

Risk Allocation Provisions
COMMERCIAL CREW INTEGRATED CAPABILITY
Announcement: NASA-CCiCap

In regards to response no. 12 and 24 of the “Questions and Answers Post #1” the following is provided for Participants’ information on the utilization of risk allocation provisions (also refer to section 4.6, Legal Liability, of the CCiCap announcement):

Cross-Waiver of Liability for Agreements Involving Activities Related to the ISS

(Based on 14 C.F.R. 1266.102)

FAA license(s) or permit(s), including cross-waivers and insurance requirements, for CCiCap demonstrations conducted by Participant under this Agreement shall govern the allocation of risks and liability, if any, of the U.S. Government (including NASA) and Participant. To the extent the FAA license(s) or permit(s) do not apply to activities under this Agreement, the following cross-waiver will apply to those activities that are within the definition of Protected Space Operations. For all other activities not covered by the FAA license\permit or this cross-waiver for Protected Space Operations, the liability and risk of loss provisions of Article 10 of this Agreement shall apply. Under no circumstances will NASA indemnify the Participant against third-party claims.

1. The objective of this Article is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The Parties intend that the cross-waiver of liability be broadly construed to achieve this objective.

2. For the purposes of this Article:

a. 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.

b. The term “Launch Vehicle” means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads, persons, or both.

c. 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

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International Space Station (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.

d. The term “Payload” means all property to be flown or used on or in a Launch Vehicle or the ISS.

e. The term “Protected Space Operations” means all Launch Vehicle 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 this Agreement, 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 Vehicles 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.

f. 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.

The terms “contractor” and “subcontractor” include suppliers of any kind.

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 (2)(f)(i) through (2)(f)(iii) of this Article or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (2)(e) above.

g. 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

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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.

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 paragraphs (3)(a)(i) through (3)(a)(iv) of this Article 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 (3)(a)(i) or (3)(a)(ii) of this Article; or
- (iv) The employees of any of the entities identified in paragraphs (3)(a)(i) through (3)(a)(iii) of this Article.

b. In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph (3)(a) of this Article, to its Related Entities by requiring them, by contract or otherwise, to:

- (i) Waive all claims against the entities or persons identified in paragraphs (3)(a)(i) through (3)(a)(iv) of this Article; and
- (ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (3)(a)(i) through (3)(a)(iv) of this Article.

c. 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.

d. Notwithstanding the other provisions of this Article, 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 this Agreement or is otherwise

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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 (3)(b) of this Article; or
- (vi) Claims by a Party arising out of or relating to another Party's failure to perform its obligations under this Agreement.

e. Nothing in this Article 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.

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Cross-Waiver of Liability for Launch Agreements for Science or Space Exploration Activities Unrelated to the ISS (Based on 14 C.F.R. 1266.104)

FAA license(s) or permit(s), including cross-waivers and insurance requirements, for CCiCap demonstrations conducted by Participant under this Agreement shall govern the allocation of risks and liability, if any, of the U.S. Government (including NASA) and Participant. To the extent the FAA license(s) or permit(s) do not apply to activities under this Agreement, the following cross-waiver will apply to those activities that are within the definition of Protected Space Operations. For all other activities not covered by the FAA license\permit or this cross-waiver for Protected Space Operations, the liability and risk of loss provisions of Article 10 of this Agreement shall apply. Under no circumstances will NASA indemnify the Participant against third-party claims.

1. The objective of this Article is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space. The Parties intend that the cross-waiver of liability be broadly construed to achieve this objective.

2. For purposes of this Article:

a. 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.

b. The term “Launch Vehicle” means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads, persons, or both.

c. The term “Payload” means all property to be flown or used on or in a Launch Vehicle.

d. The term “Protected Space Operations” means all Launch Vehicle or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an agreement for launch services. Protected Space Operations begins at the signature of this Agreement and ends when all activities done in implementation of this Agreement are completed. It includes, but is not limited to:

- (i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch Vehicles or Transfer Vehicles, 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.

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“Protected Space Operations” excludes activities on Earth that are conducted on return from space to develop further a Payload’s product or process for use other than for the activities within the scope of an agreement for launch services.

e. The term “Related Entity” means:

- (i) A contractor or subcontractor of a Party at any tier;
- (ii) A user or customer of a Party at any tier; or
- (iii) A contractor or subcontractor of a user or customer of a Party at any tier.

The terms “contractor” and “subcontractor” include suppliers of any kind.

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 2(e)(i) through 2(e)(iii) of this Article, or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph 2.d above.

f. 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.

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 paragraphs 3(a)(i) through 3(a)(iv) of this Article 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) The other Party;
- (ii) A party to another NASA agreement that includes flight on the same Launch Vehicle;
- (iii) A Related Entity of any entity identified in paragraphs 3(a)(i) or 3(a)(ii) of this Article; or
- (iv) The employees of any of the entities identified in paragraphs 3(a)(i) through 3(a)(iii) of this Article.

b. In addition, each Party shall extend the cross-waiver of liability, as set forth in paragraph 3.a of this Article, to its own Related Entities by requiring them, by contract or otherwise, to:

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- (i) Waive all claims against the entities or persons identified in paragraphs 3(a)(i) through 3(a)(iv) of this Article; and
- (ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs 3(a)(i) through 3(a)(iv) of this Article.

c. 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.

d. Notwithstanding the other provisions of this Article, 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 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 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 3.b of this Article; or
- (vi) Claims by a Party arising out of or relating to another Party's failure to perform its obligations under this Agreement.

e. Nothing in this Article 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.