

TABLE 17—TEST OPERATING AND TEST CONDITION TOLERANCES FOR FROST ACCUMULATION HEATING MODE TESTS—Continued

	Test operating tolerance <sup>1</sup>		Test condition tolerance <sup>1</sup>
	Sub-interval H <sup>2</sup>	Sub-interval D <sup>3</sup>	Sub-interval H <sup>2</sup>
Outdoor entering wet-bulb temperature, °F .....	1.5	.....	0.5
External resistance to airflow, inches of water .....	0.05	.....	<sup>5</sup> 0.02
Electrical voltage, % of rdg .....	2.0	.....	1.5

<sup>1</sup> See section 1.2 of this appendix, Definitions.

<sup>2</sup> Applies when the heat pump is in the heating mode, except for the first 10 minutes after termination of a defrost cycle.

<sup>3</sup> Applies during a defrost cycle and during the first 10 minutes after the termination of a defrost cycle when the heat pump is operating in the heating mode.

<sup>4</sup> For heat pumps that turn off the indoor blower during the defrost cycle, the noted tolerance only applies during the 10 minute interval that follows defrost termination.

<sup>5</sup> Only applies when testing non-ducted heat pumps.

\* \* \* \* \*

**4.1.1** \* \* \*

b. \* \* \* Evaluate the cooling mode cyclic degradation factor  $C_{D^c}$  as specified in section 3.5.3 of this appendix.

\* \* \* \* \*

**4.1.2.1** \* \* \*

c. \* \* \* Evaluate the cooling mode cyclic degradation factor  $C_{D^c}$  as specified in section 3.5.3 of this appendix.

\* \* \* \* \*

**4.1.3.1** \* \* \*

$n_j/N$  = fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature  $T_j$  to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season,  $n_j/N$ , from Table 18. Use Equations 4.1.3-1 and 4.1.3-2, respectively, to evaluate  $\dot{Q}_{c^{k=1}}(T_j)$  and  $\dot{E}_{c^{k=1}}(T_j)$ . Evaluate the cooling mode cyclic degradation factor  $C_{D^c}$  as specified in section 3.5.3 of this appendix.

\* \* \* \* \*

**4.1.4.1** \* \* \*

\* \* \* Evaluate the cooling mode cyclic degradation factor  $C_{D^c}$  as specified in section 3.5.3 of this appendix.

\* \* \* \* \*

**Appendix M to Subpart B of Part 430—[Amended]**

■ 5. In the table below, for each section of appendix M to subpart B of part 430 indicated in the left column, remove the language indicated in the middle column from wherever it appears in that section, and add the language indicated in the right column.

Sections	Remove	Add
3.2.2.1, 3.2.3.a ...	A default value of $C_{D^c}$ may be used in lieu of conducting the cyclic test. The default value of $C_{D^c}$ is 0.20.	If the two optional tests are conducted but yield a tested $C_{D^c}$ that exceeds the default $C_{D^c}$ or if the two optional tests are not conducted, assign $C_{D^c}$ the default value of 0.20.
3.2.4.a .....	A default value for $C_{D^c}$ may be used in lieu of conducting the cyclic test. The default value of $C_{D^c}$ is 0.25.	If the two optional tests are conducted but yield a tested $C_{D^c}$ that exceeds the default $C_{D^c}$ or if the two optional tests are not conducted, assign $C_{D^c}$ the default value of 0.25.
3.6.1 .....	A default value for $C_{D^h}$ may be used in lieu of conducting the cyclic test. The default value of $C_{D^h}$ is 0.25.	If this optional test is conducted but yields a tested $C_{D^h}$ that exceeds the default $C_{D^h}$ or if the optional test is not conducted, assign $C_{D^h}$ the default value of 0.25.
3.6.2, 3.6.4.a .....	A default value for $C_{D^h}$ may be used in lieu of conducting the cyclic. The default value of $C_{D^h}$ is 0.25.	If this optional test is conducted but yields a tested $C_{D^h}$ that exceeds the default $C_{D^h}$ or if the optional test is not conducted, assign $C_{D^h}$ the default value of 0.25.

**Appendix M to Subpart B of Part 430—[Amended]**

■ 6. For each newly redesignated section of appendix M to subpart B of part 430 in the first column, remove the cross reference sections in the middle column, and add in their places, the cross reference sections in the right column.

Section	Remove	Add
4.1.3 .....	4.1.2.4 4.1.2.5 4.1.2.6 4.1.2.7	4.1.3.1 4.1.3.2 4.1.3.3 4.1.3.4
4.1.4.3 .....	4.1.2.7	4.1.3.4

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 440**

[Docket No.: FAA-2014-1012; Amdt. No. 440-4]

RIN 2120-AK44

**Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities**

AGENCY: Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is amending its commercial space regulations governing reciprocal waivers of claims to require that customers waive claims against all the customers involved in a launch or reentry, including those signing a different set of reciprocal waivers. Also, customers of a customer contracting directly with a licensee or permittee will not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA. The FAA is also adding an appendix to provide permittees with an example of a Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer.

**DATES:** Effective October 17, 2016.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this final rule, see “How To Obtain Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this rule, contact Shirley McBride, Regulations Program Lead, AST-300, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7470; email [Shirley.McBride@faa.gov](mailto:Shirley.McBride@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The Commercial Space Launch Act of 1984, as amended at 51 U.S.C. 50901–50923 (Chapter 509), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. Section 50901(a)(7) directs the FAA to regulate only to the extent necessary, in relevant part, to protect the public health and safety and safety of property. The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 51 U.S.C. 50903.

Chapter 509 requires that, for each commercial space launch or reentry, the Department of Transportation (DOT) and, through delegation, the Federal Aviation Administration (FAA) enter into a reciprocal waiver of claims agreement with “the licensee or transferee, contractors, subcontractors, crew, space flight participants, and customers of the licensee or transferee, and contractors and subcontractors of the customers. . . .” 51 U.S.C. 50914(b)(2). This requirement also applies to permittees under 51 U.S.C. 50906(i).

**I. Overview of Final Rule**

This rule revises part 440 in the following ways: (1) Amends § 440.17 to describe fully the reciprocal waiver of claims requirements applicable to the relevant appendices; (2) amends § 440.17 and updates appendices B and C so that customers of any customer

contracting directly with a licensee or permittee do not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA; (3) amends § 440.17 and updates appendices B and C of part 440 so that customers waive claims, as required by statute, against all the customers involved in the launch or reentry, including those signing a different set of reciprocal waivers; (4) amends § 440.3 to add a definition of “first-tier customer” and “part 440 customer”; and (5) adds an appendix to provide licensees with an example of a Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer.

These changes will result in cost savings to the licensee, government and customers, and minimal cost to any customer in a direct contractual relationship with the licensee or permittee if it has customers to the launch. This rule does not address changes to the reciprocal waiver of claims created by the U.S. Commercial Space Launch Competitiveness Act, P.L. 114–90 (2015). Those changes will be addressed by a future rulemaking.

**II. Background**

On January 13, 2015, the FAA published a notice of proposed rulemaking (NPRM), “Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities,” 80 FR 1590, proposing to amend the FAA’s regulations regarding reciprocal waivers of claims agreements. The NPRM also discussed the potential burden the reciprocal waivers of claims requirements may impose on licensees and permittees launching hosted payloads. The comment period closed on March 16, 2015. On June 15, 2015, the FAA reopened the comment period for 30 days because the regulatory evaluation was not posted to the docket prior to the close of the NPRM’s comment period. This second comment period was limited to comments on the regulatory evaluation only, and closed on July 15, 2015. The FAA received five comments on the NPRM and no comments on the regulatory evaluation.

**III. Discussion of Final Rule and Public Comments**

The FAA received comments from five entities, including launch operators, service providers, and one individual. Launch operators who provided comments are Blue Origin, LLC (Blue Origin), Lockheed Martin Corporation (Lockheed), and Space Exploration Technologies Corporation (SpaceX). Harris Corporation (Harris) and an individual also commented.

In general, the commenters supported the proposed requirements. A few commenters suggested changes to the proposed regulatory text in order to achieve the FAA’s proposed outcome. After careful consideration of the comments, the FAA generally adopts the provisions as proposed, but makes the following changes. The FAA amends § 440.17(b) and (c) and part 440, appendices B and C, to include part 440 customers and their contractors and subcontractors in the reciprocal waiver of claims scheme. The FAA adds § 440.17(c)(1)(iii)(D) to preserve the statutory and regulatory requirements that all customers waive claims against all the other parties involved in the licensed permitted activity. Lastly, the FAA removes permittees from the indemnification scheme reserved by statute for licensees only, thereby maintaining the scope of the indemnification scheme as set out in 51 U.S.C. 50915.

*A. First-Tier and Part 440 Customers*

As originally proposed, § 440.17(c) is amended to require the FAA, the licensee or permittee, and each first-tier customer to enter into a reciprocal waiver of claims agreement for each licensed or permitted activity in which the U.S. Government, any agency, or its contractors and subcontractors are involved, or where property insurance is required under § 440.9(d). Additionally, as proposed, § 440.3 is amended to define the terms “first-tier customer” and “part 440 customer.” A first-tier customer is one who satisfies the definition of a customer and has a contractual relationship with a licensee or permit holder to obtain launch or reentry services. A part 440 customer means one who satisfies the regulatory definition of a customer and who is not a first-tier customer. Blue Origin requested that the FAA clarify how a licensee or permittee should identify its customers under the proposed rule. The FAA adopts these provisions as proposed, and provides further clarification below.

Blue Origin requested clarification on how the requirement to enter into a reciprocal waiver of claims agreement with each first-tier customer would apply to a situation in which a first-tier customer was a single entity representing a group of persons. Blue Origin stated that it “interprets the proposal to require that only the single entity representing the group will be required to sign a reciprocal waiver with the licensee/permittee and FAA.”<sup>1</sup> Blue Origin also requested that the FAA

<sup>1</sup> Blue Origin Comment at 2.

confirm that “if a first-tier customer is a single entity representing a group of persons, the licensee/permittee is required to enter into a cross waiver of claims only with a representative of the group as the first-tier customer.”<sup>2</sup>

An entity’s status as the representative of a group is not the determining factor as to whether or not that entity is required to sign a reciprocal waiver with the licensee or permittee and the FAA. Rather, a licensee or permittee is only required to enter into a reciprocal waiver with customers with whom it is in a contractual relationship.

To determine the entities with which it must execute a reciprocal waiver, the licensee or permittee should determine what entities it has contracted with for the licensed or permitted activity who also qualify as customers under 14 CFR 440.3. Accordingly, if a licensee entered into a contract with a number of entities for launch or reentry services, it would enter into reciprocal waivers with each of them.

Blue Origin provided a hypothetical scenario in which a school, university research lab, or other educational institution represented a group of students that contributed to the development of a payload. In this hypothetical situation, the single entity representing the group *may* be the only entity required to sign a reciprocal waiver with the licensee or permittee and the FAA. However, the hypothetical entity would be the *only* entity required to sign the reciprocal waiver only if it was the only entity in a contractual relationship with the licensee or permittee, and therefore the only entity who would qualify as a first-tier customer.<sup>3</sup> In that case, the representative would be the only first-tier customer and, therefore, the only party required to sign the reciprocal waiver of claims with the licensee or permittee and the FAA. If, however, any other member of the group was also in a direct contractual relationship with the licensee or permittee and also met the FAA’s definition of customer under § 440.3, that member would also be a first-tier customer and would also be required to sign a reciprocal waiver of claims with the licensee or permittee and the FAA. It would not, however, have to sign with all other first-tier customers because this final rule ensures that customers waive claims against all other customers involved in

a launch or reentry, including those signing different reciprocal waivers.

Blue Origin also expressed concern regarding how a licensee or permittee will determine who its customers are. Specifically, Blue Origin pointed out that determining whether each party has an interest in the payload is complicated by the fact that “people have varying levels of involvement (*e.g.*, a student works an entire semester on a project, vs. one who works a few hours), or have left the group (*e.g.*, some students graduate prior to completion of a payload, and are replaced by other students).”<sup>4</sup>

The FAA is not changing the definition of “customer” under § 440.3 in this rulemaking. However, the burden of identifying part 440 customers does shift with this rule, not to the licensee or permittee as Blue Origin suggests, but to the appropriate first-tier customer. This is because under this rule a licensee or permittee is responsible for implementing a reciprocal waiver of claims only with those customers with whom it is in a direct contractual relationship. A first-tier customer, as a result of this rule, will be responsible for implementing a reciprocal waiver of claims with each of its customers.

Although it is not changing the definition of customer under § 440.3, the FAA reiterates what it has said about the definition of customer in previous rulemakings. In its 1996 rulemaking, the FAA pointed out that it construes the term customer in proposed § 440.3 more broadly than just “the party that actually contracts with the commercial launch services provider and prospective licensee.”<sup>5</sup> The 1996 NPRM provided the example of a customer who had placed its property on board the payload in order to receive an on-orbit service, such as microgravity experiments, and stated that such an entity would be considered a customer to the launch even though it did not procure the launch.<sup>6</sup> In the final rule that resulted from the 1996 NPRM, the FAA stated: “The definition of ‘customer’ is further modified in the final rule to include any person who places property on board a payload for the purpose of obtaining launch or payload services . . . .”<sup>7</sup>

The FAA’s definition of customer, therefore, as applied to Blue Origin’s hypothetical, would be based on

ownership rights in the payload rather than the level of involvement in developing the payload. For example, a person may build a payload and sell it to a company. The company may then place that payload on board a rocket. The builder has no ownership rights in the payload, and therefore would not be a customer under § 440.3. The company who purchased, and therefore owns the payload, would be a customer under § 440.3. The person facing financial exposure for failing to properly identify these other non-signing customers would be the first-tier customer.

#### B. Government Customers

A Government customer need not sign a reciprocal waiver of claims because the FAA signs the reciprocal waiver of claims on behalf of the Government. Although, the proposed rule did not mention Government customers, Harris Corporation requested clarification on the treatment of Government-hosted payload customers on commercial payloads launched pursuant to Chapter 509. The FAA makes no change based on this comment.

Specifically, Harris asked whether the FAA would sign the waiver form on behalf of a Government customer, whether a Government customer could be considered a part 440 customer, and whether a Government customer’s contractor would be considered a contractor of the United States for purposes of § 440.14(c). As the agency has stated in previous rulemakings, “[w]hen the licensee’s customer is a U.S. Government agency, the agency is treated the same as any nongovernmental customer for purposes of determining the appropriate amount of property insurance required of the licensee and in terms of the U.S. Government’s waiver of claims or property damage or less above the required amount of property insurance under [51 U.S.C. 50914(b)(2)]. That is, a Government payload is not covered by the required Government property insurance and the United States Government agency-customer accepts responsibility for property damage to the payload.”<sup>8</sup>

Because the FAA signs on behalf of the U.S. Government, any Government customer would not separately sign any reciprocal waiver of claims. The designation as a part 440 customer does not change a customer’s responsibilities under the reciprocal waivers of claims, it only affects with whom the customer must sign a reciprocal waiver of claims. A Government customer’s status as a first-tier or part 440 customer does not

<sup>2</sup> Blue Origin Comment at 2.

<sup>3</sup> The FAA assumes for purposes of this hypothetical that the entity representing the group meets the FAA’s definition of customer in 14 CFR 440.3, by, for example, being the one who procures the launch.

<sup>4</sup> Blue Origin Comment at 2.

<sup>5</sup> *Financial Responsibility Requirements for Licensed Launch Activities*, NPRM, 61 FR 38992, 39002 (July 25, 1996).

<sup>6</sup> *Financial Responsibility*, 61 FR at 39002.

<sup>7</sup> *Financial Responsibility Requirements for Licensed Launch Activities*, Final Rule, 63 FR 45592, 45607 (August 26, 1998).

<sup>8</sup> *Financial Responsibility*, 61 FR at 39001.

matter, because the FAA signs on behalf of the Government.

As to Harris' last question concerning whether a contractor of a Government customer would be considered a contractor of the United States for purposes of § 440.14(c), it is beyond the scope of the current rulemaking. Additionally, the FAA notes that § 440.14(c) is not currently a regulatory provision.

### *C. Extension of the Reciprocal Waivers of Claims Requirements*

The FAA intended to amend only the method by which the obligations under the reciprocal waiver of claims were extended. Rather than requiring the licensee or permittee to implement the reciprocal waiver of claims with its contractors, subcontractors, customers, and customers' contractors and subcontractors, this rule requires that each customer extend the reciprocal waiver of claims to its contractors and subcontractors. Although it did not receive comment on the issue, the FAA adds the extension of the reciprocal waiver of claims requirements to § 440.17(b) to require the licensee or permittee, each first-tier customer, and each part 440 customer to extend the requirements to their respective contractors and subcontractors. Therefore, and as discussed below, a part 440 customer must waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver as a result of both the explicit requirement in § 440.17(c)(1)(iii)(D) and the extension of the reciprocal waiver of claims requirements in § 440.17(c)(2) and (c)(1)(iii).

Additionally, the FAA adds language to § 440.17(c)(2)(i), (ii), and (iii), and the associated part 440 appendices specifying that a party to a reciprocal waiver of claims must agree in that waiver to indemnify another party to the agreement from claims by the indemnifying party's contractors, subcontractors, and in the case of the customer, customers, arising out of the indemnifying party's failure to correctly extend the reciprocal waiver of claims requirement. This change was contemplated by the proposed rule, and preserves the requirements of this section prior to the amendments included in this final rule.

#### 1. Extension of Reciprocal Waiver of Claims to Part 440 Customers' Contractors and Subcontractors

SpaceX commented that the proposed rule did not effectively extend the reciprocal waiver of claims requirements to a part 440 customer's

contractors and subcontractors such that those contractors and subcontractors waived claims against all other parties otherwise protected by the reciprocal waiver of claims. SpaceX also commented that the appendices should be adjusted to state that a first-tier customer indemnifies the appropriate parties from and against liability, loss, or damage arising out of any claim brought by its customer's contractors and subcontractors. Harris commented that § 440.17(b) should be revised to include part 440 customers and their contractors and subcontractors in the waiver scheme to ensure that the parties to the reciprocal waiver of claims waive claims against them. In this rule the FAA changes § 440.17 to apply to part 440 customers' contractors and subcontractors, but does not adopt SpaceX's proposed language for the appendices. This marks a change from the regulatory text that the FAA originally proposed, based on comments discussed below.

SpaceX recommended additions to proposed § 440.17 and the associated appendices "to ensure that the regulations maintain the current obligations of all customers' contractors and subcontractors with respect to the licensee/permittee."<sup>9</sup> SpaceX stated that although the proposed rule might streamline the reciprocal waiver of claims process, "it does not expressly provide the same protections to the licensee or permittee contained in the current rule."<sup>10</sup> Specifically, SpaceX argued that, under the proposed rule, the licensee or permittee would have been required to waive and release any claims it might have against a part 440 customer and its contractors and subcontractors, but a part 440 customer's contractors and subcontractors would not have been required to waive claims against all other parties to which the reciprocal waiver requirements extended. SpaceX also noted that the contractors and subcontractors of a part 440 customer were not accounted for in proposed § 440.17 or in proposed sections 4(b) and 5(b) of the part 440 appendices in the same way as under the current rules. SpaceX provided suggested language to address what it saw as inconsistencies.

After considering the comments, the FAA has decided to make changes to the regulatory text to preserve the intent of this rulemaking and Chapter 509. Accordingly, § 440.17(b) and (c) require that each customer extends the reciprocal waiver of claims requirements to the customer's

contractors and subcontractors. The reciprocal waiver of claims requires that the contractors and subcontractors of each customer waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver, including the licensee or permittee. This rule explicitly requires the licensee or permittee, each first-tier customer, and each part 440 customer to extend the reciprocal waiver of claims requirements to their contractors, subcontractors and customers.

The FAA notes, however, that SpaceX recommended changing the text in each of the appendices to part 440 at section 4(b) to read: "Customer shall extend the requirements of the waiver . . . respectively, to its Contractors, Subcontractors, customers, and such customers' contractors and subcontractors . . ." The FAA is not adopting this suggested change for two reasons. First, this suggested language misappropriates the responsibility to extend the reciprocal waiver of claims requirements. Under SpaceX's proposed language, each first-tier customer would be required to extend the reciprocal waiver of claims requirements to its customers' contractors and subcontractors. Instead, this rule requires each customer to extend the reciprocal waiver of claims requirements to its contractors and subcontractors, but not to its customers' contractors and subcontractors. This is consistent with the previous version of the part 440 appendices. Second, this language is unnecessary because the extension of responsibilities in § 440.17(b)(2) and (3) and (c)(1)(iii) created by this rulemaking ensure that a part 440 customer extends to the customer's contractors and subcontractors the requirements of the reciprocal waiver of claims, which include waiving and releasing claims, assuming responsibility, and holding harmless and indemnifying other parties identified in the waiver,<sup>11</sup> because a first-tier customer must extend the waiver requirements to its customer. In other words, the requirements work as follows:

(1) Under § 440.17 and the part 440 appendices, a first-tier customer must waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver, as set forth in paragraphs 2(b) and 3(a) of the appendices. Additionally, a first-tier customer must extend each of these requirements to its

<sup>11</sup> See, e.g., 80 FR 1590, 1600 (extending the assumption of responsibility and waiver and release of claims for a licensed launch with one customer).

<sup>9</sup> SpaceX comment p. 1

<sup>10</sup> SpaceX comment at p. 2

contractors, subcontractors, and customers.

(2) Because a first-tier customer must extend the requirements of the waiver, including the requirement to extend the waiver, to its customers, it follows that its customers will have the same obligation as a first-tier customer under the waiver.

(3) Therefore, because of the extension of responsibilities, a first-tier customer's customers will be required, in turn, to extend the waiver requirements to their contractors, subcontractors and customers. Additionally, § 440.17(b)(3) and (c)(1)(iii) explicitly require that each part 440 customer extends the reciprocal waiver of claims requirements to its contractors and subcontractors.

Therefore, the FAA does not need to amend section 4(b) of the appendices to ensure that part 440 customers extend the waiver requirements to their contractors and subcontractors. Section 440.17(b)(2) and (3) and (c)(1)(iii) and section 4(b) of the appendices already require this. The FAA also disagrees with SpaceX's suggestion to amend section 5(b) of the appendices to require that a first-tier customer indemnify the appropriate parties from and against liability, loss, or damage arising out of any claim brought by its customer's contractors and subcontractors. Adopting SpaceX's suggestion would place an additional burden of indemnification on a first-tier customer that did not previously exist in part 440. Previous part 440 appendices required only that a first-tier customer indemnify the appropriate parties from and against liability, loss, or damage arising out of certain claims brought by its contractors, subcontractors, and employees. SpaceX's proposed language would additionally require a first-tier customer to indemnify from claims brought by its customer's contractors, subcontractors, and employees. As explained above, a first-tier customer is required to extend the reciprocal waiver of claims requirements to its customers. As a result of this extension, a first-tier customer's customer, rather than the first-tier customer himself, is required to indemnify against certain claims brought by its contractors, subcontractors, and employees.

Lastly, Harris pointed out that the absence of part 440 customers and their contractors and subcontractors in proposed § 440.17(b) exposes these parties to liability that represents a departure from Chapter 509. The FAA agrees, and this rule requires parties to the reciprocal waiver of claims

described in § 440.17(b) to waive claims against part 440 customers and their contractors and subcontractors.

## 2. Extension of Reciprocal Waiver of Claims to Part 440 Customers

In its comment, Harris also noted that the FAA overlooked explicitly requiring each part 440 customer to comply with the reciprocal waiver of claims requirements. Therefore, the FAA now adds an explicit requirement in addition to the extension of requirements provisions in order to clarify that each part 440 customer must enter into a reciprocal waiver of claims agreement. This marks a change from the regulatory text that the FAA originally proposed.

Harris commented that proposed § 440.17(b) and (c) would not have ensured that part 440 customers waive claims against the other parties included in the waiver scheme. Harris further asserted that the purpose behind the waiver scheme is “(1) [t]o limit the total universe of claims that might arise as a result of a launch; and (2) to eliminate the necessity for all of these parties to obtain property and casualty insurance to protect against these claims.”<sup>12</sup>

The FAA agrees. Under Chapter 509 and the FAA's current rules, the licensee or permittee is required to enter into a reciprocal waiver of claims with all customers and their respective contractors and subcontractors involved in launch or reentry services. In other words, each customer must waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver. In the NPRM, the FAA proposed to require only first-tier customers to sign a reciprocal waiver of claims with the FAA and the licensee or permittee. By separating first-tier customers from part 440 customers, the proposed rule did not explicitly require part 440 customers to waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver. Instead, these requirements were implied by the extension of requirements in which a first-tier customer is required to extend the reciprocal waiver of claims requirements to its customers, contractors, and subcontractors. Because commenters expressed some confusion about the requirements, the FAA amends § 440.17(b) and adds § 440.17(c)(1)(iii)(D) to explicitly require that part 440 customers waive claims

against all the other parties involved in the licensed activity.

As stated previously, these requirements levied on part 440 customers also exist as a result of the extension of the reciprocal waiver of claims that is required by § 440.17(b)(2), (b)(3), and (c)(1)(iii). By shifting the responsibility to extend the reciprocal waiver of claims from the licensee or permittee to the appropriate customer, the burden to indemnify also shifts. Therefore, should a customer fail to extend the reciprocal waiver of claims requirements to its customer, and its customer bring a claim against a party involved in the launch, the customer who failed to extend would be required to indemnify that party against its customer's claim. This represents a shift from the old scheme in which all customers signed the reciprocal waiver of claims, and therefore no one would be required to indemnify against a customer's claim unless the licensee failed to identify a customer and ensure that that customer signed the reciprocal waiver of claims.

## D. Removal of Permittees From Indemnification Scheme

This rule does not change the indemnification scheme created by 51 U.S.C. 50915. Chapter 509 provides that the United States Government shall pay for a successful third party claim to the extent the claim exceeds the insurance coverage required by statute but does not exceed the statutory limit for such coverage, provided Congress appropriates the funds.<sup>13</sup> Chapter 509 also lists the persons against whom the claim may be brought in order to qualify for this coverage.<sup>14</sup> This list includes licensees, but does not include permittees. Therefore, Congress will not appropriate funds for a third party claim against a permittee that exceeds the insurance requirements in Chapter 509.

Although it received no comments on the issue, the FAA has identified an error in the proposed rule that it corrects with the final rule. In the proposed rule, the FAA would have included permittees in the indemnification scheme reserved by statute for licensees only. Because this error would create a conflict with the FAA's statutory authority, which the FAA did not intend, the FAA has amended the regulatory text in this final rule to comply with Chapter 509 by removing permittees from the section 50915 indemnification scheme.

<sup>12</sup> Commercial Space Launch Act Amendments of 1988, Report of the Senate Committee on Commerce, Science, and Transportation on H.R. 4399, S. Rep. No. 100-593 at 14 (Oct. 7, 1988).

<sup>13</sup> 51 U.S.C. 50915(a)(1).

<sup>14</sup> 51 U.S.C. 50915(a)(3)(A).

*E. Miscellaneous*

This rule includes a new § 440.17(f) to include all provisions related to willful misconduct. The NPRM did not propose changing the willful misconduct provisions, and this rule also does not change those provisions but located them in § 440.17(f) for clarity.

**IV. Regulatory Notices and Analyses**

*A. Regulatory Evaluation*

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the

foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically “significant

regulatory action” as defined in section 3(f) of Executive Order 12866, (3) is not “significant” as defined in DOT’s Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below. As we received no comments on the benefit cost methodology, we used the same methodology here.

**Total Benefits and Costs of This Rule**

These changes will result in cost savings to the licensee or permittee, Government and customers and minimal cost to the first-tier customer if it has customers to the launch.

Cost savings are presented in the table below, which is discussed in more detail in the paragraphs that follow.

**COST SAVINGS FROM THE FINAL RULE**

	Average	7% Present value cost savings	3% Present value cost savings
Government Cost Savings .....	\$138,440	\$97,232	\$118,092
Licensee and Permittee Cost Savings:			
No Longer Requesting Waivers .....	136,282	95,716	116,251
No Longer Obtaining Part 440 Customer Signatures .....	17,035	11,965	14,531
Cost Savings from Allowing Signatures on Different Set of Reciprocal Waiver of Claims .....	365	256	311
<b>Total estimated cost savings .....</b>	<b>292,121</b>	<b>205,169</b>	<b>249,185</b>

Minor rounding occurs in summation.

The final rule might result in minimal costs to first-tier customers who will be responsible for implementing reciprocal waivers of claims with their customers.

**Who Is Potentially Affected by This Rule?**

Launch Licensees and Permittees  
Federal Government  
Customers of the Launch Licensees and Permittees

**Assumptions**

The following assumptions apply to the analysis:

- Ten year time horizon
- 2013 dollars
- Without the rule, the FAA will issue 4 partial waivers to the reciprocal cross waiver requirement per year
- Without the rule, a licensee or permittee will have to obtain some signatures from part 440 customers on launches unless waivers have been issued

**Benefits of This Rule**

The final rule will result in cost savings because licensees and permittees will no longer have to obtain signatures of part 440 customers on the reciprocal waiver of claims. Cost savings may result because licensees and permittees will not have to incur expenses to obtain part 440 signatures or licensees and permittees will not seek waivers from the FAA to the requirement that part 440 customers sign the reciprocal waiver of claims. The estimated cost savings to the licensee, permittee, and the Federal Government that will result were indicated in the table above.

Also, the FAA estimated a small cost savings due to the final rule allowing a customer added at the last minute to sign a new and separate waiver of claims agreement.

Finally, the FAA expects minimal cost savings with the addition of a

template for permitted activities with no customer.

**Costs of This Rule**

The responsibility to obtain signatures of customers who are not in a direct contractual relationship (*i.e.*, part 440 customers) with the licensee or permittee will shift under the final rule, from the licensee or permittee to the appropriate first-tier customer. The FAA expects the costs the first-tier customer will incur under the rule to implement the reciprocal waiver of claims to be minimal because the first-tier customer could modify the templates provided in appendices B and C to part 440 and add them to the contract that it has with its customers. The FAA thinks that this will be a one-time cost that could be accomplished in a short period of time by the company’s in-house lawyers. In addition, customers are currently required to extend the FAA reciprocal waiver of claims obligations to their

respective contractors and subcontractors, so the FAA does not expect the changes to the NPRM to result in additional costs.

#### *B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule will not have a significant impact on a substantial number of entities because the rule will result in cost savings and some minimal costs as described below. The FAA solicited comments in the NPRM regarding the initial regulatory flexibility analysis minimal cost determination, and received none. As we made the same determination for the initial regulatory flexibility analysis, we accept this determination for the final regulatory flexibility analysis. The reasons for the minimal cost determination are provided below.

Cost savings are expected because the licensee or permittee will no longer have to request waivers or obtain part 440 customers’ signatures, nor have to reopen the original waivers to obtain signatures if a party is added to the launch at the last minute. However, there might be minimal costs to first-tier customers. The responsibility to obtain signatures of customers who are not in

a direct contractual relationship (*i.e.*, part 440 customers) with the licensee or permittee will shift under the final rule, from the licensee or permittee to the appropriate first-tier customer. This will be a new requirement on the first-tier customer.

Under the final rule, the first-tier customers will be responsible, as described above, for implementing a reciprocal waiver of claims with their customers. These costs will be minimal because the first-tier customer could modify the templates provided in appendices B and C to part 440 and add it to the contract that it has with its customers. The FAA thinks that this will be a one-time cost that could be accomplished in a short period of time by the company’s in-house lawyers at an estimated cost of \$185.

It is not clear whether this minimal cost will impact a substantial number of small entities. To date, the FAA is unaware of any small entities who would be affected. The agency does not know whether in the future there might be small entities, that will have to implement a reciprocal waiver of claims with their customers, but even if there were a substantial number of small entities, the final rule will not have a significant impact on these entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

#### *C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

#### *D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this rule.

#### *F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

#### *G. Environmental Analysis*

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

### **V. Executive Order Determinations**

#### *A. Executive Order 13132, Federalism*

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various

levels of government, and, therefore, does not have Federalism implications.

*B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**VI. How To Obtain Additional Information**

*A. Rulemaking Documents*

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/) or
3. Access the Government Printing Office's Web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

*B. Comments Submitted to the Docket*

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

*C. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit <http://>

[www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

**List of Subjects in 14 CFR Part 440**

Indemnity payments, Insurance, Reporting and recordkeeping requirements, Space transportation and exploration.

**The Amendments**

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of title 14, Code of Federal Regulations as follows:

**PART 440—FINANCIAL RESPONSIBILITY**

- 1. The authority citation for part 440 continues to read as follows:

**Authority:** 51 U.S.C. 50901–50923.

- 2. Amend § 440.3 by adding the definitions of *first-tier customer* and *part 440 customer* in alphabetical order to read as follows:

**§ 440.3 Definitions.**

\* \* \* \* \*

*First-tier customer* means a customer as defined in this section, and who has a contractual relationship with a license or permit holder to obtain launch or reentry services.

\* \* \* \* \*

*Part 440 customer* means a customer as defined in this section, other than a first-tier customer.

\* \* \* \* \*

- 3. Amend § 440.17 by revising paragraphs (b) through (f) to read as follows:

**§ 440.17 Reciprocal waiver of claims requirements.**

\* \* \* \* \*

(b) The licensee or permittee and each of its contractors and subcontractors, each customer, and each customer's contractors and subcontractors, must enter into a reciprocal waiver of claims agreement under which each party waives and releases claims against all the other parties to the waiver and against any other customer, and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from a licensed or permitted activity, regardless of fault.

(1) The licensee or permittee must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its first-tier customers.

(2) Any first-tier customer must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its customers.

(3) Any part 440 customer must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its customers.

(c) For each licensed or permitted activity in which the United States, or its contractors and subcontractors, is involved or where property insurance is required under § 440.9(d), the Federal Aviation Administration of the Department of Transportation, the licensee or permittee, and each first-tier customer must enter into a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix B of this part for a licensed activity, in appendix C of this part for a permitted activity, or in a form that otherwise provides all the same obligations and benefits. The reciprocal waiver of claims must provide that:

(1) Each party to the reciprocal waiver of claims, including the United States but only to the extent provided in legislation:

- (i) Waives and releases claims it may have against each other party to the reciprocal waiver of claims, any customer, and against their respective contractors and subcontractors, for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assumes responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault. A licensee or permittee and each first-tier customer shall each hold harmless and indemnify each other, the United States, any other customer, and the contractors and subcontractors of each for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault; and

(iii) Extends the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, to its contractors and subcontractors involved in launch and reentry services, and, for each customer, to its contractors and subcontractors involved in launch and reentry services, and customers, by

requiring them to waive and release all claims as follows:

(A) For each contractor and subcontractor of the licensee or permittee, all claims against any customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify any customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(B) For each contractor and subcontractor of any customer, all claims against the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(C) For each contractor and subcontractor of the United States, all claims against the licensee or permittee, any customer, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e);

(D) For each part 440 customer, all claims against the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors; and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own

employees, resulting from licensed activities, regardless of fault; and

(2) For the following parties—  
(i) The licensee or permittee must hold harmless and indemnify each first-tier customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that any of licensee's or permittee's contractors and subcontractors may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement. The requirement of paragraph (c)(2)(i) of this section to hold harmless and indemnify the United States and its servants, agents, subsidiaries, employees and assignees, or any of them, does not apply when:

(A) Claims result from willful misconduct of the United States or its agents;

(B) Claims for property damage sustained by the United States or its contractors and subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e);

(C) For licensed activity, claims by a third party for bodily injury or property damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c), and do not exceed \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19; or

(D) The licensee has no liability for claims exceeding \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c).

(ii) Each first-tier customer must hold harmless and indemnify the licensee or permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that any of

each first-tier customer's customers, contractors, or subcontractors, may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(iii) The Federal Aviation Administration of the Department of Transportation on behalf of the United States, but only to the extent provided in legislation, must hold harmless and indemnify the licensee or permittee, each first-tier customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that contractors and subcontractors of the United States may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e).

(d) For each licensed or permitted activity in which the United States or its contractors and subcontractors are involved, the Federal Aviation Administration of the Department of Transportation and each space flight participant must enter into or have in place a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix E of this part, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each space flight participant:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury or property damage sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury or property damage, sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury or property damage, sustained by the space flight participant,

resulting from licensed or permitted activities, regardless of fault; and

(iv) Hold harmless and indemnify the United States and its servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for property damage or bodily injury sustained by the space flight participant, resulting from licensed or permitted activities.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release claims it may have against the space flight participant for property damage it sustains, and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury or property damage sustained by its own employees, resulting from licensed activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively;

(iii) Assume responsibility for property damage it sustains, resulting from permitted activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e);

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the space flight participant, and to agree to be responsible, for any property damage they sustain and for any bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the space flight participant, and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

(e) For each licensed or permitted activity in which the United States or its contractors and subcontractors is involved, the Federal Aviation Administration of the Department of Transportation and each crew member must enter into or have in place a reciprocal waiver of claims agreement.

The reciprocal waiver of claims must be in the form set forth in appendix D of this part, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each crew member:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury or property damage sustained by the crew member, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury or property damage, sustained by the crew member, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury or property damage, sustained by the crew member, resulting from licensed or permitted activities, regardless of fault; and

(iv) Hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for property damage or bodily injury sustained by the crew member, resulting from licensed or permitted activities.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release claims it may have against the crew member for property damage it sustains, and for bodily injury, including death, or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury or property damage sustained by its own employees, resulting from licensed activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively;

(iii) Assume responsibility for property damage it sustains, resulting from permitted activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e);

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the crew member and to agree to be responsible,

for any property damage they sustain and for any bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the crew member and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

(f) Any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify pursuant to this section does not apply to claims for bodily injury or property damage resulting from willful misconduct of any of the parties to the reciprocal waiver of claims, the contractors and subcontractors of any of the parties to the reciprocal waiver of claims, and in the case of licensee or permittee and customers and the contractors and subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

■ 4. Revise appendix B to part 440 to read as follows:

#### **Appendix B to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for Licensed Activities**

##### **Part 1—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch**

##### **Subpart A—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With One Customer**

This agreement is entered into this \_\_\_ day of \_\_\_\_\_, by and among [Licensee] (the "Licensee"), [Customer] (the "Customer") and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

##### **1. Definitions**

*Contractors and Subcontractors* means entities defined by § 440.3 of the Regulations.

*Customer* means the above-named Customer.

*Part 440 Customer* means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

*License* means License No. \_\_\_ issued on \_\_\_\_\_, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department

of Transportation, to the Licensee, including all license orders issued in connection with the License.

*Licensee* means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

*United States* means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

## 2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

## 3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

## 4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the

assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

## 5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

## 6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

## 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Customer

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Associate Administrator for Commercial Space Transportation

**Subpart B—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With More Than One Customer**

*This agreement* is entered into this \_\_\_ day of \_\_\_\_\_, by and among [Licensee] (the "Licensee"); [List of Customers]; (with [List of Customers] hereinafter referred to in their individual capacity as "Customer"); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

*Contractors and Subcontractors* means entities defined by § 440.3 of the Regulations.

*Customer* means each above-named Customer.

*Part 440 Customer* means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

*License* means License No. \_\_\_\_\_ issued on \_\_\_\_\_, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

*Licensee* means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

*United States* means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and each Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount

of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against

liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Each Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, each Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above such

amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

#### 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, any Customer or the United States of any claim by an employee of the Licensee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, each Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: \_\_\_\_\_

Its: \_\_\_\_\_

Customer 1

By: \_\_\_\_\_

Its: \_\_\_\_\_

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: \_\_\_\_\_

Its: \_\_\_\_\_

Associate Administrator for Commercial Space Transportation

### Part 2—Waiver of Claims and Assumption of Responsibility for Licensed Reentry

#### Subpart A—Waiver of Claims and Assumption of Responsibility for Licensed Reentry With One Customer

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, by and among [Licensee] (the "Licensee"), [Customer] (the "Customer"), and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of

the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the reentry of the [Payload] payload on a [Reentry Vehicle] vehicle.

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

#### 1. Definitions

*Contractors and Subcontractors* means entities defined by § 440.3 of the Regulations.

*Customer* means the above-named Customer.

*Part 440 Customer* means a customer defined by § 440.3 of the Regulations, other than the above named Customer.

*License* means License No. \_\_\_\_\_ issued on \_\_\_\_\_, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

*Licensee* means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

*United States* means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

#### 2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

Licensee and Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e) of the Regulations.

#### 4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility

required under § 440.9(c) and (e), respectively, of the Regulations.

#### 5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, or customers may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e) of the Regulations.

#### 6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful

misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

#### 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In Witness Whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Customer

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Federal Aviation Administration of the  
Department of Transportation on Behalf of  
the United States Government

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Associate Administrator for Commercial  
Space Transportation

#### Subpart B—Waiver of Claims and Assumption of Responsibility for Licensed Reentry With More Than One Customer

This agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, by and among [Licensee]

(the "Licensee"); [List of Customers] (with [List of Customers] hereinafter referred to in their individual capacity as "Customer"); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the reentry of [Payload] payload on a [Reentry Vehicle] vehicle.

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

#### 1. Definitions

*Contractors and Subcontractors* means entities described in § 440.3 of the Regulations.

*Customer* means each above-named Customer.

*Part 440 Customer* means a customer defined by § 440.3 of the Regulations, other than the above-named customer.

*License* means License No. \_\_\_\_ issued on \_\_\_\_\_, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

*Licensee* means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

*United States* means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

#### 2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 3. Assumption of Responsibility

(a) Licensee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and each Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage

they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 5. Indemnification

(a) Licensee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Each Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; and the United States and any other customer as defined by § 440.3 its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, each Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall

hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

#### 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, any Customer or the United States of any claim by an employee of the Licensee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customers, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, each Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Customer 1

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Associate Administrator for Commercial Space Transportation

■ 5. Revise appendix C to part 440 to read as follows:

### Appendix C to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for Permitted Activities

#### Part 1—Waiver of Claims and Assumption of Responsibility for Permitted Activities With No Customer

*This agreement* is entered into this \_\_\_\_ day of \_\_\_\_\_, by and between [Permittee] (the "Permittee") and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to [describe permitted activity]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

##### 1. Definitions

*Contractors and Subcontractors* means entities defined by § 440.3 of the Regulations.

*Permit* means Permit No. \_\_\_\_\_ issued on \_\_\_\_\_, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

*Permittee* means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

*United States* means the United States and its agencies involved in Permitted Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

##### 2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against the United States, and against its Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against Permittee and against its Contractors and Subcontractors, for Property Damage it sustains resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

##### 3. Assumption of Responsibility

(a) Permittee shall be responsible for Property Damage it sustains and for Bodily

Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee shall hold harmless and indemnify the United States, and the Contractors and Subcontractors of the United States, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

#### 4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against the United States, and against the Contractors and Subcontractors of the United States, and to agree to be responsible for Property Damage they sustain and to be responsible, hold harmless, and indemnify the United States, and the Contractors and Subcontractors of the United States, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, and against the Contractors and Subcontractors of Permittee, and to agree to be responsible, for any Property Damage they sustain, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

##### 5. Indemnification

Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

##### 6. Assurances Under 51 U.S.C. 50914(e)

(a) Permittee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440

Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

(b) Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

#### 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee or the United States of any claim by an employee of the Permittee or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility, or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Permittee and its Contractors and Subcontractors, the directors, officers, agents, and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Federal Aviation Administration of the  
Department of Transportation on Behalf of  
the United States Government

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Associate Administrator for Commercial  
Space Transportation

#### **Part 2—Waiver of Claims and Assumption of Responsibility for Permitted Activities With One Customer**

*This agreement is entered into this* \_\_ day of \_\_\_\_, by and among [Permittee] (the "Permittee"), [Customer] (the "Customer")

and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to [describe permitted activity]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

#### 1. Definitions

*Contractors and Subcontractors* means entities defined by § 440.3 of the Regulations.

*Customer* means the above-named Customer.

*Part 440 Customer* means a customer defined by § 440.3 of the Regulations, other than the above-named customer.

*Permit* means Permit No. \_\_ issued on \_\_\_\_, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

*Permittee* means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

*United States* means the United States and its agencies involved in Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

#### 2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Permittee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 3. Assumption of Responsibility

(a) Permittee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting

from Permitted Activities, regardless of fault. Permittee and Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

#### 4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

## 5. Indemnification

(a) Permittee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

## 6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Permitted Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

## 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee,

Customer or the United States of any claim by an employee of the Permittee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Permittee, Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Customer

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Federal Aviation Administration of the  
Department of Transportation on Behalf of  
the United States Government

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Associate Administrator for Commercial  
Space Transportation

### Part 3—Waiver of Claims and Assumption of Responsibility for Permitted Activities With More Than One Customer

*This agreement* is entered into this \_\_ day of \_\_\_\_, by and among [Permittee] (the "Permittee"); [List of Customers]; (with [List of Customers] hereinafter referred to in their individual capacity as "Customer"); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to [describe permitted activity].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

#### 1. Definitions

*Contractors and Subcontractors* means entities defined by § 440.3 of the Regulations.

*Customer* means each above-named Customer.

*Part 440 Customer* means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

*Permit* means Permit No. \_\_ issued on \_\_\_\_, by the Associate Administrator for

Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

*Permittee* means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

*United States* means the United States and its agencies involved in Permitted Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

#### 2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Permittee, the United States, any other customer, and each of their Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Permittee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 3. Assumption of Responsibility

(a) Permittee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee and each Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

#### 4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the

assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

#### 5. Indemnification

(a) Permittee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying

party's failure to implement properly the waiver requirement.

(b) Each Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

#### 6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Permitted Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding \$1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

#### 7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee, any Customer or the United States of any claim by an employee of the Permittee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Permittee,

each Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

*In witness whereof*, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: \_\_\_\_\_

Its: \_\_\_\_\_

Customer 1

By: \_\_\_\_\_

Its: \_\_\_\_\_

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: \_\_\_\_\_

Its: \_\_\_\_\_

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on July 25, 2016.

**Michael P. Huerta,**

*Administrator.*

[FR Doc. 2016-18765 Filed 8-17-16; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 301, and 602

[TD 9782]

RIN 1545-BK06

#### Tax on Certain Foreign Procurement

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the U.S. government to foreign persons pursuant to certain contracts. The regulations affect U.S. government acquiring agencies and foreign persons providing certain goods or services to the U.S. government pursuant to a contract. This document also contains final regulations under section 6114, with respect to foreign persons claiming an exemption from the 2 percent tax under an income tax treaty.

**DATES:** *Effective Date:* These regulations are effective on August 18, 2016.