

RECIPROCAL WAIVER OF CLAIMS TEMPLATE INVOLVING A U.S. GOVERNMENT CUSTOMER

A U.S. government customer need not sign a reciprocal waiver of claims because the FAA signs the reciprocal waiver of claims on behalf of the Government.¹ The attached reciprocal waiver of claims template may be used when a licensed launch involves a U.S. government customer.

¹ In response to a comment to a 2016 NPRM, the FAA discussed its role in the signing of waiver of claims agreements vis-à-vis government customers. Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities, 81 FR 55115, 55117 (Aug. 18, 2016). The final rule reiterated that the FAA signs on behalf of the U.S. Government and that therefore, a Federal government customer need not sign the reciprocal waiver of claims agreement.

WAIVER OF CLAIMS AND ASSUMPTION OF RESPONSIBILITY FOR LICENSED LAUNCH, INCLUDING SUBORBITAL LAUNCH, WITH U.S. GOVERNMENT CUSTOMER

This agreement is entered into this _____ day of _____, 20____ by and among [Licensee] (the "Licensee"), and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

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

Customer means a customer as defined by § 440.3 of the Regulations, including First-Tier Customers and Part 440 Customers, but excluding USG Customers.

First-Tier Customer means a customer as defined by § 440.3 of the Regulations, and who has a contractual relationship with a license or permit holder to obtain launch or reentry services, excluding USG Customers.

Part 440 Customer means a customer as defined by § 440.3 of the Regulations, other than a First-tier Customer and USG Customer.

USG Customer means a United States Government agency that meets the definition of customer in § 440.3 of the Regulations.

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, not including any USG Customer.

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 any Customer, any USG Customer, the United States, 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 First-Tier Customer hereby waives and releases claims it may have against Licensee, the United States, any Customer, any USG 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) Each USG Customer hereby waives and releases claims it may have against Licensee, the United States, any Customer, and each of their respective Contractors and Subcontractors, for

Property Damage it sustains resulting from Licensed Activities, regardless of fault. Each USG Customer hereby waives and releases claims it may have against Licensee, any Customer, and each of their respective Contractors and Subcontractors, 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.

(d) The United States hereby waives and releases claims it may have against Licensee, any 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 First-Tier 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 First-Tier Customer shall each hold harmless and indemnify each other, the United States, any Customer, and any USG 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) Each USG Customer shall be responsible for Property Damage it sustains resulting from Licensed Activities, regardless of fault. Each USG Customer shall be responsible 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)3, respectively, of the Regulations.

(c) 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)3, 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 any Customer, any USG 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, any USG 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) Each First-Tier 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 Part 440 Customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault. Each First-Tier Customer 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 USG Customers not in a contractual relationship with Licensee, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain.

(c) Each USG Customer in a contractual relationship with 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(b) and 3(a), respectively, to its Part 440 Customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault. Each USG Customer in a contractual relationship with Licensee 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 USG Customers not in a contractual relationship with Licensee, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain.

(d) 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(d) and 3(c), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, any Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

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

(b) Each First-Tier 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; any other Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; and any USG Customer 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 each Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States and any USG Customer shall hold harmless and indemnify Licensee, any 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 and

any USG Customer may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

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

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

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, any Customer, and USG Customer, or the United States of any claim by an employee of the Licensee, any Customer, any USG 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 Customer, the Contractors and Subcontractors of any Customer, any USG Customer, the Contractors and Subcontractors of any USG Customer, and in the case of Licensee, any 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 and any USG Customer, 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: _____

Printed Name: _____

Its: _____

Federal Aviation Administration of the Department of Transportation on Behalf of the United States
Government, and any USG Customer.

By: _____

Printed Name: _____

Its: _____