 14 CFR 1245.105. Further procedures are provided in paragraph I of this clause.

C. Minimum rights reserved by the Government.

- (1) With respect to each RpK invention made under this Agreement for which a waiver of rights is applicable in accordance with 14 C.F.R. Part 1245, Subpart 1, the Government reserves:
 - (a) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and
 - (b) Such other March-in rights as given in Paragraph H below.
- (2) NASA will not exercise the government purpose license reserved in paragraph C.(1)(a) during the term of this Agreement.
- (3) Upon a successful completion by RpK of all Milestones under this Agreement, NASA will refrain from exercising the government purpose license reserved in paragraph C.(1)(a) for a period of 10 (10) years following the expiration of this Agreement or until December 31, 2020, whichever is later.
- (4) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than an invention made under this Agreement.

D. Minimum rights to RpK

- (1) RpK is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on an invention made by RpK under this Agreement and any resulting patent in which the Government acquires title, unless RpK fails to disclose such invention within the times specified in paragraph E.(2) of this clause. RpK's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which RpK is a party and includes the right to grant sublicenses of the same scope to the extent RpK was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of RpK's business to which the invention pertains.
- (2) RpK's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of such invention pursuant to an application for an exclusive license submitted in accordance with 37 C.F.R. Part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which RpK has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be

revoked or modified at the discretion of the Administrator to the extent RpK, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- (3) Before revocation or modification of the license, RpK will be provided a written notice of the Administrator's intention to revoke or modify the license, and RpK will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by RpK) after the notice to show cause why the license should not be revoked or modified. RpK has the right to appeal, in accordance with 14 C.F.R. 1245.112, any decision concerning the revocation or modification of its license.

E. Invention identification, disclosures, and reports.

- (1) RpK shall establish and maintain active and effective procedures to assure that inventions made under this Agreement are promptly identified and disclosed to RpK personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this Agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of such inventions, and records that show that the procedures for identifying and disclosing such inventions are followed. Upon request, RpK shall furnish the Patent Representative a description of such procedures for evaluation and for determination as to their effectiveness.
- (2) RpK will disclose each such invention to the Patent Representative within two months after the inventor discloses it in writing to RpK personnel responsible for the administration of this clause or, if earlier, within six months after RpK becomes aware that such an invention has been made, but in any event before any on sale, public use, or publication of such invention known to RpK. RpK shall use the NASA electronic New Technology Reporting system (eNTRe), accessible at <http://invention.nasa.gov>, to disclose inventions. The invention disclosure shall identify this Agreement and shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of any such invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NASA, RpK will promptly notify NASA of the acceptance of any manuscript describing such an invention for publication or of any on sale or public use planned by RpK for such invention.

- (3) RpK shall furnish the Patent Representative the following:
- (a) Interim reports every 12 months (or such longer period as may be specified by the Patent Representative) from the date of the Agreement, listing inventions made under this Agreement during that period, and certifying that all such inventions have been disclosed (or that there are no such inventions) and that the procedures required by paragraph E.(2) of this clause have been followed;
 - (b) A final report, within three months after completion of the work, listing all inventions made under this Agreement or certifying that there were no such inventions, and listing all subcontracts or other agreements with a Related Entity containing a patent and invention rights clause (as required under paragraph G of this clause) or certifying that there were no such subcontracts or other agreements; and
 - (c) Interim and final reports shall be submitted electronically at the eNTRe Web-site <http://invention.nasa.gov>.
- (4) RpK agrees, upon written request of the Patent Representative, to furnish additional technical and other information available to RpK as is necessary for the preparation of a patent application on an invention made under this Agreement in which the Government retains title and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on such inventions and to establish the Government's rights in the inventions.
- (5) Protection of reported inventions. When inventions made under this Agreement are reported and disclosed to NASA in accordance with the provisions of this Article, NASA agrees to withhold such reports or disclosures from public access for a reasonable time (presumed to be 1 year unless otherwise mutually agreed) in order to facilitate the allocation and establishment of the invention and patent rights under these provisions.

F. Examination of records relating to inventions

- (1) The Patent Representative or designee shall have the right to examine any books (including laboratory notebooks), records, and documents of RpK relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this Agreement to determine whether
- (a) Any such inventions were made in performance of this Agreement;
 - (b) RpK has established and maintained the procedures required by paragraph E.(1) of this clause; and
 - (c) RpK and its inventors have complied with the procedures.

- (2) If the Patent Representative learns of an unreported RpK invention that the Patent Representative believes may have been made under this Agreement, RpK may be required to disclose the invention to NASA for a determination of ownership rights.
- (3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

G. Subcontracts or Other Agreements.

- (a) Unless otherwise authorized or directed by the Patent Representative, RpK shall include this Invention and Patent Rights Article (suitably modified to identify the parties) in any subcontract or other agreement with a Related Entity hereunder (regardless of tier) for the performance of experimental, developmental, or research work.
- (b) In the Invention and Patent Rights Article included in any such subcontract or other agreement, the following (suitably modified to identify the parties) shall be substituted for paragraph B(3)(b):

As provided in 14 C.F.R. Part 1245, Subpart 1, RpK may petition, either prior to execution of the Agreement or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under this Agreement. If such a petition is not submitted, or if after submission it is denied, RpK may petition for waiver of rights to an identified invention within eight months of first disclosure of invention in accordance with paragraph E.(2) of this Article or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in paragraph H of this Article.

- (c) In the case of subcontracts or other agreements at any tier, NASA, the Related Entity, and RpK agree that the mutual obligations of the parties created by this Article constitute privity of contract between the Related Entity and NASA with respect to those matters covered by this Article.
- (2) In the event of a refusal by a prospective Related Entity to accept such a clause, RpK:
 - (a) Shall promptly submit a written notice to the Patent Representative setting forth the prospective Related Entity's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (b) Shall not proceed with such subcontract or other agreement without the written authorization of the Patent Representative.
 - (3) RpK shall promptly notify the Patent Representative in writing upon the award of any subcontract or other agreement with a Related Entity (at any tier) containing an invention and patent rights clause by identifying the Related Entity, the

applicable invention and patent rights clause, the work to be performed under the subcontract or other agreement, and the dates of award and estimated completion. Upon request of the Patent Representative, RpK shall furnish a copy of such subcontract or other agreement, and, no more frequently than annually, a listing of the subcontracts or other agreements that have been awarded.

(4) Reserved.

(5) In recognition of RpK's substantial contribution of funds, facilities and/or equipment to the work performed under this Agreement, RpK is authorized, subject to the rights of NASA set forth elsewhere in this Article, to:

- (a) Acquire by negotiation and mutual agreement rights to an invention made under this Agreement by a Related Entity as RpK may deem necessary to obtaining and maintaining of private support; and
- (b) Request, in the event of inability to reach agreement pursuant to paragraph 7(e)(i) of this Article, that NASA request that such rights for RpK be included as an additional reservation in a waiver granted pursuant to 14 CFR Part 1245, Subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the Patent Representative. Notwithstanding paragraph B.(3)(b) of this Article, the Related Entity should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 C.F.R. Part 1245, Subpart 1), NASA will acquire title to inventions made under this Agreement. If a waiver is not requested or granted, RpK may request a license from NASA consistent with the requirements of 37 CFR Part 404. A Related Entity requesting a waiver must follow the procedures set forth in paragraph I of this Article.

H. March-in rights.

- (1) RpK agrees that, with respect to any invention made under this Agreement in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require RpK, or an assignee or exclusive licensee of such an invention, to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if RpK, its assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that:
 - (a) Such action is necessary because RpK, assignee, or exclusive licensee has not taken, or is not expected to take within a reasonable time, effective

steps to achieve practical application of such invention in such field of use;

- (b) Such action is necessary because RpK, assignee, or exclusive licensee, having achieved practical application of such invention, has failed to maintain practical application of such invention in such field of use;
- (c) Such action is necessary because RpK, assignee, or exclusive licensee has discontinued making the benefits of such invention available to the public or to the Federal Government;
- (d) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by RpK, assignee, or exclusive licensee; or
- (e) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by RpK, assignee, or exclusive licensee.

I. Requests for Waiver of Rights.

- (1) In accordance with the NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, waiver of rights to any or all inventions made or that may be made under this Agreement may be requested at different time periods. Advance waiver of rights to any or all such inventions may be requested prior to the execution of the Agreement, or within 30 days after execution thereof. In addition, waiver of rights to an identified invention made and reported under this Agreement may be requested, even though a request for an advance waiver was not previously requested or, if previously requested, was not granted.
- (2) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, for which countries, and a citation of the specific section(s) of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon.
- (3) All petitions for waiver, whether advanced or individual petitions, will be submitted to the Patent Representative designated in this Article.
- (4) A Petition submitted in advance of this Agreement will be forwarded by the Patent Representative to the Inventions and Contributions Board. The Board will consider the petition and where the Board makes the findings to support the

waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Patent Representative of the Administrator's determination. The Patent Representative will be informed by the Board whenever there is insufficient time or information to permit a decision to be made on an advance waiver without unduly delaying the execution of the Agreement. In the event a request for an advanced waiver is not granted or is not decided upon before execution of the Agreement, the petitioner will be so notified by the Patent Representative. All other petitions will be processed by the Patent Representative and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the NASA Patent Waiver Regulations.

ARTICLE 14. CAPABILITY D

Appendix 2, Milestones and Success Criteria, includes optional milestones regarding RpK's demonstration of a crew transportation capability. The "Capability D Crew Transportation Option" milestones are included only as a priced option to this Agreement and create no obligation for either party to perform unless the option is exercised by NASA. NASA shall have the exclusive right to exercise this option by providing to RpK written notification of such an intention from the Associate Administrator of Exploration Systems or his designee.

ARTICLE 15. DISCLAIMER OF WARRANTY

A. Goods (i.e., equipment, facilities, technical information, data, prototypes) and services, if provided by NASA under this Agreement, are provided "as is" and no warranty related to availability, title, or suitability for any particular use, nor any implied warranty of merchantability or fitness for a particular purpose, is provided under this Agreement. NASA makes no express or implied warranty as to any intellectual property, generated information, or product made or developed under this Agreement, or that the goods, services, materials, products, processes, information, or data to be furnished hereunder will accomplish intended results or are safe for any purpose including the intended purpose.

B. Goods (i.e., equipment, facilities, technical information, data, prototypes) and services, if provided by RpK under this Agreement, are provided "as is" and no warranty related to availability, title, or suitability for any particular use, nor any implied warranty of merchantability or fitness for a particular purpose, is provided under this Agreement. RpK makes no express or implied warranty as to any intellectual property, generated information, or product made or developed under this Agreement, or that the goods, services, materials, products, processes, information, or data to be furnished hereunder will accomplish intended results or are safe for any purpose including the intended purpose.

ARTICLE 16. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature below and shall remain in effect until the completion of all obligations of both parties hereto, or 5 years from the date of the last signature, whichever comes first.

ARTICLE 17. TERMINATION

A. Termination by Mutual Consent.

This Agreement may be terminated at any time upon mutual written consent of both parties.

B. Termination for Failure to Perform:

- (1) NASA may terminate this Agreement 30 days after issuance of a written notification that RpK has failed to perform under this Agreement, including failure to meet a scheduled Milestone as identified and described in Appendix 2. Before making such a notification, NASA will consult with RpK to ascertain the cause of the failure and determine whether additional efforts are in the best interest of the parties. NASA will give special consideration to any failure caused by delays or events beyond RpK's control. Upon such a notification and determination, NASA will take all rights identified in Articles 12 and 13 of this agreement.
- (2) In the event of a termination under Section B(1), RpK will not be entitled to any additional payments from the Government due to a termination for failure to meet a Milestone. NASA and RpK will negotiate in good faith any other outstanding issues between the parties. Failure of the parties to agree will be resolved pursuant to Article 19, Dispute Resolution.

C. Unilateral Termination by NASA:

- (1) NASA may terminate this Agreement upon written notice; NASA's obligations under this Agreement may be terminated, in whole or in part, (a) upon a declaration of war by the Congress of the United States; or (b) upon a declaration of a national emergency by the President of the United States; or (c) upon a NASA determination, in writing, that NASA is required to terminate for reasons beyond its control. For purposes of this Article, reasons beyond NASA's control include, but are not limited to, acts of God or of the public enemy, acts of the U.S. Government other than NASA, in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.
- (2) Upon receipt of written notification that NASA is unilaterally terminating this Agreement under Section C(1), above, RpK shall immediately stop work under this Agreement and shall immediately cause any and all of its partners and suppliers to cease work, except to the extent that RpK wishes to pursue these demonstrations exclusively using its own funding. Upon such a termination,

NASA and RpK agree to negotiate in good faith a final settlement payment to be made by NASA. However, in no instance shall NASA's liability for termination exceed the total amount due under the next Milestone of this Agreement and is subject to the provisions of Article 5. Failure of the parties to agree will be resolved pursuant to Article 19, Dispute Resolution.

D. Limitation on Damages.

In the event of any termination by NASA, neither NASA nor RpK shall be liable for any loss of profits, revenue, or any indirect or consequential damages incurred by the other Party, its contractors, subcontractors, or customers as a result of any termination of this Agreement. A Party's liability for any damages under this Agreement is limited solely to direct damages, incurred by the other Party, as a result of any termination of this Agreement subject to mitigation of such damages by the complaining party. However, in no instance shall NASA's liability for termination exceed the total amount due under the next milestone under this Agreement.

E. Rights in Real or Personal Property

RpK will have title to property acquired or developed by RpK and its contractors/partners with government funding, in whole or in part to conduct the work specified under this Agreement. In the event of termination of this Agreement for any reason, NASA may purchase such real or personal property as provided in Article 26 below. Upon any termination under this Article, NASA may immediately exercise all rights identified in Articles 12 and 13.

ARTICLE 18. CONTINUING OBLIGATIONS

The obligations of the parties set forth in the provisions of Articles 10 (Liability and Risk of Loss) and 12-13 (Intellectual Property and Data Rights) of this Agreement concerning liability and intellectual property rights shall continue to apply after the expiration or termination of this Agreement.

ARTICLE 19. DISPUTE RESOLUTION

All disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the RpK Administrative Contact and the NASA Administrative Contact, who shall seek to resolve such disputes by Agreement. If they are unable to resolve the dispute, then the dispute will be referred to the JSC Commercial Crew Cargo Project Manager and the CEO of RpK for joint resolution. If the parties are still unable to resolve the dispute, the Associate Administrator for Exploration Systems Mission Directorate, or the Deputy of the Directorate, will seek to resolve the dispute, but if necessary issue a written decision that shall be a final Agency decision for all purposes including for purposes of seeking judicial review.

Pending resolution of any disputes pursuant to this Article, the Parties agree that performance of all obligations shall be pursued diligently in accordance with the direction of the JSC Commercial Crew Cargo Project Manager.

The Parties agree that this Disputes Resolution procedure shall be the exclusive procedure followed by the Parties in resolving any dispute arising under, or based on, an express or implied provision of this Agreement, including an alleged breach.

ARTICLE 20. PRINCIPAL POINTS OF CONTACT

The following personnel are designated as the Administrative and Technical Contacts between the parties in the performance of this Agreement.

NASA Administrative Contact:

Name and Title
Johnson Space Center
2101 NASA Parkway
Houston, TX 77058
Phone:
Fax:
Email:

RpK Administrative Contact:

4300 Amelia Earhart Lane
Oklahoma City, OK 73159
Phone: (405) 488-1200
Fax: (405) 488-1204

NASA Technical Contact

Alan Lindenmoyer
Manager, Commercial Crew/Cargo Project
Johnson Space Center
2101 NASA Parkway
Houston, TX 77058
Phone:
Fax:
Email: alan.j.lindenmoyer@nasa.gov

RpK Technical Contact

4300 Amelia Earhart Lane
Oklahoma City, OK 73159
Phone: (405) 488-1200
Fax: (405) 488-1204

ARTICLE 21. MODIFICATION/AMENDMENTS

All modifications and amendments to this Agreement shall be by mutual agreement of the Parties and shall be executed, in writing, and signed by the signatories to this Agreement, or their respective successor or designee.

ARTICLE 22. ASSIGNMENT OF RIGHTS

Neither this Agreement nor any interest arising under it will be assigned by either Party without the express written consent of the other party.

ARTICLE 23. ANTI-DEFICIENCY ACT

All activities under or pursuant to this Agreement are subject to the availability of appropriated funds, and no provision shall be interpreted to require obligation or provision of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

ARTICLE 24. APPLICABLE LAW

U.S. Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of this Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties.

ARTICLE 25. EXPORT LICENSES

RpK will be responsible for:

A. Compliance with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions/exceptions, RpK will be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

B. Obtaining export licenses, if required, before utilizing foreign persons in the performance of this Agreement, including instances where COTS efforts are to be performed on-site at NASA Centers, where the foreign person will have access to export-controlled technical data or software.

C. All regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

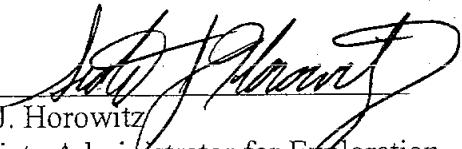
D. Ensuring that the provisions of this Article apply to its subcontractors.

In the event that either party intends to utilize a foreign person (as defined in the International Traffic in Arms Regulations and the Export Administration Regulations) in the performance of this Agreement, such party shall be responsible for obtaining the required export licenses in advance of the foreign person's participation.

ARTICLE 26. TITLE AND RIGHTS IN REAL OR PERSONAL PROPERTY

RpK will have title to real or personal property acquired or developed under this Agreement, including developed or acquired by RpK for COTS demonstrations. In the event of termination of this Agreement under Article 17.B., Termination for Failure to Perform, NASA will have the right to purchase any such property developed or acquired with funds provided by NASA. NASA's right to purchase such property shall continue for one hundred eighty (180) days following the effective date of such termination and shall thereafter lapse, and shall be exercised by providing written notice to RpK within the 180 day period. The Parties will negotiate in good faith purchase prices for specific items of property. The negotiated prices will be based on RpK's actual costs (including costs incurred prior to the date of this Agreement) for purchase or development of the specific item(s). This price will then be discounted by a percentage that reflects the ratio of government funding provided under the Agreement versus the amount of RpK funding used (whether before or after the date of this Agreement) to develop or acquire the specific item(s) of property. ($\$2$ of government funds v. $\$1$ of participant funds = $2/3 = 66.6\%$ discount).

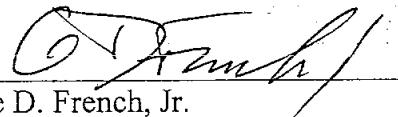
NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

BY: 

Scott J. Horowitz
Associate Administrator for Exploration
Systems

DATE: 6/16/2006

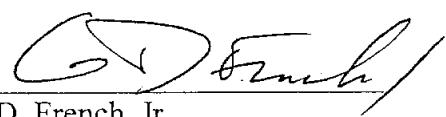
Rocketplane Limited, Inc.

BY: 

George D. French, Jr.

DATE: 6/15/06

Kistler Aerospace Corporation

BY: 

George D. French, Jr.

DATE: 6/15/06

APPENDIX 1: RpK Business Plan – Executive Summary



Rocketplane Kistler (RpK) proposes meeting NASA's COTS goals with a fleet of reusable vehicles that addresses a healthy diversity of other markets. RpK offers its K-1 to demonstrate Capabilities B/C (internal cargo delivery, disposal, and return) with Demo 1, and Capability A (external cargo delivery and disposal) with Demo 2 starting in 2008 for a NASA investment of \$207M. We offer an option to demonstrate Capability D in 2010 with the same basic K-1 by adding a Crew Module with a Human Rating Certification for an additional \$200M investment

RpK offers NASA the opportunity to leverage ISS resupply and crew transfer needs to spark initiation of a revolutionary commercial space transportation service.

RpK is a diversified space transportation service provider with both orbital and suborbital services. RpK's XP vehicle is on the threshold of providing suborbital space tourism and microgravity services.

NASA's investment in RpK's K-1 space transportation service demonstrations will do more than provide NASA with a commercial ISS service provider. It will place a total of six commercial capabilities at the service of NASA and the nation. The K-1 can deliver satellites, deliver and recover ISS cargo, and transport ISS crew. In addition it provides launch-on-demand capability for the Department of Defense, cargo and crew transport for NASA's Vision for Space Exploration, and extended microgravity service for research purposes.

NASA's investment leverages existing RpK resources that make early COTS deliveries possible. Over _____ has been invested in K-1 development. The K-1 is 75% complete by weight and 94% by design. NASA investment through COTS will enable RpK to reunite the existing K-1 team of prime and sub contractors, and complete K-1 development.

The \$207M of NASA funding provides NASA with two COTS demonstration flights to prove Capabilities B/C (Demo 1) and Capability A (Demo 2). RpK will also perform, a risk reduction flight to rendezvous with a point in space prior to any approach to ISS. An additional \$200 million NASA investment will enable a Capability D demonstration.

[Click for K-1 CONOPS Video](#)

[Click for RpK Marketing Video](#)

[Click for K-1 Hardware Video](#)

[Click for Rocketplane Video](#)

Business Strategy

RpK intends to be the leading provider of space transportation services, not a builder of launch systems. The distinction is important.

RpK will operate reusable launch vehicles – the Rocketplane XP for suborbital services and the K-1 for orbital services. Reusability is the key to low cost, responsive space systems. A reusable vehicle, unlike an expendable vehicle, does not need to be built new for each flight. It operates independently of the production stream and is not tied to an extensive network of suppliers. Neither the XP nor the K-1 is tied to the factory. Once the fleet is in place, RpK can focus on providing truly commercial transportation services, not hardware delivery.

To secure the private financing required for XP and K-1 development, RpK has put in place a world class management team with expertise extending from space business financing, system development, and program management to marketing and sales. This team has a proven track record in delivering space systems. Once funding is secure, RpK will populate its staff with additional skilled and knowledgeable managers and engineers to oversee the contractors completing vehicle development. Most of the key Kistler Aerospace K-1 team are fully supporting the COTS effort for RpK and many of the Kistler technical team are waiting to join the RpK COTS Program Team.

With the fleet complete, RpK will provide comprehensive space delivery and in-space services to NASA, DoD, and commercial customers with the versatile and complementary K-1 and Rocketplane XP.

RpK achieves NASA's Commercial Crew / Cargo Project Objectives

- Implement U.S. Space Exploration policy with an investment to stimulate commercial enterprises in space

NASA's COTS transportation system provides basis for a viable commercial launch business for multiple markets

- Facilitate U.S. private industry demonstration of cargo and crew space transportation capabilities with the goal of achieving reliable, cost effective access to low-Earth orbit
- ✓ *Fleet of 5 reliable, fully reusable K-1 launch vehicles results in low costs for launch, operations, and insurance*
- ✓ *The second stage Orbital Vehicle (OV) accommodates interchangeable payload, cargo, and crew modules for flexible satellite and ISS launches*
- Create a market environment in which commercial space transportation services are available to Government and private sector customers
- ✓ *RpK will be a full-service launch provider, operating from multiple sites*

Our reusable launch vehicles and streamlined CONOPS provide rapid turn around services to quickly respond to customers' needs.

Technical Approach

RpK intends to complete the fabrication, assembly, test and integration of the K-1

In that time, the operations facility, which is 100% design complete, will also be finished and commissioned.

RpK will conduct a risk reduction flight combining two missions: 1) deploy a commercial satellite; and 2) position the cargo module to a point in space to verify K-1 proximity operations before approaching ISS. Subsequent to that flight, RpK will launch the COTS Demonstration

flights and initial Operational flights from Spaceport Woomera, Australia.

RpK will demonstrate COTS Capabilities B/C with a Pressurized Cargo Module (PCM) in December 2008, and Capability A in February 2009 with an Unpressurized Cargo Module (UCM).

with a nominal 9-day turnaround (3-day surge capability) and an operational recurring price of:

Financial Information

As of June 15, 2006, RpK has received signed term sheets from strategic partners and strategic investors that equate to commitments for in COTS funding.

RpK's strategic partners include Strategic investors include

With a combination of strategic partners, strategic investors, and NASA investment, RpK has the right mix of investors to attract additional investors moving forward.

By leveraging available RpK assets, shown in the figure below, NASA increases their probability of success for the COTS program. Experienced managers and subcontractors combined with RpK's in-hand, fabricated and tested, full-size subsystems allows for rapid integration, assembly, and checkout of the RLV. NASA's investment in RpK also leverages RpK's follow-on K-1 vehicle as a Phase-1 backup vehicle, launching from Woomera, Australia and flying a risk reduction flight prior to demonstration 1 to increase protection for the ISS. This approach significantly reduces demonstration risk. NASA's investment further gains execution of four demonstrations shown in the figure below.

Thus NASA significantly benefits from investing in RpK to perform the Phase-1 COTS development and demonstration. Within 30 months NASA gains the six capabilities shown in the bottom portion of the figure below. RpK's fleet, launch-on-demand, microgravity, and growth capabilities provide NASA far more than just cargo and crew transfer support.

NASA's Phase-1 COTS investment leverages significant, available RpK resources:

- R1 - Prime contractor RpK's management team with decades of experience developing, testing, and delivering space station, aerospace vehicle, and spacecraft to NASA, other government, and civilian customers.
- R2 - RpK subcontractors who have designed, developed, tested the HW / SW subsystems they have already fabricated following proven ISO9001 S&MA procedures.
- R3 - Existing ship sets of full-size K-1 hardware, tooling, and existing GN&C software allows achieving the 30-month demonstration schedule.
- R4 - RpK's integrated K-1 RLV with pressurized & unpressurized cargo modules, the K-1 Crew Module, and the XP RLV
- R5 - Woomera, Australia spaceport for K-1 launches & Burns Flats, Oklahoma Spaceport for XP launches.
- R6 - RpK's second integrated K-1 is a backup LV to the demonstration K-1 as well as the scheduled Phase-2 RLV. Any catastrophic difficulty with the first vehicle will not prevent successful completion of Phase-1 by 2010.

NASA's Phase-1 COTS investment gains the following capability demonstrations:

- >> Risk Reduction flight prior to Demonstration 1
- >> Capability B/C Demonstration 1 to / from the ISS
- >> Capability A Demonstration 2 to / from the ISS
- >> 2 Crew Module Demonstrations

NASA's COTS investments stimulates 6 commercial capabilities for use by NASA:

- C1 - Fleet Capability:** In 30 months establishes a viable commercial space transport company (RpK) with a fully-reusable, rapid turn around orbital K-1 and suborbital XP transport fleet.
- C2 - Orbital Cargo Delivery Capability:** Starting in 2009, NASA gains assured annual delivery of 29,416 kg/yr upmass, 21,400 kg/yr disposal, and 14,700 kg/yr recoverable downmass, allowing NASA to confidently retire the STS on schedule.
- C3 - Crew Transport Capability:** By August 2012 NASA gains an assured 5-person per flight transport capability allowing NASA to confidently commence Phase 2 commercial crew transport operations.
- C4 - Launch on Demand Capability:** Starting in 2009, NASA gains 9-day (after notice) rapid turn-around and transport capability of critical cargo to the ISS. Starting in 2012 NASA gains on-demand assured transport of ISS crew.
- C5 - Growth Capability:** Establishes a crew / cargo orbital space transport system with modular, expandable capability to conduct future NASA missions, such as moon re-supply.
- C6 - Microgravity Delivery Capability:** Fleet of orbital and suborbital launch vehicles easily capable of carrying microgravity payloads for short and multiple orbit flights.

B1. Company Information**A. Business Strategy**

RpK will be a full-service commercial space transportation provider, making what is now slow, costly, and inflexible into a responsive, affordable, and routine end-to-end service. We execute our business strategy with our mature, complimentary, K-1 and Rocketplane XP fully reusable space transportation vehicles.

As discussed above, RpK will operate reusable space transportation vehicles – the Rocketplane XP for suborbital services and the K-1 for orbital services. RpK will use NASA COTS to demonstrate reliable, low cost transportation services.

To secure the private financing required for XP and K-1 development, RpK has put in place a world class management team with expertise extending from space business financing, system development, program management, marketing, and sales. This team has a proven track record in space system development. Once funding is secure, RpK will populate its staff with additional skilled and knowledgeable managers and engineers to oversee the contractors completing the K-1 vehicle and launch site developments.

With the fleet complete, RpK will provide comprehensive space delivery and in-space services to NASA, DoD, and commercial customers with the versatile and complementary K-1 and Rocketplane XP.

B. Market

RpK will address a diversity of markets. In fact it is the diversity of markets addressed that make RpK such a robust investment. The XP will serve the suborbital space tourism and microgravity research markets.

The K-1 will serve NASA as a COTS space transportation vehicle.

The K-1 is also provides robust crew transport capability to the ISS
Addressing COTS Capability D opens orbital space to further
commercial development.

C. Products and Services

RpK provides low cost space access for a variety of purposes. Due to our reusability, RpK's vehicles provide schedule flexibility heretofore unavailable from space transportation.

RpK supports all space markets, including COTS missions, and the broader NASA Vision for Space Exploration.

as part of our risk reduction flight and continues with the execution of NASA's Phase 2 ISS resupply contract planned to start in May 2009.

As discussed, RpK provides unique on-orbit and return to earth services for both cargo and crew.

D. Competitor Analysis

No single competitor competes with RpK in all the markets that RpK serves. Other firms are either suborbital or orbital services, but none is as advanced as RpK. Other firms provide orbital delivery and orbital return, but none also provide launch-on-demand. RpK's strength as a competitor resides in its ability to address multiple markets, but to rely on no single one to be successful.

E. Marketing and Sales

F. Governance Structure

CEO George French is the majority owner of both RpK businesses.

The Kistler and Rocketplane BoD's have empowered the RpK executives with broad authority for daily production and operations decisions.

G. Management Team

The company is structured to complete development of the K-1 and XP vehicles, and press forward with comprehensive customer sales and services. The management team has decades of government and industry experience. They include veteran executives from Rocketplane and Kistler.

B2. Development and Demonstration Plan

A. Plan and Schedule

RpK has a realistic 28-month plan to COTS Demo 1. It is based on the advanced development state of the K-1. We plan to continue the on-going reactivation of the K-1 effort prior to contract award. We have approaches to mitigate programmatic risks, including staffing and facilities plans. Additionally RpK has developed an estimated schedule to complete Capability D in 37 months after Capability D ATP.

B. Resources

We have a resource plan to build a commercial space transportation infrastructure. The investment is planned in order to develop Capabilities A, B and C. NASA funding of \$207M provides the basis to demonstrate capabilities A, B, and C, stimulates commercial investment, facilitates near-term availability of multiple launch services, and reduces risk. In order to obtain capability D, ^{more}

C. Teaming Arrangements

Our team includes the best of industry in their areas of responsibility. They have extensive previous experience working with RpK and are participating in the K-1 restart planning.

D. Performance Milestone Payments

The proposed schedule of COTS performance milestone payments (Financial Template 2) is based on objective success criteria and realistic achievement dates. Payments total \$206.8M and are backloaded to fit the funding profile.

RpK's proposed Capability D milestone payments, based on RpK's best estimate of a worst-case scenario, represents the maximum exposure to both NASA and RpK's investors. We have identified in our technical proposal several (but not all-inclusive) trades that will be conducted, at RpK's expense, upon execution of the COTS contract. These trades will solidify a baseline approach that accomplishes several objectives. The obvious is to ensure crew safety, system reliability, redundancy and operational efficiency. In addition to the technical objectives of these trades, cost and schedule will be evaluated to establish an achievable and cost schedule.

Concurrent with the Capability D trades, RpK will commence effort to establish a Master Schedule to level 4 (or lower where appropriate) to accomplish Capability D Demonstration and transitioning to a Phase 2 Operational Readiness. Costing of these tasks will undoubtedly result in a more realistic and achievable cost and schedule program.

The result of these efforts and the anticipated cost savings will be shared with NASA on a dollar for dollar basis. RpK anticipates a final negotiation of Capability D milestone payments prior to Capability D program execution.

B3. COTS Operational Readiness (OR)

RpK plans to build two complete K-1 vehicles and a third Orbital Vehicle. This build will occur in sequence without a production pause. Long lead items are already in hand for Vehicle 2 production. This approach ensures K-1 readiness for the operational COTS missions. RpK's Crew Module is derived from the Pressurized Cargo Module. Consequently the majority of the tooling, design, and expertise will be readily available, and suppliers and contractors will already be identified. This enables near-term Operational Readiness dates with a full-scale RLV, and confidence that the STS can be retired in 2010.

B4. Financial Pro-forma

B5. Compliance

RpK complies with all COTS eligibility requirements, and federal laws and policies, including ITAR. RpK is 100% owned by US nationals. We are compliant with all FAA regulations and finally, we do not rely on Russian suppliers.

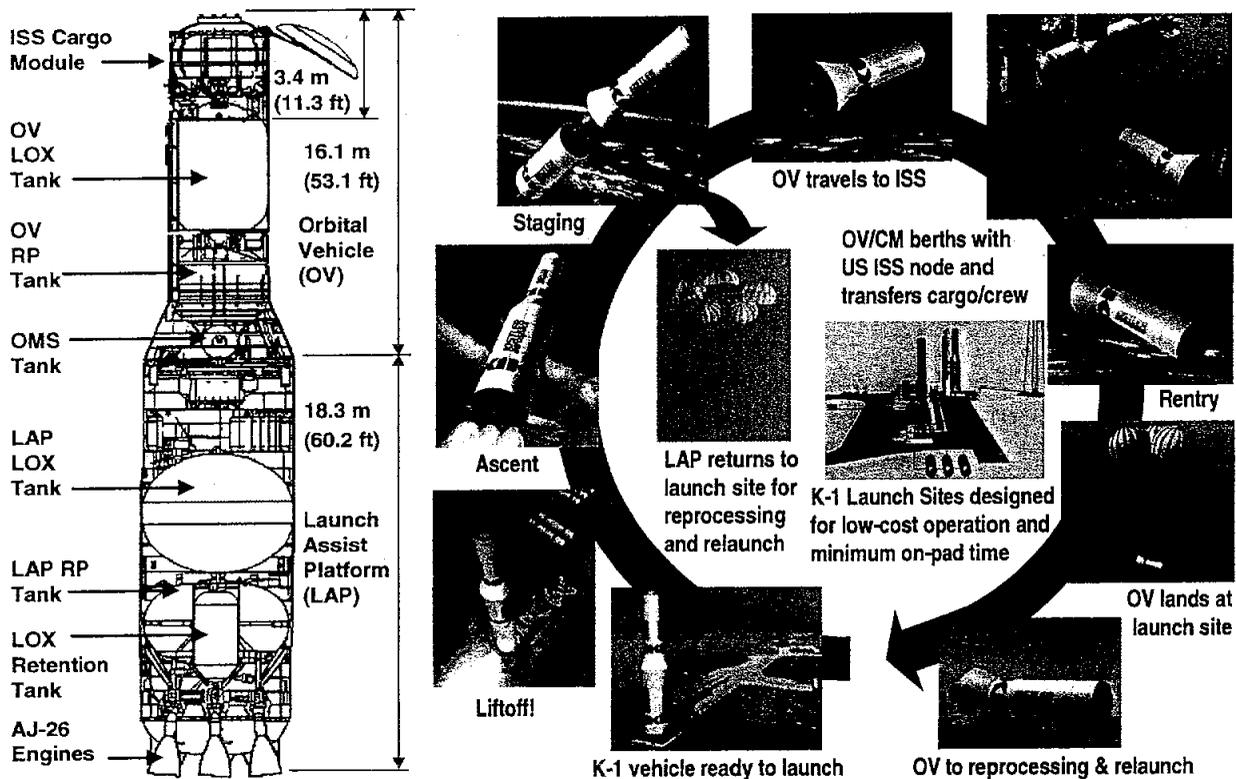
TECHNICAL APPROACH SUMMARY

T1. System Concept and Performance

The system architecture includes the flight and ground system elements, and the CONOPS. System elements are the K-1, Cargo Integration Facility (CIF), Payload Processing Facility (PPF), Vehicle Processing Facility (VPF), Launch Facility, Visiting Vehicle Control Center (VVCC), and Mission Control Center (MCC). By using the minimum number of system elements (e.g., no aircraft launch vehicles or ocean-going recovery vehicles), system affordability, reliability, and cycle time are optimized.

The K-1 is based on years of increasingly mature development and risk reduction of the fully reusable, two-stage, LOX/kerosene launch vehicle with interchangeable reusable payload/cargo/crew modules mated to the second stage orbital vehicle. The COTS Demo is the next logical step in this progress.

The CONOPS includes horizontal ground processing and checkout, K-1 rollout and launch, berthing and cargo/crew transfer to the ISS, autonomous return trajectory, re-entry and soft landings of the LAP and OV at the launch site, and reprocessing for relaunch.



T2. Mission Compatibility & Perf. Analysis

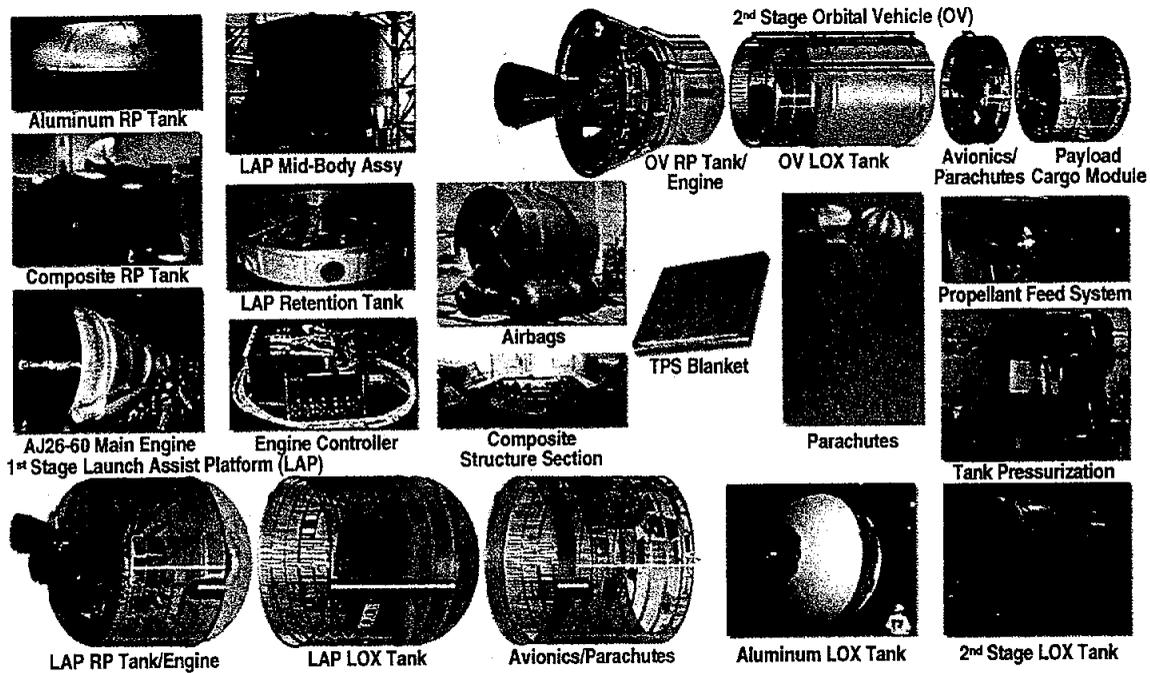
Our system is designed to perform the COTS Service Reference Mission (SRM) and meet or exceed the requirements of the CI-SRD and CI-IIRD. Transition from Phase 1 Demos to Phase 2 Operations is straightforward since the first K-1 is a full scale vehicle, albeit with reduced cargo capacity. It will be flown operationally, and the lower weight of the LV(2), without LV(1) demo instrumentation and new weight savings, enable it to have full A-D performance.

T3. Development

All subsystems will have at least a NASA TRL 5/6 by the end of IAT&CO; no new technology developments are required. The K-1 design is 85% finalized. Initial requirements tasks are complete, and many subsystems tests have been conducted. These include nine firings of the main engines (up to full duration of 400 sec., and 114% power), full-scale drop tests of the 6-parachute recovery system, air bag drop tests, and LOX tank proof tests. HWIL testing of the avionics and software has been started.

T4. Manufacturing

More than 75% of K-1 hardware (by weight) is complete, including 46 main engines in inventory, enough for 180 K-1 flights. The manufacturing approach uses proven processes and materials. A modular design of common line replaceable units – structures, propulsion, landing system, avionics, and thermal protection system (TPS) – enables high reliability, high production learning, simplified maintenance, and rapid turnaround. Manufacturing plans are in place to resume K-1 production applying past lessons learned.



T5. Test and Verification

Hardware is tested per MIL-STD-1540C. Subsystems will be completed, tested, and qualified by subcontractors. Final IAT&CO is at Lockheed Martin Michoud using proven horizontal processes. The K-1 stages will be flown to Spaceport Woomera, Australia where initial flights begin in 2008. We will qualify the ISS resupply end-to-end system using all phases of the operational CONOPS.

Demo 1 verifies Capabilities B/C with a pressurized CM, and Demo 2 verifies A with a UCM. The K-1 will rendezvous and berth with the ISS. It then reenters and returns to the launch site for refurbishment. The same K-1 is the first operational vehicle in the fleet, and we have several LOI's for commercial LEO satellite deliveries beginning in 2009.

T6. ISS Certification and Orbital Test Bed Int.

Under contract to MSFC, we demonstrated how the K-1 can safely deliver and return cargo directly to the ISS, and how the K-1 vehicle met the VVR for the ISS. The CM accommodates four standard ISPRs and berths at the US ISS node. We have FAA Policy Approval for operations at CCAFS in Florida, and are assessing the New Mexico spaceport.

T7. COTS Human Rating Certification (Cap. D)

RpK proposes to develop a Crew Module based upon the RpK Pressurized Cargo Module. The commonality of hardware, tooling, and expertise makes it possible to initiate crew transfer service in 2010 if early NASA funding is available. RpK will initiate pre-PDR design activities with its own funds at COTS ATP in order to retain the option for crew transfer capability in 2010. The third K-1 vehicle will be used for Capability D Demos.

T8. Technical Risks

Based on the mature design and built hardware, the overall risk is low. We've identified the remaining technical risks, and their mitigation using additional ground and space tests.

T9. Safety and Mission Assurance

We meet all NASA safety, mission assurance, and reliability requirements. A reusable LV is designed for higher reliability than an expendable LV. The K-1 has triplex avionics.

FINANCIAL INFORMATION SUMMARY

The programmatic progress and technical and operational knowledge resulting from \$600M of prior investment, coupled with an infusion of new investment, NASA funding, and early operational revenue constitute the financial foundation of the business plan. We are continuing to combine the strengths of Rocketplane and Kistler management and launch systems to implement the plan. Under new leadership, RpK leverages significant financial resources and heritage flight hardware to assure successful COTS Demo flights in time for an efficient transition from STS to K-1 ISS ops.

The financial data reflects our entrepreneurial business plan. This data fully accounts for the complete restructuring of Kistler's balance sheet in Chapter 11 (due to the collapse of the LEO comsat market), which positioned Kistler for new investment. We use commercial business practices that provide price and operational benefits to customers.

F1. Income and Cash Flow Statements

Provided paragraph B4 of this Executive Summary.

F2. Total Fixed Contribution from NASA

NASA funds for Capabilities A-C are \$207M as described paragraph B2.D. NASA funds for Capability D are estimated at \$200M.

F3. Proposed Gov't Services, Facilities or Equip.

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| GOV'T SERVICES, FACILITIES, OR EQUIPMENT |
| NASA Goddard TDRSS |
| NASA JSC Adv. Crew Escape Suits |
| NASA Michoud manufacturing and assembly facilities |
| NASA MSFC Wind Tunnel, Passive Common Berthing Mechanisms, Flight Releasable Grapple Fixture and Hatch Mechanism |

F4. Total Cost by System

Two K-1's will be built to assure successful COTS Demos. First unit status is shown for Capability A through C followed by Capability D. As previously indicated Capability D is estimated on a worst case basis and will likely be adjusted downward as RpK executed our trade and analysis exercise to generate a Per-PDR position.

F5. Phased Cost by Function

Phased cost by function for Capabilities A through C is a summarization our detailed resource loaded schedule as presented in our initial Financial Information Volume. Functional phased cost for Capability D is, as stated previously, our best estimate based on a worst case scenario and any savings achieved as a result of our trade analysis and detail planning will be shared with NASA

F6. Projected Operational Prices for A, B, C and F7. Projected Operational Prices for D

Our baseline price projections are per flight to the ISS and per passenger,

SUMMARY

With the formation of RpK, we believe there are even more compelling reasons to select the K-1 for COTS now than in 2003 when NASA observed, "The ... K-1 system is a recoverable launch system. A significant portion of the K-1 system has already been designed and fabricated and numerous flight engines have been acquired. Based on NASA's due diligence review of Kistler's contract performance in July 2003, the vehicle design and fabrication are sufficiently mature to support a capability of delivering flight data ... [within 18 months]."

The new RpK team has a viable 30-month demonstration program based on a mature K-1, well-developed business plan, and strong financial and management resources. The fully-reusable, multi-mission K-1 RLV provides a large payload capacity, rapid availability, high reliability, and low cost. For COTS, ... per launch, and a robust 9-day turnaround and 3-day surge capability.

APPENDIX 2: RpK Milestones and Success Criteria

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| <p>Milestone 1: Program Implementation Plan Review</p> <p>Subsequent to Space Act Agreement execution and initiation of the COTS program, RpK shall host a kickoff meeting to describe the plan for program implementation, which includes management planning for Design, Development, Testing, & Evaluation (DDT&E), integrated schedule, financing, supplier engagement, risks and anticipated mitigations. An additional objective of this review meeting is for RpK to brief their subcontractor team and provide a detailed status of the K-1 vehicle, cargo module, ISS rendezvous/ mission operations, and the launch site.</p> <p>RpK shall provide a briefing of the program implementation plan, along with a hard copy of the presentation materials, and responses to any questions that the NASA Team might have concerning RpK's plan.</p> <p>Success Criteria: Successful review of the program implementation plan review as described above.</p> | <p>Amount: \$7,300,000 Date: 9/06</p> |
| <p>Milestone 2: Financing Round 1</p> <p>Success Criteria: All necessary documentation is completed and provided to NASA, the first payment is received and documented via bank statement, and conditions associated with subsequent payments are accepted by NASA.</p> | <p>Amount: \$7,300,000 Date: 9/06</p> |
| <p>Milestone 3: System Requirements Review</p> <p>RpK shall conduct a System Requirements Review (SRR) in accordance with the SRR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) document..</p> <p>Success Criteria: Successful completion of the System Requirements Review.</p> | <p>Amount: \$17,500,000 Date: 2/07</p> |
| <p>Milestone 4: Financing Round 2</p> <p>Success Criteria: All necessary documentation is completed and provided to NASA, the first payment is received and documented via bank statement, and conditions associated with subsequent payments are accepted by NASA.</p> | <p>Amount: \$7,500,000 Date: 2/07</p> |

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| <p>Milestone 5: Pressurized Cargo Module Critical Design Review</p> <p>RpK shall conduct a Pressurized Cargo Module (PCM) Critical Design Review (CDR) in accordance with the PDR definition in NASA Systems Engineering Process & Requirements (NPR 7123-1) document.</p> <p>Success Criteria: Successful completion of the Pressurized Cargo Module (PCM) Critical Design Review.</p> | <p>Amount: \$5,000,000 Date: 8/07</p> |
| <p>Milestone 6: Unpressurized Cargo Module Critical Design Review</p> <p>RpK shall conduct an Unpressurized Cargo Module (UCM) Critical Design Review (CDR) in accordance with the CDR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) of this document.</p> <p>Success Criteria: Successful completion of the Unpressurized Cargo Module Critical Design Review.</p> | <p>Amount: \$5,000,000 Date: 9/07</p> |
| <p>Milestone 7: ISS Test Readiness Review</p> <p>RpK shall conduct a Test Readiness Review (TRR) in accordance with the TRR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) of this document.</p> <p>Success Criteria: Successful completion of the Test Readiness Review.</p> | <p>Amount: \$2,100,000 Date: 10/07</p> |
| <p>Milestone 8: Rendezvous Software Test Readiness Review</p> <p>RpK shall conduct a Rendezvous Software Test Readiness Review (TRR) in accordance with TRR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) document.</p> <p>Success Criteria: Successful completion of the Rendezvous Software Test Readiness Review.</p> | <p>Amount: \$20,000,000 Date: 2/08</p> |

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| <p>Milestone 9: Financing Round 3</p> <p>Success Criteria: All necessary documentation is completed and provided to NASA, the first payment is received and documented via bank statement, and conditions associated with subsequent payments are accepted by NASA.</p> | <p>Amount: \$20,000,000 Date: 2/08</p> |
| <p>Milestone 10: PCM Test Readiness Review</p> <p>RpK shall conduct a PCM TRR in accordance with TRR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) document.</p> <p>Success Criteria: Successful completion of the PCM Test Readiness Review.</p> | <p>Amount: \$30,000,000 Date: 5/08</p> |
| <p>Milestone 11: K-1 Complete and Shipped to Woomera</p> <p>RpK shall complete the K-1 vehicle fabrication, assembly, integration, vehicle testing, and delivery to the Woomera launch facility.</p> <p>Success Criteria: Successful confirmation of the K-1 vehicle completion and delivery to the Woomera launch facility.</p> | <p>Amount: \$20,000,000 Date: 7/08</p> |
| <p>Milestone 12: Certification Of Flight Readiness</p> <p>RpK shall perform a Certification Of Flight Readiness (CoFR) in accordance with CoFR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) of this document.</p> <p>Success Criteria: Successful completion of the CoFR.</p> | <p>Amount: \$4,500,000 Date: 9/08</p> |
| <p>Milestone 13: Pre-Demo 1 Risk Reduction Flight</p> <p>RpK shall conduct a space flight to pre-demonstrate the ability to deliver and return pressurized cargo to and with the objectives described in the Risk Reduction Flight Test Plan.</p> <p>Success Criteria: Successful completion of Pre Demo 1 Risk Reduction Flight.</p> | <p>Amount: \$25,000,000 Date: 11/08</p> |

Milestone 14: 1st Demo Flight

RpK shall conduct a space flight to demonstrate the ability to deliver and return pressurized cargo to and from ISS in accordance with the objectives described in the Flight Test 1 Plan.

Success Criteria:
Successful completion of all objectives of Flight Test 1.

Amount: \$25,000,000
Date: 1/09

Milestone 15: 2nd Demo Flight

RpK shall conduct a space flight to demonstrate the ability to deliver and return unpressurized cargo to and from ISS in accordance with the objectives described in the Flight Test 2 Plan.

Success Criteria:
Successful completion of all objectives of Flight Test 2.

Amount: \$10,600,000
Date: 3/09

Capability D Crew Transportation Option

Milestone D1: Program Management Plan & System Requirements Review

Subsequent to Space Act Agreement Capability D option execution and initiation of the COTS program, RpK shall host a kickoff meeting to describe the plan for program implementation, which includes management planning for Design, Development, Testing, & Evaluation (DDT&E), integrated schedule, financing, supplier engagement, risks and anticipated mitigations. An additional objective of this review meeting is for RpK to conduct a Crew Transportation System Requirements Review (SRR) in accordance with the SRR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) document.

Success Criteria:

RpK shall provide a briefing of the program management plan, along with a hard copy of the presentation materials, and responses to any questions that the NASA Team might have concerning RpK's plan. Successful completion of the Crew Transportation SRR.

Amount: \$15,000,000
Date: January 2009

Milestone D2: Crew System Preliminary Design Review

RpK shall conduct a Crew System Preliminary Design Review (CS-PDR) Preliminary Design Review (PDR) in accordance with the PDR definition in NASA Systems Engineering Process & Requirements (NPR 7123-1) document.

Success Criteria:

Successful completion of the Crew System Preliminary Design Review (CS-PDR).

Amount: \$10,000,000
Date: March 2009

Milestone D3: Crew System Critical Design Review

RpK shall conduct an Crew System Critical Design Review (CS-CDR) Critical Design Review (CDR) in accordance with the CDR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) of this document.

Success Criteria:

Successful completion of the Crew System Critical Design Review Critical Design Review.

Amount: \$15,000,000
Date: May 2009

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| <p>Milestone D4: Fabrication Start</p> <p>RpK shall start fabrication of major structural components</p> <p>Success Criteria: Fabrication has started</p> | <p>Amount: \$15,000,000 Date: June 2009</p> |
| <p>Milestone D5: Financing #1</p> <p>Success Criteria: All necessary documentation is completed and provided to NASA, the first payment is received and documented via bank statement, and conditions associated with subsequent payments are accepted by NASA.</p> | <p>Amount: \$10,000,000 Date: September 2009</p> |
| <p>Milestone D6: Hardware / Software Integration Test</p> <p>RpK shall initiate Hardware / Software lab testing.</p> <p>Success Criteria: Successful initiation of the entire crew system hardware in the lab environment.</p> | <p>Amount: \$15,000,000 Date: January 2010</p> |
| <p>Milestone D7: Safety Review</p> <p>RpK shall conduct a internal Safety Review in accordance as defined in RpK</p> <p>Success Criteria: As defined in the in accordance with the PDR definition in NASA Systems Engineering Process & Requirements (NPR 7123-1) document.</p> | <p>Amount: \$10,000,000 Date: April 2010</p> |
| <p>Milestone D8: Financing #2</p> <p>Success Criteria: All necessary documentation is completed and provided to NASA, the first payment is received and documented via bank statement, and conditions associated with subsequent payments are accepted by NASA.</p> | <p>Amount: \$10,000,000 Date: July 2010</p> |

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| <p>Milestone D9: Test Readiness Review RpK shall conduct a Test Readiness Review in accordance with the definition in NASA Systems Engineering Process & Requirements (NPR 7123-1) document.</p> <p>Success Criteria: Successful completion of the TRR as defined in NASA Systems Engineering Process & Requirements (NPR 7123-1) document.</p> | <p>Amount: \$10,000,000 Date: November 2010</p> |
| <p>Milestone D10: Start of Crew Module Assembly and Integration</p> <p>RpK shall Start Crew Module Integration.</p> <p>Success Criteria: Successful initiation Crew Module Integration and Assembly.</p> | <p>Amount: \$10,000,000 Date: February 2011</p> |
| <p>Milestone D11: Crew System Integration Test Complete</p> <p>RpK shall conduct a Crew System Integration Test in accordance with RpK's Test Plan</p> <p>Success Criteria: Completed in accordance with RpK's Test Plan criteria.</p> | <p>Amount: \$15,000,000 Date: May 2011</p> |
| <p>Milestone D12: Phase One Safety Review Panel RpK shall complete the NASA Phase One Safety Review Panel process.</p> <p>Success Criteria: As defined in the NASA Safety Review Process, document SSP 30599.</p> | <p>Amount: \$10,000,000 Date: July 2011</p> |
| <p>Milestone D13: Financing #3</p> <p>Success Criteria: All necessary documentation is completed and provided to NASA, the first payment is received and documented via bank statement, and conditions associated with subsequent payments are accepted by NASA.</p> | <p>Amount: \$10,000,000 Date: October 2011</p> |

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| <p>Milestone D14: Crew Module Complete and Shipped to Woomera</p> <p>RpK shall complete the Crew Module vehicle fabrication, assembly, integration, vehicle testing, and delivery to the Woomera launch facility.</p> <p>Success Criteria: Successful confirmation of the Crew Module completion and delivery to the Woomera launch facility.</p> | <p>Amount: \$10,000,000 Date: January 2012</p> |
| <p>Milestone D15: Financing #4</p> <p>Success Criteria: All necessary documentation is completed and provided to NASA, the first payment is received and documented via bank statement, and conditions associated with subsequent payments are accepted by NASA.</p> | <p>Amount: \$10,000,000 Date: March 2012</p> |
| <p>Milestone D16: Certification of Flight Readiness</p> <p>RpK shall perform a Certification Of Flight Readiness (CoFR) in accordance with CoFR definition in the NASA Systems Engineering Process & Requirements (NPR 7123-1) of this document.</p> <p>Success Criteria: Successful completion of the CoFR.</p> | <p>Amount: \$15,000,000 Date: June 2012</p> |
| <p>Milestone D17: Crew Demo Flight</p> <p>RpK shall conduct a space flight to demonstrate the ability to deliver and return flight crew to and from ISS in accordance with the objectives described in the Crew Flight Test 1 Plan.</p> <p>Success Criteria: Successful completion of all objectives of Crew Flight Test 1.</p> | <p>Amount: \$10,000,000 Date: August 2012</p> |