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APPENDIX A TO PART 1264—NOTICE TO CONSENT TO THE CHAIRPERSON, NASA BOARD OF CONTRACT APPEALS (BCA), OR DESIGNEE, AS PRESIDING OFFICER

In accordance with the provisions of 14 CFR 1264.106, you are hereby notified that the Chairperson, NASA Board of Contract Appeals (BCA), or designee, in addition to other duties, upon your consent, may conduct any or all proceedings as the presiding officer, pursuant to 14 CFR part 1264 which implements the Program Fraud Civil Penalties Act of 1986.

You should be aware that your decision to consent, or not to consent, to the referral of this case to the NASA/BCA must be entirely voluntary. Only if you and the authority head consent to this reference will either the Chairperson or the designee to whom the case may be assigned be informed of your decision.

An appeal from a decision by the presiding officer under this consent procedure may be taken in the same manner as an appeal from a decision by any other presiding officer, as provided in 14 CFR 1264.136(d), 1264.137, 1264.138, and 1264.141.

If you consent, you must sign, date, and return this form within the 30-day period provided for your answer (see 14 CFR 1264.108, 1264.109).

consent: _____
(Signature of person alleged to be liable)

_____
(Print name)

_____
(Date of signature)

PART 1266—CROSS-WAIVER OF LIABILITY

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AUTHORITY: 42 U.S.C. 2458c and 42 U.S.C. 2473 (c)(1), (c)(5) and (c)(6).

SOURCE: 73 FR 10148, Feb. 26, 2008, unless otherwise noted.

§ 1266.100 Purpose.

The purpose of this Part is to ensure that consistent cross-waivers of liability are included in NASA agreements for activities related to the ISS and for NASA's science or space exploration activities unrelated to the ISS that involve a launch.

§ 1266.101 Scope.

The provisions at §1266.102 are intended to implement the cross-waiver requirement in Article 16 of the intergovernmental agreement entitled, ''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 (IGA).'' Article 16 establishes a cross-waiver of liability for use by the Partner States and their related entities and requires that this reciprocal waiver of claims be extended to contractually or otherwise-related entities of NASA by requiring those entities to make similar waivers of liability. Thus, NASA is required to include IGA-based cross-waivers in agreements for ISS activities that fall within the scope of ''Protected Space Operations,'' as defined in §1266.102. The provisions of §1266.102 provide the regulatory basis for cross-waiver clauses to be incorporated into NASA agreements for activities that implement the IGA and the memoranda of understanding between the United States and its respective international partners. The provisions of §1266.104 provide the regulatory basis for cross-waiver clauses to be incorporated into NASA launch agreements for science or space exploration activities unrelated to the ISS.

§ 1266.102 Cross-waiver of liability for agreements for activities related to the International Space Station.

(a) The objective of this section is to implement NASA's responsibility to flow down the cross-waiver of liability in Article 16 of the IGA to its related entities in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The IGA declares the Partner States' intention that the cross-waiver of liability be broadly construed to achieve this objective.

(b) For the purposes of this section:

(1) The term ''Party'' means a party to a NASA agreement involving activities in connection with the ISS.

(2)(i) The term ''related entity'' means:

(A) A contractor or subcontractor of a Party or a Partner State at any tier;

(B) A user or customer of a Party or a Partner State at any tier; or

(C) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.

(ii) The terms ''contractor'' and ''subcontractor'' include suppliers of any kind.

(iii) The term ''related entity'' may also apply to a State, or an agency or institution of a State, having the same relationship to a Partner State as described in paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (b)(6) of this section.

(3) 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.

(4) 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.

(5) The term ''payload'' means all property to be flown or used on or in a launch vehicle or the ISS.

(6) The term ''Protected Space Operations'' means all launch or transfer 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. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, the ISS, payloads, or instruments, 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.

(7) The term ''transfer vehicle'' means any vehicle that operates in space and transfers payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A transfer vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(8) The term ''Partner State'' includes each Contracting Party for which the IGA has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(c)(1) Cross-waiver of liability: 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 paragraphs (c)(1)(i) through (c)(1)(iv) of this section 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 paragraph (c)(1)(i) or (c)(1)(ii) of this section; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(2) In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph (c)(1) of this section, to its related entities by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section; and

(ii) Require that their related entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims 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.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to the 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 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 paragraph (c)(2) of this section; or

(vi) Claims by a Party arising out of or relating to another Party's failure to perform its obligations under the agreement.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when 49 U.S.C. Subtitle IX, Chapter. 701 is applicable.

§ 1266.103 [Reserved]

§ 1266.104 Cross-waiver of liability for launch agreements for science or space exploration activities unrelated to the International Space Station.

(a) The purpose of this section is to implement a cross-waiver of liability between the parties to agreements for NASA's science or space exploration activities that are not related to the International Space Station (ISS) but involve a launch. It is intended that the cross-waiver of liability be broadly construed to achieve this objective.

(b) For purposes of this section:

(1) The term ''Party'' means a party to a NASA agreement for science or space exploration activities unrelated to the ISS that involve a launch.

(2) (i) The term ''related entity'' means:

(A) A contractor or subcontractor of a Party at any tier;

(B) A user or customer of a Party at any tier; or

(C) A contractor or subcontractor of a user or customer of a Party at any tier.

(ii) The terms ''contractor'' and ''subcontractor'' include suppliers of any kind.

(iii) The term ''related entity'' may also apply to a State or an agency or institution of a State, having the same relationship to a Party as described in paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section, or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (b)(6) of this section.

(3) 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.