

transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. *Protected Space Operations* also includes all activities related to evolution of the Space Station, as provided for in Article 14 of the Intergovernmental Agreement. *Protected Space Operations* excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station-related activities in implementation of this Agreement.

(c)(1) Each Partner State agrees to a cross-waiver of liability pursuant to which each Partner State waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

- (i) Another Partner State;
  - (ii) A related entity of another Partner State;
  - (iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.
- (2) In addition, each Partner State shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Liability Convention where the person,

entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

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

- (i) Claims between a Partner State and its own related entity or between its own related entities;
- (ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
- (iii) Claims for damage caused by willful misconduct;
- (iv) Intellectual property claims.

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

#### **§ 1266.103 Cross-waiver of liability during Shuttle operations.**

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to Shuttle launch services agreements and to other NASA agreements that involve Shuttle flights, and the parties' related entities, in the interest of encouraging participation in space exploration, exploitation, and investment. The cross-waiver of liability shall be broadly construed to achieve this objective.

(b) As used in this cross-waiver, the term:

- (1) *Party* means a person or entity that signs an agreement involving a Shuttle flight;
- (2) *Related Entity* means:
  - (i) A contractor or subcontractor of a Party at any tier;
  - (ii) A user or customer of a Party at any tier; or
  - (iii) A contractor or subcontractor of a user or customer of a Party at any tier. *Contractors* and *Subcontractors* include suppliers of any kind;
- (3) *Damage* means:
  - (i) Bodily injury to, or other impairment of health of, or death of, any person;
  - (ii) Damage to, loss of, or loss of use of any property;
  - (iii) Loss of revenue or profits; or

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(iv) Other direct, indirect, or consequential damage;

(4) *Payload* means any property to be flown or used on or in the Shuttle; and

(5) *Protected Space Operations* means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of an agreement for Shuttle launch services. Protected Space Operations begin at the signature of the agreement and ends when all activities done in implementation of the agreement are completed. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of: the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. *Protected Space Operations* excludes activities on Earth which are conducted on return from space to develop further a payload's product or process for use other than for Shuttle-related activities necessary to complete implementation of the agreement.

(c)(1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract, against:

(i) Another Party;

(ii) Any Party who has signed a NASA agreement that includes a Shuttle flight;

(iii) A related entity of any party in paragraph (c)(1)(ii) of this section;

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

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (Mar. 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

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

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

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Contract claims between the Parties based on the express contractual provisions of the agreement;

(vi) Claims for damage based on a failure of the Parties or their related entities to flow down the cross-waiver.

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

**§ 1266.104 Cross-waiver of liability for NASA expendable launch vehicle (ELV) program launches.**

(a) The purpose of this section is to establish a cross-waiver of liability between the parties to agreements for NASA ELV program launches, and the parties' related entities, in the interest