

Chapter 2: Special Terms and Conditions

The following special terms and conditions will be incorporated into NASA grants and cooperative agreements as applicable.

1. Cross-Waiver of Liability for International Space Station Activities

This Term and Condition must be included in grants when the effort to be performed may involve Protected Space Operations, as that term is defined in the provision, relating to the International Space Station. If a grant or cooperative agreement may involve a launch other than the International Space Station, the Grant Officer also must insert the special Term and Condition entitled “Cross-Waiver of liability for Science or Space Exploration Activities unrelated to the International Space Station.”

The cross-waivers will require the recipient to extend the cross-waiver terms and conditions to their subcontractors at any tier and related entities, ensuring those subcontractors and related entities also waive all claims against any entity or person defined in the provision for damages arising out of Protected Space Operations. This cross-waiver is intended to be broadly construed, and NASA extends it to its related entities as set forth in the provision. The language in the cross waiver is required by the international agreements NASA has with its international partners for the use of the Space Station.

CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES

1. The Intergovernmental Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) for the International Space Station (ISS) contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS. This cross-waiver of liability is to be broadly construed to achieve this objective.
2. As used in this provision, the term:
 - a. "Agreement" refers to any NASA agreement, grant, cooperative agreement, or contract that contains the cross-waiver of liability provision authorized by 14 CFR § 1266.102.
 - b. "Damage" means:
 - i. Bodily injury to, or other impairment of health of, or death of, any person;
 - ii. Damage to, loss of, or loss of use of any property;
 - iii. Loss of revenue or profits; or
 - iv. Other direct, indirect, or consequential damage.
 - c. "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

- d. "Partner State" includes each Contracting Party for which the IGA has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.
 - e. "Party" means a party to an Agreement involving activities in connection with the ISS, including a party that is the prime recipient under this grant/cooperative agreement.
 - f. "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.
 - g. "Protected Space Operations" means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing agreements, and contracts to perform work in support of NASA's obligations under these Agreements. It includes, but is not limited to:
 - i. Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and
 - ii. All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. "Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. "Protected Space Operations" excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.
 - h. "Related Entity" means:
 - iii. A contractor, recipient or subcontractor of a Party or a Partner State at any tier;
 - iv. A user or customer of a Party or a Partner State at any tier; or
 - v. A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms "recipient," "contractor," and "subcontractor" include suppliers of any kind.
 - vi. "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A "Transfer Vehicle" also includes a vehicle that departs from and returns to the same location on a space object.
3. Cross-waiver of liability
- a. The Recipient agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver

- shall apply to any claims for Damage, whatever the legal basis for such claims, against:
- i. A Party;
 - ii. A Party to another Agreement that includes flight on the same Launch Vehicle;
 - iii. A Related Entity of any entity identified in paragraph (c) (1) (i) or (c) (1) (ii) of this provision; or
 - iv. The employees of any of the entities identified in paragraphs (c) (1) (i) through (c) (1) (iii) of this provision.
- b. The Recipient agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this provision to its own Related Entities at all tiers by requiring them, by contract or otherwise, to:
- i. Waive all claims against the entities or persons identified in paragraphs (c) (1) (i) through (c) (1) (iv) of this provision; and
 - ii. Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c) (1) (i) through (c)(1)(iv) of this provision.
- c. For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- d. Notwithstanding the other conditions of this provision, this cross-waiver of liability shall not be applicable to:
- i. Claims between a Recipient and its own Related Entities;
 - ii. Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;
 - iii. Claims for Damage caused by willful misconduct;
 - iv. Intellectual property claims; or
 - v. Claims for damages resulting from a failure of the Recipient to extend the cross-waiver of liability to its Related Entities, pursuant to paragraph (c)(2) of this provision.
- e. Nothing in this provision shall be construed to create the basis for a claim or suit where none would otherwise exist.
- f. This cross-waiver shall not be applicable when [51 U.S.C. 50101](#) et seq. is applicable.
- g. This cross-waiver shall not apply to or affect the rights and obligations arising from any other Term and Condition or provision of this grant/cooperative agreement.

2. Cross-Waiver of Liability for Science of Space Exploration Activities Unrelated to International Space Station

This Term and Condition must be included in NOFOs and award terms and conditions when the effort may involve a launch unrelated to the International Space Station. If a grant or cooperative agreement may involve the International Space Station, the Grant Officer also must insert the special Term and Condition entitled “Cross-Waiver of liability for International Space Station Activities.”

The cross-waivers will require the recipient to extend the cross-waiver terms and conditions to their subcontractors at any tier and related entities, ensuring those subcontractors and related entities also waive all claims against any entity or person defined in the provision for damages arising out of Protected Space Operations. This cross-waiver is intended to be broadly construed, and NASA extends it to its related entities as set forth in the provision. The language in the cross waiver is required by the international agreements NASA has with its international partners for the exploration of space.

CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION

1. The purpose of this provision is to extend a cross-waiver of liability for activities conducted under Agreements involving Science or Space Exploration activities, unrelated to the International Space Station (ISS), but which involve a launch. This cross-waiver of liability shall be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.
1. As used in this provision, the term:
 - a. “Agreement” refers to any NASA agreement, grant, cooperative agreement, or contract that contains the cross-waiver of liability provision authorized in 14 CFR § 1266.104.
 - b. “Damage” means:
 - i. Bodily injury to, or other impairment of health of, or death of, any person;
 - ii. Damage to, loss of, or loss of use of any property;
 - iii. Loss of revenue or profits; or
 - iv. Other direct, indirect, or consequential damage;
 - c. “Launch Vehicle” means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads or persons, or both.
 - d. "Party" means a party to an Agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch, including a party that is the prime recipient under this grant/cooperative agreement.

- e. "Payload" means all property to be flown or used on or in a Launch Vehicle.
 - f. "Protected Space Operations" means all Launch or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an Agreement for Science or Space Exploration activities, unrelated to the ISS, but which involve a launch. Protected Space Operations begins 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 Launch or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and
 - ii. All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a Payload's product or process other than for the activities within the scope of an Agreement.
 - g. "Related entity" means:
 - i. A contractor, recipient, or subcontractor of a Party at any tier;
 - ii. A user or customer of a party at any tier; or
 - iii. A contractor or subcontractor of a user or customer of a Party at any tier. The terms "recipient," "contractor" and "subcontractor" include suppliers of any kind.
2. Cross-waiver of liability:
- a. The Recipient agrees to a waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this Term and Condition 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 waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:
 - i. A Party;
 - ii. A Party to another Agreement that includes flight on the same Launch Vehicle;
 - iii. A Related Entity of any of the entities identified in (c)(1)(i) or (c)(1)(ii) of this provision; or
 - iv. The employees of any of the entities identified in (c)(1)(i) through (c)(1)(iii) of this provision.
 - b. The Recipient agrees to extend the cross-waiver of liability as set forth in paragraph

- (c)(1) of this provision to its own Related Entities at all tiers by requiring them, by contract or otherwise, to:
- i. Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision; and
 - ii. Require that their Related Entities waive all claims against the entities or persons identified in paragraph (c)(1)(i) through (c)(1)(iv) of this provision.
- c. For avoidance of doubt, this cross-waiver includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- d. Notwithstanding the other conditions of this provision, this cross-waiver of liability shall not be applicable to:
- i. Claims between the Recipient and its own Related Entities;
 - ii. Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health, or death of such person;
 - iii. Claims for Damage caused by willful misconduct;
 - iv. Intellectual property claims; or
 - v. Claims for damages resulting from failure of the Recipient to extend the cross-waiver of liability to its related entities, pursuant to paragraph (c)(2) of this provision.
- e. Nothing in this provision shall be construed to create the basis for a claim or suit where none would otherwise exist.
- f. This cross-waiver shall not be applicable when 51 U.S.C. 50101 et seq. is applicable.
- g. This cross-waiver shall not apply to or affect the rights and obligations arising from any other Term and Condition or provision of this grant/cooperative agreement.

3. Personal Identity Verification of Recipient Personnel

This provision shall be included in awards when access is needed to the NASA Center and/or NASA information systems for greater than 180 days.

PERSONAL IDENTITY VERIFICATION OF RECIPIENT PERSONNEL

1. The Recipient shall comply with Agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

2. The Recipient shall account for all forms of Government-provided identification issued to the Recipient employees in connection with performance under this contract. The Recipient shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:
 - a. When no longer needed for grant performance.
 - b. Upon completion of the Recipient's employee's employment.
 - c. Upon grant completion or termination.
3. The Grant Officer may delay final payment under a grant if the Recipient fails to comply with these requirements.
4. The Recipient shall insert the substance of this clause, including this paragraph (d), in all subcontracts or sub agreements when their employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the Recipient to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Grant Officer.

4. Buy America Preference for Infrastructure Project

This term and condition must be inserted into all awards whose activities meet the definition of "infrastructure" below.

In accordance with the [Infrastructure Investments and Jobs Act](#) (IIJA) (P.L. 117-58), recipients of a Federal financial assistance award issued under infrastructure programs are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- All iron and steel used in the project are produced in the United States - this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- All manufactured products used in the project are produced in the United States - this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- All construction materials are manufactured in the United States - this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

The following definitions apply to this term and condition:

1. Construction materials - Includes an article, material or supply - other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand and gravel; or aggregate binding agents or additives - that is or consists of primarily of: (a) non-ferrous metals; (b) plastic and polymer-based products (including polyvinylchloride, composite building materials and polymers used in fiber optics cables); (c) glass (including optic glass; (d) lumber; or (e) drywall.
2. Domestic content procurement preference - All iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.
3. Infrastructure - Includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.
4. Project - Means the construction, alteration, maintenance, or repair of infrastructure in the United States.

5. Animal Research Policy and Procedures

The recipient shall follow the Animal Research Policy and Procedures stated in the current version as of (as of the effective date of this grant award) of the following documents:

1. NASA Policy Directive (NPD) 8910.1A - "Care and Use of Animals."
2. NASA Procedural Requirements (NPR) 8910.1A - "Care and Use of Animals."
3. 14 CFR, Part 1232 - "Care and Use of Animals in the Conduct of NASA Activities."

The recipient shall furnish, throughout the life of this grant award, copies of protocols and documents showing the approvals from the appropriate Animal Care and Use Committee (ACUC) for such protocols.

6. Human Research Policy and Procedures

The Recipient shall follow the human research policy and procedures stated in the current version (as of the effective date of this grant award) of the following documents:

1. NASA Policy Directive (NPD) 7100.8D - "Protection of Human Research Subjects."
2. NASA Procedural Requirements (NPR) 7100.1 - "Protection of Human Research Subjects."
3. 14 CFR, Part 1230 - "Protection of Human Subjects."
4. 45 CFR, Part 46 - "Protection of Human Subjects."