

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 440

[Docket No.: FAA-2014-1012; Notice No. 14-10]

RIN 2120-AK44

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

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend the reciprocal waivers of claims regulations so that customers would waive claims against all the customers involved in a launch or reentry, including those signing a different set of reciprocal waivers. Also, customers of any customer contracting directly with a licensee or permittee would not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA. The FAA also proposes to add an appendix to provide permittees with an example of a Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer. The proposed rule would incorporate the reciprocal waiver of claims requirements in the regulatory text, ensure that customers would waive claims against all other customers involved in a launch or reentry, including those signing different reciprocal waivers, reduce the need for licensees and permittees to request a partial waiver of the reciprocal waiver of claims requirements and for the FAA to process those requests, and provide a reciprocal waiver template for permittees with no customers, reducing the need for the FAA to assist such a permittee in drafting its cross waivers.

**DATES:** Send comments on or before March 16, 2015.

**ADDRESSES:** Send comments identified by docket number FAA-2014-1012 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493-2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule, contact Shirley McBride, Regulations Program Lead, 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).

For legal questions concerning this proposed rule, contact Sabrina Jawed, Attorney, AGC-200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone (202) 267-8839; email [Sabrina.Jawed@faa.gov](mailto:Sabrina.Jawed@faa.gov).

**SUPPLEMENTARY INFORMATION:** See the "Additional Information" section for information on how to comment on this proposal and how the FAA will handle comments received. The "Additional Information" section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

#### Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as amended at 51 U.S.C. 50901-50923 (the Act), 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.

The statute under which the Secretary of Transportation regulates commercial space transportation, 51 U.S.C. subtitle V, chapter 509, sections 50901-50923 (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). This rule changes Title 14, Code of Federal Regulations (14 CFR) 440.3, 440.17 and appendices B and C

to address new scenarios involving hosted payloads.

## I. Background

The FAA first promulgated regulations regarding reciprocal waivers of claims agreements in 1998<sup>1</sup> at 14 CFR part 440, and included appendix B as an example of an Agreement of Waiver of Claims and Assumption of Responsibility for Licensed Activities. In 2000 and 2006, respectively, the FAA amended its regulations to include these same requirements for licensed reentries<sup>2</sup> and permitted launches.<sup>3</sup> The 2006 final rule also added appendix C as an example of an Agreement for Waiver of Claims and Assumption of Responsibility for Permitted Activities. In the original requirements, the FAA referenced the reciprocal waiver of claims as a “three-party agreement” (*i.e.*, between the licensee or permittee, its customer, and the FAA). The term “three-party” created confusion and caused some customers of commercial space launches to believe that only three parties were necessary to complete a waiver, even if there were multiple customers associated with a single launch. In other words, according to some, one customer could sign the reciprocal waiver with the licensee or permittee and the U.S. Government and by so doing waive not only its own claims but also the claims of all other customers to the launch. Appendices B and C defined “Customer” as “the above-named customer on behalf of the Customer and any person described in § 440.3 of the Regulations.” Again, some customers construed this language to mean one customer could sign on behalf of all other customers.

In 2011, the FAA amended § 440.17 and the appendices to part 440 to clarify that each individual customer must enter into the reciprocal waiver of claims, and a customer does not sign on behalf of other customers. In doing so, the FAA removed the term “three-party” from § 440.17(c) and from paragraph 5(d) of the appendices to dispel the notions that only three parties had to sign the reciprocal waivers and that one customer could sign on behalf of the remaining customers in a multi-customer launch.<sup>4</sup>

In 2012, the FAA became aware of a new scenario where the U.S. Government is a customer of a licensee, and the Government provides its customers’ payloads to the licensee. This scenario makes compliance with part 440 challenging for the licensee because the licensee is not contracting directly with all its customers, and there are a large number of total customers. Since 2012, the FAA has licensed additional launches that raised similar issues, and it expects to continue to see increasingly complex scenarios. The FAA briefly describes the first of these launches below to provide a better understanding of the issues it would address with this proposed rule.

On October 7, 2012, SpaceX launched a Falcon 9 rocket carrying its Dragon spacecraft as part of NASA’s first contracted cargo delivery flight to the International Space Station (ISS). In addition to providing supplies to the ISS, Dragon carried a number of student experiments as part of NASA’s Student Spaceflight Experiments Program (SSEP). NASA described SSEP as a national science, technology, engineering, and mathematics education initiative.<sup>5</sup> NanoRacks, LLC (“NanoRacks”), contracted with NASA and arranged to carry the student experiments on a locker insert to put into an experimental locker onboard the ISS. Under the FAA’s definitions, NanoRacks and each student who placed a payload onboard the NanoRacks insert qualified as a “customer”. Section 440.3 defines a customer, in relevant part, as any person with rights in the payload or any part of the payload, or any person who has placed property onboard the payload for launch, reentry, or payload services.<sup>6</sup> Accordingly, because NanoRacks and the students were persons who had rights in their respective payloads, the locker insert and the experiments, due to their ownership of those objects, and because they placed property onboard the Dragon, they were customers. Therefore, § 440.17 required their signatures as customers on the reciprocal waivers of claims along with the licensee (SpaceX), and the FAA.

SpaceX had a contract with NASA, but was not in a contractual relationship

with NanoRacks or any of the students placing experiments onboard Dragon. On September 20, 2012, SpaceX submitted a petition to the FAA requesting a partial waiver of § 440.17, which requires a licensee to enter into a reciprocal waiver of claims with each of its customers.<sup>7</sup> To be in compliance with § 440.17, SpaceX would have first had to determine who its customers were, and then obtain each of their signatures. To avoid this burdensome process, SpaceX instead requested a partial waiver from the FAA of § 440.17.

Thereafter, both SpaceX and Orbital Sciences, Corp. have requested partial waivers for missions in which NASA was a customer.<sup>8</sup> Since October 2012, the FAA has published three partial waivers to part 440 requirements in the **Federal Register**, and has issued three letters of waiver. Issuing a waiver is costly and time-consuming to the FAA, while requesting a waiver is costly and time-consuming for industry.

## II. Overview of Proposed Rule

This NRPM proposes to revise part 440 in the following ways: (1) Amend § 440.17 to state the reciprocal waiver of claims requirements; (2) amend § 440.17 and appendices B and C so that customers of any customer contracting directly with a licensee or permittee would not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA; (3) amend appendices B and C of part 440 so that customers would 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) amend § 440.3 to add a definition of “first-tier customer” and “part 440 customer”; and (5) add 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 would 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

<sup>7</sup> Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers, Notice of Waiver, 77 FR 63221 (Oct. 16, 2012).

<sup>8</sup> Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers for Orbital Sciences Corporation, Notice of Waiver, 78 FR 70392 (Nov. 25, 2013); Waiver of Requirement to Enter Into a Reciprocal Waiver of Claims Agreement With All Customers for Orbital Sciences Corporation, Notice of Waiver, 78 FR 57215 (Sept. 17, 2013). The FAA has also granted waivers that it did not publish in the **Federal Register** because they did not present any novel issues.

<sup>1</sup> See *Financial Responsibility Requirements for Licensed Launch Activities*, Final Rule, 63 FR 45592 (Aug. 26, 1998).

<sup>2</sup> See *Financial Responsibility Requirements for Licensed Reentry Activities*, Final Rule, 65 FR 56670 (Sept. 19, 2000).

<sup>3</sup> See *Human Space Flight Requirements for Crew and Space Flight Participants*, Final Rule, 71 FR 75616 (Dec. 5, 2006).

<sup>4</sup> See *Clarification of Reciprocal Waivers of Claims for Multiple-Customer Commercial Space*

*Launch and Reentry*, Technical Amendment, 76 FR 8629 (Feb. 15, 2011).

<sup>5</sup> Space Station—Here we Come! NASA Press Release: <http://www.nasa.gov/audience/foreducators/station-here-we-come.html> (last visited February 2, 2014).

<sup>6</sup> A person is an individual or an entity organized or existing under the laws of a State or country. 51 U.S.C. 50901(12), 14 CFR 401.5. The students and NanoRacks were persons because the students are individuals and NanoRacks is an entity, a limited liability corporation.

permittee if it has customers to the launch.

### III. Discussion of the Proposal

#### A. Amend § 440.17 To State the Reciprocal Waiver of Claims Requirements

The FAA proposes to amend § 440.17 to describe the requirements for the reciprocal waiver of claims agreement. Currently, those requirements are detailed in part 440 appendices, but are not all reflected in § 440.17. This proposed change would locate the cross-waiver requirements in the regulatory text rather than just the appendices. Section 440.17(c) would describe the requirements for each party to the reciprocal waiver of claims, to the extent provided in appendices B and C, to (i) waive and release claims for its property damage and its employees' bodily injury or property damage; (ii) assume responsibility for its property damage and its employees' bodily injury or property damage; (iii) extend its assumption of responsibility and waiver and release of claims to its contractors and subcontractors, and customers in the case of a first-tier customer;<sup>9</sup> and (iv) hold harmless and indemnify each other party from bodily injury or property damage sustained by its employees. Sections 440.17(d) and (e) would require each party to the reciprocal waiver of claims, to the extent described in appendices D and E, to (i) waive and release claims for bodily injury or property damage; (ii) assume responsibility for bodily injury or property damage; and (iii) hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees against claims for property damage or bodily injury.

Section 440.17 does not currently detail the reciprocal waiver of claims requirements in full. Rather, the section currently uses appendices, as incorporated through sub-sections, to detail the scope of the reciprocal waiver of claims. At the same time, subsection (c) currently qualifies the use of appendices with the additional clause "or in a form that satisfies the requirements." The FAA believes that this qualification could lead to uncertain expectations for launch participants because the appendices are more comprehensive than what § 440.17 contains. Section 440.17 only includes general references to requirements such as assumption of responsibility, hold harmless, and indemnification clauses.

<sup>9</sup> This requirement would be new to both the regulatory text and the appendices and is discussed in detail in Section B of this preamble.

To address this deficiency, the FAA proposes that § 440.17 list the specific requirements that should be included in the reciprocal waiver of claims agreement. This proposed change would serve to locate the requirements in one place within the regulation for clarity and ease of use.

#### B. Amend § 440.17 and Appendices B and C so That Only First-Tier Customers Sign the Statutorily Mandated Waiver of Claims, and Amend § 440.3 To Define "First-Tier Customer" and "Part 440 Customer"

This rulemaking would amend the part 440 requirement describing which entities are required to sign the statutorily-mandated waiver of claims. Specifically, this rulemaking would no longer require a first-tier customer's customer to sign reciprocal waivers with the licensee and the Government, and would require that a first-tier customer obtain its customers' agreement but indemnify the other parties for any failure to properly apply the requirements of the waiver to its customers. The FAA proposes defining first-tier customer as a customer as defined in § 440.3 who has a contractual relationship with the licensee or permittee to obtain launch or reentry services. In other words, a first-tier customer would be one who met the FAA's regulatory definition of a customer, and was in a contractual relationship with the licensee. The FAA proposes defining part 440 customer as a customer defined by § 440.3 of the Regulations, other than a first-tier customer. The FAA would add these definitions because they are a concise way to differentiate between a customer who is a direct contractual relationship with the licensee or permittee, and a customer who is not. The FAA would also revise the wording in the definition of contractors and subcontractors throughout the appendices, for greater specificity.

The FAA will discuss the proposed requirements in the following order: (1) First-tier customers would flow down the reciprocal waiver requirements to their customers; and (2) first-tier customers would indemnify other parties against claims brought by their customers.

The FAA would revise § 440.17(c) to require each first-tier customer to apply the requirements of § 440.17 to each of its customers, and would amend appendices B and C to reflect this requirement. Currently, part 440 requires all customers, as defined by § 440.3, to sign reciprocal waivers with the licensee and the U.S. Government, even those not contracting directly with

a licensee or permittee. This rulemaking would relieve licensees or permittees of having to obtain signatures of their part 440 customers, *i.e.*, any customer who is not contracting directly with the licensee or permittee. The FAA proposes to use its current practice of requiring that launch participants extend reciprocal waiver requirements to their contractors and subcontractors as a model. A first-tier customer currently extends the reciprocal waiver provisions to its contractors and subcontractors. The FAA proposes similarly requiring a first-tier customer to extend the reciprocal waiver provisions to its customers, assuming its customers are not also first-tier customers. Consistent with current practice, the agency leaves implementation of these provisions to the licensee or permittee and does not intend to monitor compliance with the requirement to extend the reciprocal waiver provisions.<sup>10</sup> The indemnification, discussed later in this section, provides its own incentives.

The result of requiring first-tier customers to extend the FAA reciprocal waiver requirements to their own customers, would be that the licensee or permittee would only be responsible for signing reciprocal waivers with customers with whom it is in a direct contractual relationship. The FAA notes that the Commercial Space Launch Act specifies that the reciprocal waivers of claims requirement applies only to customers involved in launch or reentry services. 51 U.S.C. 50914(b). Thus, part 440 customers are limited to customers involved in launch or reentry services. As the FAA has stated previously, "[t]he term 'customer' does not include the ultimate beneficiary of the payload services, as opposed to launch services, because doing so could theoretically include any person who uses a television or makes a long-distance telephone call, and goes beyond the intended scope of the Act."<sup>11</sup>

The FAA offers three examples to illustrate the effects of this proposed change. First, this proposed change would not affect launches in which a licensee or permittee contracted directly with all its customers. For example, if Licensee Launcher was launching a payload owned by ToyCo, then Licensee Launcher, ToyCo and the FAA would sign the part 440 reciprocal waivers. This straightforward scenario is what the FAA contemplated when it originally drafted part 440.

In the second example, involving a hosted payload situation, if Licensee

<sup>10</sup> See 63 FR at 45607.

<sup>11</sup> See 61 FR at 39012.

Launcher was launching a payload provided by LockerCo that included property owned by WatchCo and CologneCo, under the current rules, Licensee Launcher, LockerCo, WatchCo, and CologneCo would be required to sign the reciprocal waivers with the FAA. In this scenario, Licensee Launcher contracted with LockerCo for the launch, and LockerCo contracted with WatchCo and CologneCo. Even though Licensee Launcher had no contractual relationship with any of the customers other than LockerCo, he is still required to obtain signatures for all the customers of the launch to comply with part 440. This proposed rule would allow Licensee Launcher to sign a reciprocal waiver with only LockerCo and the FAA. LockerCo would then be required to flow down the reciprocal waiver requirements to its customers: WatchCo and CologneCo. LockerCo would be free to choose the method by which it extended these requirements down, so long as the end effect was that LockerCo's customers waived all claims they would have waived had they signed the original waiver with Licensee Launcher and the FAA.

The third example involves a hosted payload with a U.S. Government customer. If Licensee Launcher were launching a payload provided by NASA that included cubesats owned by South University, North University, and Jane Doe, under the current rules Licensee Launcher, South University, North University, Jane Doe, and the FAA would be required to sign reciprocal waivers. In this scenario, Licensee Launcher contracted with NASA for the launch, and NASA contracted with South University, North University, and Jane Doe. Besides NASA, Licensee Launcher had no contractual relationship with any of the customers. However, as in the examples above, Licensee Launcher is currently required to obtain signatures from all the customers of the launch to comply with part 440. This proposed rule would allow Licensee Launcher to sign a reciprocal waiver with only the FAA. The FAA would sign on behalf of the U.S. Government,<sup>12</sup> which would include NASA, even though NASA is also a customer. Under part 440, NASA, as a Government customer, currently already accepts responsibility for property damage to its payload.<sup>13</sup> Under the proposed amendments, NASA

would be required to extend the reciprocal waiver requirements to its customers: South University, North University, and Jane Doe. NASA would be free to choose the method by which it extended these requirements down, as long as the end effect was that NASA's customers waived all claims they would have waived had they signed the original waiver with Licensee Launcher and the FAA.

The proposal to require a first-tier customer to extend the reciprocal waiver requirements does not conflict with previous positions the FAA has taken on this issue. In its 2011 Technical Amendment, the FAA stated that "a plain language reading of the [Commercial Space Launch Act] makes it clear that Congress intended the government to enter into a reciprocal waiver of claims with all customers." This proposal is consistent with what the FAA has stated before, even though the FAA would only require customers contracting directly with the licensee or permittee to sign with the Government and the licensee or permittee. The intent of the statute would be preserved because first-tier customers would extend the part 440 requirements to any customers they had that met the definition of customer in § 440.3. Thus, customers who did not sign with the Government and the licensee, but who still met the FAA's definition of customer, would waive claims against all the relevant parties, namely the Government, the licensee or permittee, all other part 440 customers, and the relevant parties' contractors. In this way, the protections Congress intended the statute to afford would be preserved even though the result would be that all customers would no longer have to sign directly with the Government and the licensee or permittee. As the FAA contemplated, in cases with more than one customer's payload on the manifest for a single launch, executing separate but appropriately modified agreements to ensure that all parties are protected would satisfy the statute's mandate.<sup>14</sup> All customers would still have to enter into a waiver of claims agreement; however, the licensee or permittee would no longer be responsible for obtaining a part 440 customer's signature on its reciprocal waiver with the FAA.

The FAA also modeled its proposal regarding indemnification on the current practice for contractors and subcontractors. In the context of a party requiring its contractors and

subcontractors to agree to abide by the requirements of part 440, the FAA has stated previously that indemnification provides a strong incentive for parties to correctly extend reciprocal waiver requirements. This incentive provides a remedy for parties who sustain loss due to another party's failure to extend the reciprocal waiver requirements.<sup>15</sup> The FAA would apply the same reasoning to customers of a first-tier customer. Each customer would be required to indemnify the Government, the licensee or permittee, and any other customer not its own, against claims brought by its contractors, subcontractors, and customers that are not also in a direct contractual relationship with the licensee or permittee.

This proposal similarly does not conflict with the 2011 Technical Amendment, where the FAA stated that in no case was any one customer required to indemnify against claims brought by another customer, or to extend the reciprocal waiver of claims to other customers. At that time, the FAA was not contemplating a scenario in which a customer's customer would have a payload on the launch manifest, but would not be in a direct contractual relationship with the licensee or permittee. Instead, in 2011 the FAA meant only to clarify that unrelated customers could not waive claims on behalf of each other. The FAA envisioned a scenario in which the licensee or permittee itself contracted with various customers. In such a scenario, each customer would sign the reciprocal waiver of claims and could not sign for any other customer, or indemnify other signatories to the waiver of claims against a non-signing customers' claims.

Although the FAA removed language stating that a customer must provide indemnification on behalf of another customer,<sup>16</sup> the intent was to clarify that a customer could not sign on behalf of another customer and indemnify a signatory to the reciprocal waiver against that customer's claim in a scenario where the signing customer was not in a relationship with the non-signing customer. The effect of allowing a customer to sign on behalf of a different customer it has no relationship with and indemnify against that customer's claims is the non-signing customer effectively receives the benefits of the reciprocal waiver of claims without the obligations.

<sup>12</sup> The FAA, through delegation from the Department of Transportation, is required by 51 U.S.C. 50914(b)(2) to make reciprocal waiver of claims for the Government.

<sup>13</sup> *Financial Responsibility Requirements for Licensed Launch Activities*, Final Rule, 63 FR 45592, 45601 (Aug. 26, 1998).

<sup>14</sup> See *Financial Responsibility Requirement for Licensed Launch Activities Proposed Rule*, 61 FR at 39012.

<sup>15</sup> *Financial Responsibility Requirements for Licensed Launch Activities*, Notice of Proposed Rulemaking, 61 FR 38992, 39012 (July 25, 1996).

<sup>16</sup> See 76 FR 8629 at 8630.

In contrast, this proposal would require not only that a customer in a contractual relationship with the licensee or permittee extend the cross waiver requirements to its customers, but also that it indemnify the other parties against claims brought by its own customers. In this scenario, all customers would be aware of the claims they were waiving, and, if a customer failed to extend the reciprocal waiver requirements, it would be required to indemnify. Therefore, it would be in a customer's best interests to correctly extend the reciprocal waiver requirements so that its customers would not bring claims against the other parties. To accomplish this, the FAA would recommend using the forms provided in part 440 appendices B and C.

*C. Amend Appendices B and C of Part 440 so That Customers of Any Customer Contracting Directly With a Licensee or Permittee Would Not Have To Sign a Waiver Directly With the Licensee or Permittee, Other Customers, or the FAA*

The FAA proposes requiring that customers waive claims against all other customers involved in a launch or reentry. This change would obviate launch participants re-signing reciprocal waivers if a new customer was added close to the launch date.

The FAA proposes amending the waivers of claims agreements in appendices B and C so that customers waive claims, as required by the statute, against all the customers involved in the launch or reentry, including those signing a different set of reciprocal waivers. In the 2011 Technical Amendment, the FAA inadvertently removed from the definition of "customer" in appendices B and C the phrase "and any person described in § 440.3 of the Regulations." By removing this phrase, it became unclear that the customer signing the waiver with the licensee or permittee and the FAA was waiving any claims it had against all other customers.

Correcting this omission is important in order to ease the administrative burden on the FAA, customers, licensees, and permittees in instances where a new customer is added to a launch only a short time before the scheduled launch date. As the rule currently stands, all of the parties involved would need to re-sign the original waiver of claims because the protection only extends to those customers who have signed the specific waiver. This could be an onerous process were there to be many entities as customers for a single launch. The proposed amendment would clarify that

a signing customer waived any claims against all other customers currently or to be involved in a launch, and would allow a customer who was added at the last minute to sign a new and separate waiver of claims with the FAA and the licensee or permittee, while still waiving claims against any other customers who have signed a separate waiver of claims. This correction should not be construed to allow a customer to sign an indemnification agreement on behalf of another customer. Each customer in a contractual relationship with the licensee or permittee would still sign a waiver of claims on its own behalf.

Although it may look contradictory to include the clause "and any other customer as defined by 14 CFR 440.3" in the reciprocal waiver with one customer found in appendices B and C, the clause is necessary to meet the intent of allowing a last-minute customer to sign a new and separate waiver of claims with the FAA and the licensee or permittee, while also waiving claims against any customers on a launch who have signed a previous waiver of claims. Reciprocal waiver of claims with one customer found in appendices B and C would be used when one customer signed, and reciprocal waiver of claims with multiple customers found in appendices B and C would be used when multiple customers signed the same reciprocal waiver.

For example, Licensee Launcher is conducting a launch, and has one customer (WatchCo). WatchCo signs the "Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With One Customer," located in appendix B to part 440, with the FAA and Licensee Launcher. Two months later, Licensee Launcher acquires customer CologneCo. CologneCo is not a customer of WatchCo. Licensee Launcher now has two customers for its launch. Under the proposed rule, CologneCo would sign reciprocal waivers with Licensee Launcher and the FAA, but it would not need to sign with WatchCo because WatchCo waived and released claims it may have against any other customers as defined by § 440.3 and their contractors and subcontractors.

Thus, a licensee with multiple customers for a launch or reentry may sign one cross-waiver with multiple customers, or may sign multiple cross-waivers with each individual customer. Under the proposed rule, the outcome would be the same.

*D. Add an Appendix for Waiver of Claims and Assumption of Responsibility for Permitted Activities With No Customer*

Finally, this rulemaking would add a waiver of claims to appendix C that accounts for scenarios in which a permitted activity does not involve any customer. Permitted activities are launches or reentries of a reusable suborbital rocket for the purpose of research and development, demonstrating compliance with requirements in order to obtain a license, or crew training, and often do not involve a customer. Permittees may not receive compensation for carrying any property or human being, 51 U.S.C. 50906(h). Accordingly, although the FAA contemplated nonpaying customers, permittees may regularly conduct launches without any customer.

Currently, when a permittee plans to conduct permitted activities without any customer, the FAA and permittee modify the existing waivers of claims forms in appendix C in order to create a two-party agreement between the U.S. Government and the permittee. The FAA permits No. EP 07-003 issued to Armadillo Aerospace, L.P. in 2007, No. EP 12-007 issued to Scaled Composites in 2012, and No. EP 12-008 issued to SpaceX in 2012 all involved such a modified waiver of claims. This process led to additional coordination between the FAA and the permittees, and the permittees typically sought confirmation from the FAA that the modified waiver of claims agreement complied with part 440. With the addition of a separate waiver of claims template in appendix C for permitted activities with no customer, the FAA would be able to provide a uniform and compliant waiver of claims that would make the permitting process more efficient.

#### 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 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 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 (Pub. L. 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 proposed 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 proposed 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) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign

commerce of the United States; and (6) would 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.

**Total Benefits and Costs of This Rule**

These changes would result in cost savings to the licensee, 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 are discussed in more detail in the paragraphs that follow.

Cost Savings from the Proposed Rule			
	Average	7% Present Value Cost Savings	3% Present Value Cost Savings
<b>Government Cost Savings</b>	\$138,443	\$97,234	\$118,094
<b>Licensee Cost Savings</b>			
No Longer Requesting Waivers	\$136,282	\$95,716	\$116,251
No Longer Obtaining Sub-tier Signatures	\$17,035	\$11,965	\$14,531
<b>Cost Savings from Allowing Signatures on Different Set of Cross-Waivers</b>	\$365	\$256	\$311
<b>Total Estimated Cost Savings</b>	<b>\$292,124</b>	<b>\$205,170</b>	<b>\$249,188</b>

**Minor Rounding Occurs in Summation**

The proposal might result in minimal costs to first-tier customers who would be responsible for implementing cross-waivers 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 FAA would issue 4 partial waivers to the reciprocal cross waiver requirement per year
- Without the rule the licensee would have to obtain some signatures from sub-tier customers on launches unless waivers have been issued.

**Benefits of This Rule**

The proposal would result in cost savings because licensees would no longer have to obtain signatures of sub-tier customers on the cross-waiver. Cost savings may result because licensees

would not have to incur expenses to obtain sub-tier signatures or licensees would not seek waivers from the FAA to the requirement that sub-tier customers sign the cross-waiver. The estimated cost savings to the licensee and the Federal Government that would result were indicated in the table above.

Also, the FAA estimated a small cost savings due to the proposal to allow 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 proposed 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.* sub-tier customers) with the licensee would shift under the proposal, from the licensee to the appropriate first-tier customer. The FAA expects the costs the first-tier customer would incur under the rule to implement the cross-waiver would 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. In addition, customers are currently required to extend the FAA cross-waiver obligations to their respective contractors and subcontractors. The FAA thinks that this would be a one-time cost that could be accomplished in a short period of time by the company's in-house lawyers.

**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 proposed rule would not have a significant impact on a substantial number of entities because the rule would result in cost savings and some minimal costs as described below.

Cost savings are expected because the licensee would no longer have to request waivers or obtain sub-tier signatures, nor have 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.*, sub-tier customers) with the licensee would shift under the proposal, from the licensee to the appropriate first-tier customer. This would be a new requirement on the first-tier customer.

Under the proposal, the first-tier customer would be responsible, as described above, to implement the cross-waiver with their customers. These costs would 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 would 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 would impact a substantial number of small entities. To date, the only entities that the FAA is aware of currently that fly hosted payloads are NASA and the Air Force. We do not know whether in the future there might be small entities which would have to implement a cross-waiver with their customers, but even if there were a substantial number of small entities, the proposal would 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.

The FAA solicits comments regarding this determination.

#### *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 proposed rule and determined that it would 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 \$151.0 million in lieu of \$100 million. This proposed 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 proposed 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 1050.1E 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 312f and involves no extraordinary circumstances.

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

#### *A. Executive Order 12866*

See the “Regulatory Evaluation” discussion in the “Regulatory Notices and Analyses” section elsewhere in this preamble.

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

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would 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, would not have Federalism implications.

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

The FAA analyzed this proposed 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 would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

### **VI. Additional Information**

#### *A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by

submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

#### *B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

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

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

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

#### **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

proposes to amend 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 to add the definition 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. Revise § 440.17 to read as follows:

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

(a) As a condition of each license or permit, the licensee or permittee must comply with the reciprocal waiver of claims requirements of this section.

(b) The licensee or permittee must implement a reciprocal waiver of claims with each of its contractors and subcontractors, each first-tier customer and each of the first-tier customer's contractors and subcontractors, 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.

(c) For each licensed or permitted activity in which the U.S. Government, any agency, or its contractors and subcontractors is involved or where property insurance is required under section 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 licensed activity, in Appendix C of this part for 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, including the United States but only to the extent provided in legislation:

(i) Waives and releases claims it may have against each other party, 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 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 activities, regardless of fault. Licensee and 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 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 and, for first-tier customer its customers, by requiring them to waive and release all claims they may have against:

(A) For the contractors and subcontractors 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 the contractors and subcontractors of first-tier 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 the contractors and subcontractors 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 sections 440.9(c) and (e) of this part; 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 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 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. The requirement of (c)(2)(i) of this section to hold harmless and indemnify the United States and its agencies, 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 section 440.9(e) of this part;

(C) Claims by a third party for bodily injury or property damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(c) of this part, 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 section 440.19 of this part; or

(D) Licensee or permittee 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 section 440.9(c) of this part.

(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 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 any of first-tier 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 or permitted activities.

(iii) The Federal Aviation Administration of the Department of Transportation on behalf of the United States and its agencies, 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 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 section 440.9(c) and (e) of this part.

(d) For each licensed or permitted activity in which the U.S. Government, any of its agencies, 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, 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, including death, or property damage sustained by space flight participant, resulting from licensed or permitted activities, regardless of fault;

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

(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, including death, sustained by space flight participant, resulting from licensed or permitted activities; and

(v) Hold harmless 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, including death, or property damage, sustained by space flight participant, resulting from licensed or permitted activities, regardless of fault, except to the extent that claims result from willful misconduct of the United States or its agents.

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

(i) Waive and release claims it may have against space flight participant 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, including death, 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 sections 440.9(c) and (e), respectively, of this part;

(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 section 440.9(e) of this part;

(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 space flight participant, and to agree to be responsible, for any property damage they sustain and for any bodily injury, including death, 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 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 U.S. Government, any of its agencies, 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, 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, including death, or property damage sustained by crew member, resulting from licensed or permitted activities, regardless of fault;

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

(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, including death, sustained by crew

member, resulting from licensed or permitted activities; and

(v) Hold harmless 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, including death, or property damage, sustained by crew member, resulting from licensed or permitted activities, regardless of fault, except to the extent that claims result from willful misconduct of the United States or its agents.

(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, including death, 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 sections 440.9(c) and (e), respectively, of this part;

(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 section 440.9(e) of this part;

(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 crew member and to agree to be responsible, for any property damage they sustain and for any bodily injury, including death, 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 crew member and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

■ 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 section 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 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.

(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 sections 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 part 440 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 sections 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 part 440 customers, 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 part 440 customers, 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 sections 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.

(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 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 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.

(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, 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 sections 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 section 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 section 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 section 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 section 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 section 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 section 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 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.

(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 sections 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 part 440 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 sections 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 part 440 customers, 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 part 440 customers, 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 sections 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.

(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 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 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.

(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, 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 sections 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 section 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 section 440.9(c) 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 section 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 section 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 section 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, resulting from Licensed Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee, 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.

(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 sections 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 part 440 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 part 440 customers, 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 part 440 customers, 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 sections 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.

(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 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.

(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, 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 section 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 section 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 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.

(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 part 440 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 sections 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 part 440 customers, 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 part 440 customers, 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 sections 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.

(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 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 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.

(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, 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 sections 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 section 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 section 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 section 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 section 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 section 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 \_\_\_d 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 section 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 section 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 section 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 section 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.

##### *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 section 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 section 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 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 section 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 part 440 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 sections 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 part 440 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 section 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, part 440 customers, 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, part 440 customers, 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 sections 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.

(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 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 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 Permitted Activities.

### 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 section 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 section 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 section 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 part 440 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 sections 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 part 440 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 section 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, part 440 customers, 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, part 440 customers, 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 sections 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.

(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 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 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 Permitted Activities.

#### 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 section 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 section 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) and 44701(a) in Washington, DC, on January 2, 2015.

**Shana Dale,**

*Deputy Associate Administrator, Commercial Space Transportation.*

[FR Doc. 2015-00252 Filed 1-12-15; 8:45 am]

**BILLING CODE 4910-13-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2014-0861, FRL-9921-49-Region 9]

### Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze Federal Implementation Plan; Reconsideration

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to revise provisions of the Arizona Regional Haze (RH) Federal Implementation Plan (FIP) applicable to the Nelson Lime Plant. In response to a request for reconsideration from the plant's owner, Lhoist North America of Arizona, Inc. (LNA), we propose to replace the control technology demonstration requirements for nitrogen oxides (NO<sub>x</sub>) applicable to Kilns 1 and 2 at the Nelson Lime Plant with a series of revised recordkeeping and reporting requirements. Lastly, we are proposing a correction in the regulatory language of the final rule where a table listing the pollution emission limits for NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>) at each kiln was misprinted. We are seeking comment on each of these proposed actions.

**DATES:** Written comments must be submitted on or before February 27, 2015. Requests for a public hearing must be received on or before January 28, 2015.

**ADDRESSES:** See the **SUPPLEMENTARY INFORMATION** section for further instructions on where and how to learn more about this proposal, request a public hearing, or submit comments.

**FOR FURTHER INFORMATION CONTACT:** Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947-4139 and via electronic mail at [webb.thomas@epa.gov](mailto:webb.thomas@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" refer to EPA.

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- III. FIP Revision for Nelson Lime Plant
- IV. EPA's Proposed Action
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