



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Class Deviation

PCD 25-29

September 28, 2025

CLASS DEVIATION FROM FEDERAL ACQUISITION REGULATION (FAR) PART 28 AND NASA SUPPLEMENT (NFS) PART 1828 TO IMPLEMENT THE REVOLUTIONARY FAR OVERHAUL (NASA Case 2025-N033)

PURPOSE: To provide a Class Deviation from the FAR to implement the FAR Council’s model deviation text to FAR Part 28 Bonds and Insurance, and deviation to NFS 1828.

BACKGROUND: On April 15, 2025, the Executive Order (E.O.) 14275, [“Restoring Common Sense to Federal Procurement”](#) was signed. Section 2 of the E.O. establishes the policy that the FAR “should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.” To implement E.O. 14275, the Office of Federal Procurement Policy (OFPP) is leading the **Revolutionary FAR Overhaul (RFO)** initiative. This effort is supported by the Federal Acquisition Regulatory Council (the Council) member agencies—General Services Administration, Department of Defense, NASA, along with other agencies. In line with the E.O., the initiative aims to eliminate unnecessary regulations and policies across all levels of the federal government.

The Office of Management and Budget (OMB) memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, provided additional guidance to federal agencies regarding the FAR overhaul.

FAR Streamlining. As part of the RFO, the FAR will be streamlined to include only statutory requirements, while non-statutory content will move to new buying guides, collectively forming the Strategic Acquisition Guidance (SAG). The Council will first issue model deviation guidance by FAR part, followed by formal rulemaking through the notice-and-comment process. Agencies will have 30 days to issue class deviations based on the model text once it is released.

Streamlining Agency Acquisition Supplements. Agencies must streamline their FAR supplements by removing regulations not based on statute or executive orders and aligning with the FAR

Council's deviation guidance. Supporting policies must also be updated to reflect these changes. This approach ensures the NASA FAR Supplement (NFS) remains consistent with the streamlined FAR.

FAR Buying Guides and NFS Companion Guide (CG) (coming soon). As the FAR and the NFS are streamlined, helpful non-regulatory content will be moved to new FAR Buying Guides and NFS CG. These guides are intended to offer practical instructions and best practices for implementing effective contracting methods.

RFO Part 28, Bonds and Insurance, has been released by the FAR Council. RFO Part 28 prescribes requirements for obtaining financial protection against losses under contracts that result from the use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance. The regulation aims to ensure that the government is protected against financial loss due to the failure of contractors to fulfill their obligations under contracts. Burdensome, duplicative, or outdated language and language not required by statute have been removed from FAR Part 28. This plain language version of FAR Part 28 shall be adhered to.

To align with the RFO FAR Part 28, the NFS 1828, Bonds and Insurance, is revised to remove non-statutory and outdated language. This deviation implements the revised RFO Part 28 and NFS Part 1828.

GUIDANCE:

(1) Contracting officers shall follow the RFO Part 28 deviated text instead of FAR Part 28 as codified at 48 CFR Chapter 28. The FAR Council's RFO text is available at [FAR Overhaul - Part 28 | Acquisition.GOV](#).

(2) COs shall also follow the NFS Part 1828 deviated text enclosed within this deviation.

ACTION REQUIRED BY CONTRACTING OFFICERS: Effectively immediately, ensure that new contract actions issued on or after the effective date complies with the policy in the PCD.

EFFECTIVE DATE: This PCD is effective as dated and shall remain in effect until implemented in the FAR and NFS or otherwise rescinded.

PROVISION AND CLAUSE CHANGES: N/A

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Enclosure

Changes in the NFS Deviation text below are identified as follows:
Deletions shown as ~~strike throughs~~; and additions in **[bold in brackets]**

PART 1828
BONDS AND INSURANCE
(September 2015)

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**NFS PART 1828
BONDS AND INSURANCE**

~~Subpart 1828.1—Bonds~~

~~1828.106 Administration.~~

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~~1828.106-6 Furnishing information.~~

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~~(c) The contracting officer is the agency head's designee.~~

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~~Subpart 1828.2—Sureties~~

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~~1828.203 Acceptability of individual sureties.~~

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~~(g) Notification of suspected criminal or fraudulent activities, with all supporting documentation, shall be submitted to the Director, Acquisition Integrity Program within the Office of the General Counsel and the Office of Inspector General.~~

Subpart 1828.3—Insurance

~~1828.307 Insurance under cost reimbursement contracts.~~

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~~1828.307-1 Group insurance plans.~~

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~~(a) The procurement officer is the approval authority.~~

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~~1828.307-2 Liability.~~

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~~(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:~~

~~(a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or~~

~~(b) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.~~

~~(B) In all other circumstances, the Senior Procurement Executive is the approval authority.~~

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311-1 Contract clause.

The contracting officer shall **[must]** insert the clause at FAR 52.228-7, Insurance-Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

1828.311-2 Agency solicitation provisions and contract clauses.

1828.311-270 NASA solicitation provisions and contract clauses.

(a) The contracting officer ~~shall~~ **[must]** insert the clause at [1852.228-71](#), Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer ~~shall~~ **[must]** insert the provision at [1852.228-80](#), Insurance--Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer ~~shall~~ **[must]** insert FAR clause 52.228-7 and the associated clause at [1852.228-81](#), Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer ~~shall~~ **[must]** insert the clause at [1852.228-82](#), Insurance--Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

1828.370 Fixed-price contract clauses.

(a) The contracting officer ~~shall~~ **[must]** insert the clause at [1852.228-70](#), Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at [1852.228-70](#) if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at [1852.228-70](#) ~~shall~~ **[must]** not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk ~~shall~~ **[must]** be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at [1852.228-71](#), Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, ~~shall~~ **[must]** be used.

(c) When the clause at [1852.228-70](#) is used, the term "Contractor's premises" ~~shall~~ **[must]** be expressly defined in the contract Schedule and ~~shall~~ **[must]** be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses incorporating cross-waivers of liability for International Space Station activities and Science or Space Exploration activities unrelated to the International Space Station.

(a) In contracts covering International Space Station activities, or Science or Space Exploration activities unrelated to the International Space Station that involve a launch, NASA ~~shall~~ **[must]** require the contractor to agree to waive all claims against any entity or person defined in the clause based on damage arising out of Protected Space Operations. This cross-waiver ~~shall~~ **[must]** 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-waivers will require the contractor to extend the cross-waiver provisions 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 clause for damages arising out of Protected Space Operations. The purpose of the clauses prescribed in this section is to extend the cross-waivers under other agreements to NASA contractors that perform work in support of NASA's obligations under these agreements.

(b) The contracting officer ~~shall~~ **[must]** insert the clause at [1852.228-78](#), Cross-Waiver of Liability for Science or Space Exploration Activities unrelated to the International Space Station, in solicitations and contracts above the simplified acquisition threshold for the acquisition of launches for science or space exploration activities unrelated to the International Space Station or for acquisitions for science or space exploration activities that are not related to the International Space Station but involve a launch. If a science or space exploration activity is in support of the International Space Station, the contracting officer ~~shall~~ **[must]** insert the clause prescribed by paragraph (c) of this section and designate its application to that particular launch.

(c) The contracting officer ~~shall~~ **[must]** insert the clause at [1852.228-76](#), Cross-Waiver of Liability for International Space Station Activities, in solicitations and contracts above the simplified acquisition threshold when the work to be performed involves Protected Space Operations, as that term is defined in the clause, relating to the International Space Station.

(d) At the contracting officer's discretion, the clauses prescribed by paragraphs (b) and (c) of this section may be used in solicitations, contracts, new work modifications, or extensions to existing contracts under the simplified acquisition threshold involving science or space exploration activities unrelated to the International Space Station, or International Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the science or space exploration activities unrelated to the International Space Station, or International Space Station activities.

1828.372 Clause for minimum insurance coverage.

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at [1852.228-75](#), Minimum Insurance Coverage, in fixed-price solicitations and contracts requiring performance on a government installation and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

Subpart 1852.2—Text of Provisions and Clauses

1852.228-70 Aircraft Ground and Flight Risk.

As prescribed in [1828.370\(a\)](#), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangers, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

AIRCRAFT GROUND AND FLIGHT RISK (~~OCT 1996~~) [(SEP 2025) (DEVIATION)]

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor ~~shall~~ **[must]** not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes--

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "*In the open*" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) "*Flight*" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises ~~shall~~ **[must]** be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "*Contractor's premises*" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "*Operation*" means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "*Flight crew members*" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "*Contractor's managerial personnel*" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, ~~shall~~ **[must]** continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer ~~shall~~ **[must]** notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor ~~shall~~ **[must]** act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment

~~shall~~ **[must]** be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract ~~b-shall~~ **[must]** be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination ~~shall~~ **[must]** be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment ~~shall~~ **[must]**, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract ~~shall~~ **[must]** be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property ~~shall~~ **[must]** be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor ~~shall~~ **[must]** promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer ~~shall~~ **[must]** notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor ~~shall~~ **[must]** be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor ~~be shall~~ **[must]** be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk ~~shall~~ **[must]** not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion ~~shall~~ **[must]** not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have

been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause ~~shall~~ **[must]** not extend to the first \$1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and ~~shall~~ **[must]** be responsible for the first \$1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause ~~shall~~ **[must]** not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract ~~re-shall~~ **[must]** require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor ~~shall~~ **[must]** enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor ~~shall~~ **[must]** take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

- (i) The damaged, lost, or destroyed aircraft;
- (ii) The time and origin of the damage, loss, or destruction;
- (iii) All known interests in commingled property of which aircraft are a part; and
- (iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment ~~shall~~ **[must]** be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract ~~shall~~ **[must]** be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or

destruction, the Government ~~shall~~ **[must]** either (i) require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment ~~shall~~ **[must]** be made in the amount due under this contract and in the time required for its performance, and the contract ~~shall~~ **[must]** be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor ~~shall~~ **[must]** be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer ~~shall~~ **[must]** have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment ~~shall~~ **[must]** be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it ~~shall~~ **[must]** equitably reimburse the Government.

(2) The Contractor ~~shall~~ **[must]** do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, ~~shall~~ **[must]** at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

1852.228-71 Aircraft Flight Risks.

As prescribed in [1828.311-270\(a\)](#), insert the following clause:

AIRCRAFT FLIGHT RISKS
(~~DEC 1988~~) [(SEP 2025) (DEVIATION)]

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost- Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance--Liability to Third Persons clause), the Contractor ~~shall~~ **[must]** not (1) be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause--

(1) Unless otherwise specifically provided in the Schedule, "*aircraft*" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance)

or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "*Flight*" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to sea-planes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) "*Flight crew members*" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c)(1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds \$100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract ~~shall~~ **[must]** be made (i) in the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract ~~shall~~ **[must]** be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction ~~shall~~ **[must]** be taken into consideration.

(End of clause)

1852.228-75 Minimum Insurance Coverage.

As prescribed in [1828.372](#), insert the following clause:

MINIMUM INSURANCE COVERAGE
(~~OCT-1988~~) [(SEP 2025) (DEVIATION)]

The Contractor ~~shall~~ **[must]** obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they ~~shall~~ **[must]** be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's

commercial operations that it would not be practical. The employer's liability coverage ~~shall~~ **[must]** be at least \$100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least \$500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States ~~shall~~ **[must]** provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury liability and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies ~~shall~~ **[must]** be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies ~~shall~~ **[must]** contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury ~~shall~~ **[must]** be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228-76 Cross-Waiver of Liability for International Space Station Activities.
As prescribed in [1828.371\(c\) and \(d\)](#), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES
(~~OCT 2012~~) **[(SEP 2025) (DEVIATION)]**

(a) 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. The objective of this clause is to extend this cross-waiver of liability to NASA contracts in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The Parties intend that this cross-waiver of liability be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(1) “*Agreement*” refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(2) “*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.

(3) “*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.

(4) “*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 to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(5) “*Party*” means a party to a NASA Space Act agreement involving activities in connection with the ISS and a party that is neither the prime contractor under this contract nor a subcontractor at any tier.

(6) “*Payload*” means all property to be flown or used on or in a Launch Vehicle or the ISS.

(7) “*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 arrangements, 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.

(8) “*Related Entity*” means:

- (i) A contractor or subcontractor of a Party or a Partner State at any tier;
- (ii) A user or customer of a Party or a Partner State at any tier; or
- (iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms “contractor” and “subcontractor” include suppliers of any kind.

(9) “*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.

(c) Cross-waiver of liability:

(1) The Contractor 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 clause based on Damage arising out of Protected Space Operations. This cross-waiver ~~shall~~ **[must]** 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~~ **[must]** apply to any claims for Damage, whatever the legal basis for such claims, against—

- (i) A Party as defined in (b)(5) of this clause;
- (ii) A Partner State other than the United States of America;
- (iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this

clause; or

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

(2) In addition, the contractor ~~shall~~ **[must]** , by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause to its subcontractors at any tier 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 clause; and

(ii) Require that their subcontractors waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) 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.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability ~~shall~~ **[must]** not be applicable to—

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(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;

(v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause;

(vi) Claims by the Government arising out of or relating to the contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause ~~shall~~ **[must]** be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver ~~shall~~ **[must]** not be applicable when 49 U.S.C. Subtitle IX, Chapter. 701 is applicable.

(End of clause)

1852.228-78 Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to the International Space Station.

As prescribed in [1828.371\(b\) and \(d\)](#), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES
UNRELATED TO THE INTERNATIONAL SPACE STATION
(~~OCT 2012~~) [(SEP 2025) (DEVIATION)]

(a) The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities that are not related to the International Space Station (ISS) but involve a launch. This cross-waiver of liability ~~shall~~ **[must]** be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

(1) “*Agreement*” refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR Part 1266.104.

(2) “*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;

(3) “*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.

(4) “*Party*” means a party to a NASA Space Act agreement for Science or Space Exploration activities unrelated to the ISS that involve a launch and a party that is neither the prime contractor under this contract nor a subcontractor at any tier hereof.

(5) “*Payload*” means all property to be flown or used on or in a Launch Vehicle.

(6) “*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 that 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.

(7) “*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.

The terms “contractors” and “subcontractors” include suppliers of any kind.

(8) “*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.

(c) Cross-waiver of liability:

(1) The Contractor 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 clause based on Damage arising out of Protected Space Operations. This cross-waiver ~~shall~~ **[must]** 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~~ **[must]** apply to any claims for Damage, whatever the legal basis for such claims, against—

(i) A Party;

(ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;

(iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or

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

(2) The Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors 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 clause; 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 clause.

(3) 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*, entered into force on 1 September 1972, in which 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 clause, this cross-waiver of liability ~~shall~~ **[must]** not be applicable to:

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(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;

(v) Claims for damages resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or

(vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

(5) Nothing in this clause ~~shall~~ **[must]** be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver ~~shall~~ **[must]** not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

As prescribed in [1828.311-270\(b\)](#), insert the following provision:

INSURANCE — IMMUNITY FROM TORT LIABILITY
(SEP 2000) [(SEP 2025) (DEVIATION)]

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is *partially* immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance — Liability To Third Persons, and the associated NFS clause 1852.228-81, Insurance — Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is *totally* immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228-82, Insurance — Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

1852.228-81 Insurance — Partial Immunity From Tort Liability.
As prescribed in [1828.311-270\(c\)](#), insert the following clause:

INSURANCE — PARTIAL IMMUNITY FROM TORT LIABILITY
(SEP 2000) [(SEP 2025) (DEVIATION)]

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228-7, Insurance — Liability To Third Persons, provided that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor ~~shall~~ **[must]** be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228-7, for liabilities to third persons for which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

1852.228-82 Insurance — Total Immunity From Tort Liability.
As prescribed in [1828.311-270\(d\)](#), insert the following clause:

INSURANCE — TOTAL IMMUNITY FROM TORT LIABILITY
(SEP 2000) [(SEP 2025) (DEVIATION)]

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

PART 1828
BONDS AND INSURANCE

SUBPART	<u>1828.3</u>	INSURANCE
1828.311		Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1828.311-1		Contract clause.
1828.311-2		Agency solicitation provisions and contract clauses.
1828.311-270		NASA solicitation provisions and contract clauses.
1828.370		Fixed-price contract clauses.
1828.371		Clauses incorporating cross-waivers of liability for International Space Station activities and Science or Space Exploration activities unrelated to the International Space Station.
1828.372		Clause for minimum insurance coverage.

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311-1 Contract clause.

The contracting officer must insert the clause at FAR 52.228-7, Insurance-Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated unless—

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

1828.311-2 Agency solicitation provisions and contract clauses.

1828.311-270 NASA solicitation provisions and contract clauses.

(a) The contracting officer must insert the clause at [1852.228-71](#), Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at [1852.228-80](#), Insurance--Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228-7 and the associated clause at [1852.228-81](#), Insurance—Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at [1852.228-82](#), Insurance--Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

1828.370 Fixed-price contract clauses.

(a) The contracting officer must insert the clause at [1852.228-70](#), Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at [1852.228-70](#) if the best estimate of premium costs that would be included in

the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at [1852.228-70](#) must not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk must be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at [1852.228-71](#), Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, must be used.

(c) When the clause at [1852.228-70](#) is used, the term "Contractor's premises" must be expressly defined in the contract Schedule and must be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses incorporating cross-waivers of liability for International Space Station activities and Science or Space Exploration activities unrelated to the International Space Station.

(a) In contracts covering International Space Station activities, or Science or Space Exploration activities unrelated to the International Space Station that involve a launch, NASA must require the contractor to agree to waive all claims against any entity or person defined in the clause based on damage arising out of Protected Space Operations. This cross-waiver must 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-waivers will require the contractor to extend the cross-waiver provisions 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 clause for damages arising out of Protected Space Operations. The purpose of the clauses prescribed in this section is to extend the cross-waivers under other agreements to NASA contractors that perform work in support of NASA's obligations under these agreements.

(b) The contracting officer must insert the clause at [1852.228-78](#), Cross-Waiver of Liability for Science or Space Exploration Activities unrelated to the International Space Station, in solicitations and contracts above the simplified acquisition threshold for the acquisition of launches for science or space exploration activities unrelated to the International Space Station or for acquisitions for science or space exploration activities that are not related to the International Space Station but involve a launch. If a science or space exploration activity is in support of the International Space Station, the contracting officer must insert the clause prescribed by paragraph (c) of this section and designate its application to that particular launch.

(c) The contracting officer must insert the clause at [1852.228-76](#), Cross-Waiver of Liability for International Space Station Activities, in solicitations and contracts above the simplified acquisition threshold when the work to be performed involves Protected Space Operations, as that term is defined in the clause, relating to the International Space Station.

(d) At the contracting officer's discretion, the clauses prescribed by paragraphs (b) and (c) of this section may be used in solicitations, contracts, new work modifications, or extensions to existing contracts under the simplified acquisition threshold involving science or space exploration activities unrelated to the International Space Station, or International Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the science or space exploration activities unrelated to the International Space Station, or International Space Station activities.

1828.372 Clause for minimum insurance coverage.

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at [1852.228-75](#), Minimum Insurance Coverage, in fixed-price solicitations and contracts requiring performance on a government installation and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

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Subpart 1852.2—Text of Provisions and Clauses

1852.228-70 Aircraft Ground and Flight Risk.

As prescribed in [1828.370\(a\)](#), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of "aircraft" should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of "in the open" may be modified to include "hush houses," test hangers, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

**AIRCRAFT GROUND AND FLIGHT RISK
(SEP 2025) (DEVIATION)**

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor must not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, "aircraft" includes--

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) "*In the open*" means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) "*Flight*" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises must be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) "*Contractor's premises*" means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) "*Operation*" means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) "*Flight crew members*" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) "*Contractor's managerial personnel*" means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, must continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer must notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor must act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment must be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract must be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination must be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment must, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract must be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property must be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor must promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer must notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor must be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor must be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk must not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

- (4) The extent that the damage, loss, or destruction is in fact covered by insurance;
- (5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government- furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion must not apply); or
- (6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause must not extend to the first \$1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and must be responsible for the first \$1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause must not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract must require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor must enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor must take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

- (i) The damaged, lost, or destroyed aircraft;

- (ii) The time and origin of the damage, loss, or destruction;
- (iii) All known interests in commingled property of which aircraft are a part; and
- (iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment must be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract must be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government must either (i) require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or (ii) terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment must be made in the amount due under this contract and in the time required for its performance, and the contract must be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor must be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer must have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment must be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it must equitably reimburse the Government.

(2) The Contractor must do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, must at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

1852.228-71 Aircraft Flight Risks.

As prescribed in [1828.311-270\(a\)](#), insert the following clause:

AIRCRAFT FLIGHT RISKS (SEP 2025) (DEVIATION)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost- Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and

paragraph (c) of the Insurance--Liability to Third Persons clause), the Contractor must not (1) be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause--

(1) Unless otherwise specifically provided in the Schedule, "*aircraft*" includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) "*Flight*" includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to sea-planes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) "*Flight crew members*" means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c)(1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds \$100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract must be made (i) in the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract must be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction must be taken into consideration.

(End of clause)

1852.228-75 Minimum Insurance Coverage.

As prescribed in [1828.372](#), insert the following clause:

MINIMUM INSURANCE COVERAGE
(SEP 2025) (DEVIATION)

The Contractor must obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they must be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage must be at least \$100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least \$500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States must provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury liability and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies must be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies must contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury must be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228-76 Cross-Waiver of Liability for International Space Station Activities.

As prescribed in [1828.371\(c\) and \(d\)](#), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES
(SEP 2025) (DEVIATION)

(a) 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. The objective of this clause is to extend this cross-waiver of liability to NASA contracts in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (ISS). The Parties intend that this cross-waiver of liability be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(1) “*Agreement*” refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(2) “*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.

(3) “*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.

(4) “*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 to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(5) “*Party*” means a party to a NASA Space Act agreement involving activities in connection with the ISS and a party that is neither the prime contractor under this contract nor a subcontractor at any tier.

(6) “*Payload*” means all property to be flown or used on or in a Launch Vehicle or the ISS.

(7) “*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 arrangements, 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.

(8) “*Related Entity*” means:

- (i) A contractor or subcontractor of a Party or a Partner State at any tier;
- (ii) A user or customer of a Party or a Partner State at any tier; or
- (iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The terms “contractor” and “subcontractor” include suppliers of any kind.

(9) “*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.

(c) Cross-waiver of liability:

(1) The Contractor 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 clause based on Damage arising out of Protected Space Operations. This cross-waiver must 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 must apply to any claims for Damage, whatever the legal basis for such claims, against—

(i) A Party as defined in (b)(5) of this clause;

(ii) A Partner State other than the United States of America;

(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or

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

(2) In addition, the contractor must, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause to its subcontractors at any tier 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 clause; and

(ii) Require that their subcontractors waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) 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.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability must not be applicable to—

(i) Claims between the Government and its own contractors or between its own contractors and subcontractors;

(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;

(v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause;

(vi) Claims by the Government arising out of or relating to the contractor’s failure to perform its obligations under this contract.

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

(6) This cross-waiver must not be applicable when 49 U.S.C. Subtitle IX, Chapter. 701 is applicable.

(End of clause)

1852.228-78 Cross-Waiver of Liability for Science or Space Exploration Activities Unrelated to the International Space Station.

As prescribed in [1828.371\(b\) and \(d\)](#), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES
UNRELATED TO THE INTERNATIONAL SPACE STATION
(SEP 2025) (DEVIATION)

(a) The purpose of this clause is to extend a cross-waiver of liability to NASA contracts for work done in support of Agreements between Parties involving Science or Space Exploration activities that are not related to the International Space Station (ISS) but involve a launch. This cross-waiver of liability must be broadly construed to achieve the objective of furthering participation in space exploration, use, and investment.

(b) As used in this clause, the term:

(1) "*Agreement*" refers to any NASA Space Act agreement that contains the cross-waiver of liability provision authorized in 14 CFR Part 1266.104.

(2) "*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;

(3) "*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.

(4) "*Party*" means a party to a NASA Space Act agreement for Science or Space Exploration activities unrelated to the ISS that involve a launch and a party that is neither the prime contractor under this contract nor a subcontractor at any tier hereof.

(5) "*Payload*" means all property to be flown or used on or in a Launch Vehicle.

(6) "*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 that 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.

(7) "*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.

The terms "contractors" and "subcontractors" include suppliers of any kind.

(8) "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.

(c) Cross-waiver of liability:

(1) The Contractor 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 clause based on Damage arising out of Protected Space Operations. This cross-waiver must 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 must apply to any claims for Damage, whatever the legal basis for such claims, against—

- (i) A Party;
- (ii) A Party to another NASA Agreement or contract that includes flight on the same Launch Vehicle;
- (iii) A Related Entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this clause; or
- (iv) The employees of any of the entities identified in (c)(1)(i) through (iii) of this clause.

(2) The Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own subcontractors 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 clause; 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 clause.

(3) 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*, entered into force on 1 September 1972, in which 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 clause, this cross-waiver of liability must not be applicable to:

- (i) Claims between the Government and its own contractors or between its own contractors and subcontractors;
- (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;
- (v) Claims for damages resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors and related entities, pursuant to paragraph (c)(2) of this clause; or
- (vi) Claims by the Government arising out of or relating to a contractor's failure to perform its obligations under this contract.

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

(6) This cross-waiver must not be applicable when 49 U.S.C. Subtitle IX, Chapter 701 is applicable.

(End of clause)

1852.228-80 Insurance — Immunity From Tort Liability.

As prescribed in [1828.311-270\(b\)](#), insert the following provision:

INSURANCE — IMMUNITY FROM TORT LIABILITY
(SEP 2025) (DEVIATION)

If the offeror is partially or totally immune from tort liability to third persons as a State agency or as a charitable institution, the offeror will include in its offer a representation to that effect. When the successful offeror represented in its offer that it is immune from tort liability, the following clause(s) will be included in the resulting contract:

(a) When the offeror represents that it is *partially* immune from tort liability to third persons as a State agency or as a charitable institution, the clause at FAR 52.228-7, Insurance — Liability To Third Persons, and the associated NFS clause 1852.228-81, Insurance — Partial Immunity From Tort Liability, will be included in the contract.

(b) When the offeror represents that it is *totally* immune from tort liability to third persons as a State agency or as a charitable institution, the clause at NFS 1852.228-82, Insurance — Total Immunity From Tort Liability, will be included in the contract.

(End of provision)

1852.228-81 Insurance — Partial Immunity From Tort Liability.

As prescribed in [1828.311-270\(c\)](#), insert the following clause:

INSURANCE — PARTIAL IMMUNITY FROM TORT LIABILITY
(SEP 2025) (DEVIATION)

(a) Except as provided for in paragraph (b) of this clause, the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract; and

(b) The Contractor need not provide or maintain insurance coverage as required by paragraph (a) of FAR clause 52.228-7, Insurance — Liability To Third Persons, provided that the Contractor may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Contractor must be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of FAR clause 52.228-7, for liabilities to third persons for

which the contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

1852.228-82 Insurance — Total Immunity From Tort Liability.

As prescribed in [1828.311-270\(d\)](#), insert the following clause:

INSURANCE — TOTAL IMMUNITY FROM TORT LIABILITY
(SEP 2025) (DEVIATION)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Contractor, the cost and expense of which may be reimbursable to the contractor under this contract, the Contractor will immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Contractor. The Contractor will, if required by the Government, authorize Government representatives to settle or defend the claim and to represent the contractor in or take charge of any litigation. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)