

(4) AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING CROSS-WAIVER OF LIABILITY FOR COOPERATION IN THE EXPLORATION AND USE OF SPACE FOR PEACEFUL PURPOSES

The Government of Japan and the Government of the United States of America,

Desiring to conclude an Agreement for a cross-waiver of liability applicable to joint activities in the exploration and use of space for peaceful purposes,

Have agreed as follows:

ARTICLE 1

The purpose of this Agreement is to establish a framework for cross-waiver of liability in the interest of encouraging cooperation between the Government of Japan and the Government of the United States of America in joint activities for the exploration and use of space for peaceful purposes. This cross-waiver of liability shall be broadly construed to achieve this objective.

ARTICLE 2

This Agreement shall apply to joint activities listed in the Annex, ongoing at the time of entry into force of this Agreement or begun while this Agreement is in force. The Government of Japan and the Government of the United States of America shall consult on a regular basis to review the list of joint activities contained in the Annex and may revise the Annex by mutual agreement. This Agreement shall not apply to activities undertaken pursuant to the Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, the Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station, done at Washington, on September 29, 1988 (hereinafter referred to as the "IGA"), or any subsequent agreement that modifies or supersedes the IGA.

ARTICLE 3

1. For the purposes of this Article:

(a) A "Party" includes the Government of Japan, the Government of the United States of America, and their agencies. It also includes those institutions established under the laws and regulations of Japan or of the United States of America for the implementation of the space development programs of the respective countries and other entities which may be designated in the Annex, with respect to each specific joint activity for which they are designated.

(b) The term "related entity" means:

- (1) a contractor or subcontractor of a Party at any tier;
- (2) a user or customer of a Party at any tier or
- (3) a contractor or subcontractor of a user or customer of a Party at any tier.

The term "related entity" may also include another State or an agency or institution of another State, where such State, agency or institution is an entity as described in (1) through (3) above or is otherwise involved in a joint activity listed in the Annex.

The terms "contractors" and "subcontractors" include suppliers of any kind.

(c) The term "damage" means:

- (1) bodily injury to, or other impairment of health of or death of, any person;
- (2) damage to, loss of or loss of use of any property;
- (3) loss of revenue or profits; or
- (4) 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 "payload" means all property to be flown or used on or in a launch vehicle.

(f) The term "Protected Space Operations" means all activities pursuant to the joint activities listed in the Annex, including launch vehicle activities and payload activities on Earth, in outer space, or in transit between Earth and outer space. It includes, but is not limited to:

- (1) research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, or instruments, as well as related support equipment and facilities and services;
- (2) all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

The term "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for the joint activity in question.

2. (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 sub-paragraphs (1) through (3) 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, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:
 - (1) the other Party;
 - (2) a related entity of the other Party;
 - (3) the employees of any of the entities identified in sub-paragraphs (1) and (2) above.
- (b) In addition, each Party shall extend the cross-waiver of liability as set forth in sub-paragraph 2 (a) above to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in sub-paragraphs 2 (a) (1) through 2 (a) (3) above.
- (c) This cross-waiver of liability shall be applicable to liability arising from the Convention on International Liability for Damage Caused by Space Objects, done at the cities of Washington, London and Moscow, on March 29, 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 Article, this cross-waiver of liability shall not be applicable to:
 - (1) claims between a party and its own related entity or between its own related entities;
 - (2) claims made by a natural person, his/her estate, survivors, or subrogees for bodily injury, other impairment of health or death of such natural person;
 - (3) claims for damage caused by willful misconduct;
 - (4) intellectual property claims;
 - (5) claims for damage resulting from a failure of the Parties to extend the cross-waiver of liability as set forth in sub-paragraph 2 (b) or from a failure of the Parties to ensure that their related entities extend the cross-waiver of liability as set forth in sub-paragraph 2 (b); or
 - (6) contract claims between the Parties based on the express contractual provisions.
- (e) Nothing in this Article shall be construed to create the basis for a claim or suit where none would otherwise exist.

ARTICLE 4

Notwithstanding the provisions of Article 3 of this Agreement, this cross-waiver may be limited by mutual agreement between the two Governments, to take into account the particular characteristics of the joint activities listed in the Annex.

ARTICLE 5

1. This Agreement shall enter into force on the date on which the Government of Japan and the Government of the United States of America exchange notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed and shall remain in force for a period of five years. It shall remain in force thereafter unless terminated by either Government upon giving six months' written notice to the other Government.
2. The termination of this Agreement shall not affect its application to any claims arising out of joint activities listed in the Annex at the time of termination of this Agreement, whether or not such activities are executed before the termination.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at Washington, this twenty-fourth day of April, 1995, in duplicate, in the Japanese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT
OF JAPAN:
Takakazu Kuriyama

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:
Timothy E . Wirth