

# AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

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POLICY NUMBER:

SCHEDULE

Item 1. Name of Insured:

Address:

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Item 2. Policy Period:

Effective Date: 12.01 a.m. \_\_\_\_\_ 20 Standard time at  
the address of  
Expiration Date: 12.01 a.m. \_\_\_\_\_ 20 the first named Insured

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Item 3. Premium:

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Item 4. Geographical Limits:

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Item 5. Authorized Agent:

Name:

Address:

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Item 6. Hazards Covered:

as covered by and as more fully set forth in the Primary Policy.

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Item 7. Limits of Liability:

- (a) Combined Primary and Underlying Excess Limit(s)
  - (b) Total Limit of Liability under this Policy and the Primary and Underlying Excess Policies combined
  - (c) Excess Limit
-

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Item 8. Primary and Underlying Excess Policy Details and Limits:

Primary Insurers

Policy Number

Limit

Underlying Excess Insurers

Policy Number

Limit

Dated in London, the

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## POLICY WORDING

WHEREAS the Insured set forth in the Schedule has paid or agreed to pay the Premium or consideration set forth in the Schedule to the Insurers, subject to the terms, conditions, limitations and exclusions hereinafter mentioned, the Insurers hereby agree:

## INSURING AGREEMENT

With respect to the Insurance afforded by the terms of this policy:

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of bodily injury and because of property damage caused by an Occurrence during the Policy Period, and arising out of the Hazards Covered set forth in Item 6 of the Schedule.

Provided always that:

1. Liability attaches to the Insurers only after the Primary and Underlying Excess Insurers have paid or have been held liable to pay the full amount set forth in Item 7(a) of the Schedule in respect of the Ultimate Net Loss and then
  - (a) the Limit of Liability under this policy will be such amount of the Ultimate Net Loss as will provide the Insured with a total limit under the Primary and Underlying Excess Policies and this policy combined as set forth in Item 7(b) of the Schedule; or
  - (b) if no amount is set forth in Item 7(b) of the Schedule the Limit of Liability under this policy shall be such amount of the Ultimate Net Loss as set forth in Item 7(c) of the Schedule excess of the limit set forth in Item 7(a) of the Schedule.
2. The Limit of Liability under this policy as stated in Item 7 of the Schedule shall not be increased by the inclusion hereon of more than one Insured whether by endorsement or otherwise.
3. If any of the Hazards Covered by this policy is subject to an aggregate Limit of Liability in the Primary Policy then the Limit of Liability under this policy shall, as respects such hazard, apply in the aggregate for the Policy Period.
4. If the Hazards Covered by this policy include liability arising out of the ownership, operation or use of aircraft by the Insured and if the Primary Policy provides that its terms apply separately to each such aircraft, then the terms of this policy shall also, as respects that hazard, apply separately to each such aircraft.

## EXCLUSIONS

This policy does not apply:

1. To any loss suffered by the Insured as a result of the inability, refusal or failure to pay of the Primary and/or Underlying Excess Insurers for any reason whatsoever including, without limitation, any financial impairment, insolvency or liquidation.
2. to liability excluded by the:

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- (a) War, Hi-jacking and Other Perils Exclusion Clause (Aviation) AVN 48B;
  - (b) Noise and Pollution and Other Perils Exclusion Clause AVN 46B (Amended);
  - (c) Nuclear Risks Exclusion Clause AVN 38B;
  - (d) Asbestos Exclusion Clause 2488AGM00003;
  - (e) Date Recognition Exclusion Clause AVN 2000A (Amended);
  - (f) Contracts (Rights of Third Parties) Act 1999 Exclusion Clause AVN 72;
- attached to this policy.

### DEFINITIONS

(A) ULTIMATE NET LOSS

“Ultimate Net Loss” means the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and other valid and collectible insurances, excepting however the Primary and Underlying Excess Policies, and shall exclude all Excluded Costs and Permitted Costs.

(B) EXCLUDED COSTS

“Excluded Costs” means all office expenses of the Insured, all expenses for salaried employees of the Insured and general retainer fees for Counsel normally paid by the Insured.

(C) PERMITTED COSTS

“Permitted Costs” means interest accruing after entry of judgement, investigation, adjustment and legal expenses (excluding however all expenses for salaried employees of the Insured and general retainer fees for Counsel normally paid by the Insured).

(D) OCCURENCE

“Occurrence” shall be deemed to have the same meaning in this policy as is attributed to it in the Primary Policy but, notwithstanding the foregoing, for the purposes of this policy all legal obligations of the Insured to pay damages arising out of exposure to substantially the same general conditions shall be deemed to arise out of one Occurrence.

### CONDITIONS

1. MAINTENANCE OF PRIMARY AND UNDERLYING EXCESS INSURANCE

The Insured shall maintain the Primary and Underlying Excess Policies in full effect during the currency of this policy except for any reduction of any aggregate limits contained therein solely by payment of claims in respect of Occurrences during the Policy Period stated in Item 2 of the Schedule. If the Primary and Underlying Excess Policies are not so maintained in full effect at all times during the currency of this policy, coverage under this policy shall immediately cease.

## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

### 2. PRIMARY POLICY CONDITIONS

In respect of the Hazards Covered set forth in Item 6 of the Schedule, this policy is subject (except as regards the Premium, the obligation to investigate and defend, the renewal agreement, if any, the amount and Limit of Liability other than the deductible or self-insurance provision where applicable, and except as otherwise provided herein), to the same warranties, terms, conditions, definitions and exclusions as are contained in or may be added to the Primary Policy prior to the happening of an Occurrence for which claim is made hereunder. Should any alteration be made in the premium for the Primary Policy during the currency of this policy, the Insured shall give notice within thirty (30) days thereof to the Insurers who shall have the right to amend the Premium hereon accordingly.

### 3. ATTACHMENT OF LIABILITY

Liability to pay under this policy shall not attach unless and until the Primary and Underlying Excess Insurers have paid or have been held liable to pay the full amount of the Primary and Underlying Excess Limit(s) as set forth in Item 7(a) of the Schedule.

### 4. INCURRING OF PERMITTED COSTS

In the event of a claim or claims arising which appear likely to exceed the Primary and Underlying Excess Limit(s), no Permitted Costs shall be incurred by the Insured without the consent of the Insurers.

### 5. APPORTIONMENT OF COSTS

Permitted Costs incurred by or on behalf of the Insured with the written consent of the Insurers, and for which the Insured is not covered by the Primary and Underlying Excess Insurers, shall be apportioned as follows:

- (a) Should any claim or claims be resolved prior to the commencement of trial for not more than the Primary and Underlying Excess Limit(s), then no Permitted Costs shall be payable by the Insurers.
- (b) Should, however, the amount for which the said claim or claims may be resolved exceed the Primary and Underlying Excess Limit(s), then the Insurers, if they consent to the proceedings continuing, shall contribute to the Permitted Costs incurred by or on behalf of the Insured in the ratio that the amount they are liable to pay in respect of the Ultimate Net Loss bears to the whole amount of the Ultimate Net Loss.

In the event that the Insured elects not to appeal a judgement in excess of the Primary and Underlying Excess Limit(s) the Insurers may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable or assessable court costs and interest incidental thereto, but in no event shall the total liability of the Insurers exceed the Limit of Liability under this policy as provided for herein, plus the expenses of such appeal.

Once the applicable Limits of Liability of this policy have been exhausted by payment of judgements or settlements then the Insurers' obligations under this policy shall have been fully discharged, and they shall not have any further obligation to investigate, negotiate, settle or otherwise dispose of any claim or suit made or brought against the Insured, or to pay for the expenses thereof, or to pay on behalf of the Insured any claim or judgment, or to reimburse the Insured for any of its expenses incurred in connection with any claim or suit.

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### 6. APPLICATION OF RECOVERIES

All recoveries or payments recovered or received subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and the Insurers, provided always that nothing in this policy shall be construed to mean that losses under this policy are not payable until the Insured's Ultimate Net Loss has been finally ascertained.

### 7. NOTIFICATION OF CLAIMS

In the event of an Occurrence likely to give rise to a claim hereunder written notice shall be given by, or on behalf of, the Insured to the Insurers' authorized agent as soon as practicable and forward to the Insurers' authorized agents every demand, notice, summons or other process received by the Insured or the Insured's representative.

### 8. ASSISTANCE AND CO-OPERATION OF THE INSURED

The Insured shall co-operate with the Insurers and, upon the Insurers' request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The Insured shall not except at its own cost voluntarily make any payment, assume any obligation or incur any expense.

### 9. ACTION AGAINST INSURERS

No action shall lie against the Insurers unless as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurers.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the Insurers as a co-defendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured shall not relieve the Insurers of any of their obligations under this policy.

### 10. PREMIUM

The Premium stated in the Schedule is payable 50% at the inception of this policy and the balance six months thereafter.

### 11. INSPECTION

Subject to security regulations of the United States Government the Insurers or their representatives shall be permitted to inspect the Insured's premises and operations and to examine and audit the Insured's books and records at any time during the Policy Period and any extension thereof, and within three years after final termination of this policy, as far as they relate to the premium basis or the subject matter of this insurance.

### 12. SUBROGATION

In the event of any payment under this policy, the Insurers shall be subrogated to all the Insured's



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rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

Nothing herein contained, however, shall bar the Insured from waiving its rights of recovery against any government.

### 13. ARBITRATION

- (1) The word "damages", wherever used in the Insuring Agreement and the phrase "judgment against the Insured after actual trial" in Condition 9 include an award:
  - (a) which is entered in an arbitration proceeding wherein any person or organization, pursuant to a written contract prior to a loss between such person or organization and the Insured seeks enforcement of a claim against the Insured for damages payable under the terms of the policy, and
  - (b) which becomes final, and
  - (c) is legally binding on the Insured in the jurisdiction in which it is made.
- (2) The word "suit" wherever used in Condition 5 includes any arbitration proceeding to which paragraph (1) hereof is applicable.
- (3) In any such arbitration proceedings the Insurers shall be entitled to exercise the Insured's right in the choice of arbitrators and in the conduct of such proceedings.
- (4) All of the provisions of the policy not inconsistent herewith shall be applicable to each such arbitration proceeding, to the claim or claims sought to be enforced and to any award entered therein.
- (5) By acceptance of this Condition the Insured agrees that any agreement to submit to arbitration a controversy to which this Condition may be applicable will specify that such arbitration shall be under the rules of a recognised plan or arbitration proceeding.
- (6) The Insurers shall not be liable under the policy to defend or to pay an award entered in an arbitration proceeding held pursuant to a contract which does not comply with paragraph (5) foregoing.

### 14. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or prevent the Insurers from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

### 15. ASSIGNMENT

No assignment of interest under this policy shall bind the Insurers until their consent is endorsed hereon. Promptly on execution of such an assignment the Insured shall send a copy thereof to the Insurers' authorized agents. If during the Policy Period an Insured shall die or be adjudged bankrupt, the Insurers, if such Insured's legal representatives or trustees in bankruptcy and their Insurers so agree, shall issue an endorsement to include such legal representatives or trustees as Insureds hereunder.

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Otherwise, this policy shall terminate as of the date of such death or adjudication. In the event of such termination, the earned premium for the period the policy has been in force shall be computed pro rata.

### 16. CANCELLATION

It is understood and agreed that this policy is non-cancellable by either the Insured or the Insurers other than in the event of non-payment of premium or as detailed in any specific cancellation provision contained herein.

In the event that the premium (or any instalment thereof) is not paid by its due date, Insurers shall have the right to terminate the cover afforded by the policy to the Insured by the giving of not less than thirty (30) days notice to the Authorized Agent. All notices of cancellation served in accordance with any of the provisions of this clause shall be by means of instantaneous communication that provides a permanent record of such communication, and shall be deemed to be served upon despatch or where communications between the parties are interrupted upon attempted despatch.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction hereof, such notice shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

In the event the Insured pays the premium due within the notice period, the applicable notice of cancellation by the Insurers shall cease to have any force or effect.

### 17. APPLICABLE LAW

This policy shall be governed by the laws of the State wherein the Insured has its principal place of business (as set forth in the Schedule) and will be subject to the jurisdiction of a court of competent jurisdiction as provided for in Condition 21 Service of Suit.

### 18. CONFLICTING STATUTES

The terms of this policy which are in conflict with the statutes of the State wherein the Insured has its principal place of business as set forth in the Schedule are hereby amended to conform to such statutes. However, the foregoing shall not apply to any type of coverage not afforded by this policy nor shall it apply to any amount or amounts in excess of the Limits of Liability as stated in Item 7 of the Schedule.

The Insured agrees to reimburse the Insurers for any payment made by the Insurers which the Insurers would not have been obligated to make under the terms of this policy but for the agreement contained in this paragraph.

### 19. INADVERTENT ERRORS OR OMISSIONS

Inadvertent errors, omissions or failure to give notice to the Insurers as herein required shall not relieve the Insurers of liability under this policy, provided that any such error, omission or failure shall be corrected as soon as discovered.

### 20. DECLARATIONS

By acceptance of this policy the Insured agrees that the statements in the Schedule are its agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing directly between the Insured

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and the Insurers relating to this insurance.

### 21. SERVICE OF SUIT

It is agreed that in the event of the failure of the Insurers hereon to pay any amount claimed to be due hereunder, the Insurers hereon, at the request of the Insured, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of the Insurers' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon

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Tower 49  
Twelve East 49<sup>TH</sup> Street,  
New York, NY 10017

and that in any suit instituted against any one of them upon this contract, the Insurers will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of the Insurers in any such suit and/or upon the request of the Insured to give a written undertaking to the Insured that they will enter a general appearance upon the Insurers' behalf in the event that such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Insurers hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

### 22. FALSE AND FRAUDULENT

If the Insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and all claims hereunder shall be forfeited.

### 23. SANCTIONS AND EMBARGO CLAUSE

Notwithstanding anything to the contrary in the policy the following shall apply:

- (1) If, by virtue of any law or regulation which is applicable to an Insurer at the inception of this policy or becomes applicable at any time thereafter, providing coverage to the Insured is or would be unlawful because it breaches an embargo or sanction, that Insurer shall provide no coverage and have no liability whatsoever nor provide any defence to the Insured or make any payment of defence costs or provide any form of security on behalf of the Insured, to the extent that it would be in breach of such law or regulation.
- (2) In circumstances where it is lawful for an Insurer to provide coverage under the policy, but the payment of a valid and otherwise collectable claim may breach an embargo or sanction, then the Insurer will take all reasonable measures to obtain the necessary authorisation to make such payment.

## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

- (3) In the event of any law or regulation becoming applicable during the Policy Period which will restrict the ability of an Insurer to provide coverage as specified in paragraph 1, then both the Insured and the Insurer shall have the right to cancel its participation on this policy in accordance with the laws and regulations applicable to the policy provided that in respect of cancellation by the Insurer a minimum of 30 days notice in writing be given. In the event of cancellation by either the Insured or the Insurer, the Insurer shall retain the pro rata proportion of the premium for the period that the policy has been in force. However, in the event that the incurred claims at the effective date of cancellation exceed the earned or pro rata premium (as applicable) due to the Insurer, and in the absence of a more specific provision in the policy relating to the return of premium, any return premium shall be subject to mutual agreement. Notice of cancellation by the Insurer shall be effective even though the Insurer makes no payment or tender of return premium.

AVN 111 01.10.10

### 24. VARIATION IN RISK

The Insured, upon being aware of any material change in the circumstances or nature of the risks covered by this policy, shall give immediate notice thereof to the Insurers who shall have the right to amend the Premium hereon accordingly.

### 25. OTHER INSURANCE

To the extent that there is other insurance providing coverage to the subject claim (other than underlying insurance or insurance that is specifically intended to be excess of this policy), the liability of the Insurers under this policy shall be limited to their rateable proportion of the claim.

# AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

## ATTACHMENTS

### 1. WAR, HI-JACKING AND OTHER PERILS EXCLUSION CLAUSE (AVIATION)

This policy does not cover claims caused by:

- (a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labor disturbances.
- (d) Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- (e) Any malicious act or act of sabotage.
- (f) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil military or de facto) or public or local authority.
- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of an aircraft or crew In Flight (including any attempt at such seizure or control) made by any person or persons on board the aircraft.

Furthermore, under this policy does not cover claims arising whilst an aircraft is outside the control of the Insured by reason of any of the above perils. The aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the aircraft to the Insured at an airfield not excluded by the geographical limits of this policy, and entirely suitable for the operation of the aircraft (such safe return shall require that the aircraft be parked with engines shut down and under no duress).

AVN 48B 1.10.96

## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

### 2. NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE

1. This policy does not cover claims directly or indirectly occasioned by, happening through or in consequence of:
  - (a) noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith,
  - (b) pollution and contamination of any kind whatsoever,
  - (c) electrical and electromagnetic interference,
  - (d) interference with the use of property,unless caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation.

1 (b) does not apply to pollution and contamination of a product or products sold or supplied by the Insured.
2. With respect to any provision in the policy concerning any duty of the Insurers to investigate or defend claims, such provision shall not apply and the Insurers shall not be required to defend
  - (a) claims excluded by Paragraph 1, or
  - (b) a claim or claims covered by the policy when combined with any claims excluded by Paragraph 1 (referred to below as "Combined Claims").
3. In respect of any Combined Claims, the Insurers shall (subject to proof of loss and the limits of the policy) reimburse the Insured for that portion of the following items which may be allocated to the claims covered by the policy:
  - (i) damages awarded against the Insured, and
  - (ii) defence fees and expenses incurred by the Insured.
4. Nothing herein shall override any radioactive contamination or other exclusion clause attached to or forming part of this policy.

AVN 46B 1.10.96 (Amended)

## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

### 3 NUCLEAR RISKS EXCLUSION CLAUSE

1. This Policy does not cover:
  - (i) loss of or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
  - (ii) any legal liability of whatsoever naturedirectly or indirectly caused by or contributed to by or arising from:
  - (a) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - (b) the radioactive properties of, or a combination of radioactive properties with toxic, explosive or other hazardous properties of, any other radioactive material in the course of carriage as cargo, including storage or handling incidental thereto;
  - (c) ionizing radiations or contamination by radioactivity from, or the toxic, explosive or other hazardous properties of, any other radioactive source whatsoever.
2. It is understood and agreed that such radioactive material or other radioactive source in paragraph 1(b) and (c) above shall not include:
  - (i) depleted uranium and natural uranium in any form;
  - (ii) radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial, educational or industrial purpose.
3. This Policy, however, does not cover loss of or destruction of or damage to any property or any consequential loss or any legal liability of whatsoever nature with respect to which:
  - (i) the Insured under this Policy is also an insured or an additional insured under any other insurance policy, including any nuclear energy liability policy; or
  - (ii) any person or organization is required to maintain financial protection pursuant to legislation in any country; or
  - (iii) the Insured under this Policy is, or had this Policy not been issued would be, entitled to indemnification from any government or agency thereof.
4. Loss, destruction, damage, expense or legal liability in respect of the nuclear risks not excluded by reason of paragraph 2 shall (subject to all other terms, conditions, limitations, warranties and exclusions of this Policy) be covered, provided that:
  - (i) in the case of any claim in respect of radioactive material in the course of carriage as cargo, including storage or handling incidental thereto, such carriage shall in all respects have complied with the full International Civil Aviation Organization "Technical Instructions for the Safe Transport of Dangerous Goods by Air", unless the carriage shall have been subject to any

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more restrictive legislation, when it shall in all respects have complied with such legislation;

- (ii) this Policy shall only apply to an incident happening during the period of this Policy and where any claim by the Insured against the Insurers or by any claimant against the Insured arising out of such incident shall have been made within three years after the date thereof;
- (iii) in the case of any claim for the loss of or destruction of or damage to or loss of use of an aircraft caused by or contributed to by radioactive contamination, the level of such contamination shall have exceeded the maximum permissible level set out in the following scale:

| <b>Emitter<br/>(IAEA Health and Safety<br/>Regulations)</b> | <b>Maximum permissible level of non-fixed<br/>radioactive surface contamination<br/>(Averaged over 300 cm<sup>2</sup>)</b> |
|---|--|
| Beta, gamma and low toxicity alpha emitters                 | Not exceeding 4 Becquerels/cm <sup>2</sup><br>(10 <sup>-4</sup> microcuries/cm <sup>2</sup> )                              |
| All other emitters  | Not exceeding 0.4 Becquerels/cm <sup>2</sup><br>(10 <sup>-5</sup> microcuries/cm <sup>2</sup> )                            |

- (iv) the cover afforded hereby may be cancelled at any time by the Insurers giving seven days' notice of cancellation.

AVN 38B 22.7.96



## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

### 4 ASBESTOS EXCLUSION CLAUSE

This policy does not cover any claims of any kind whatsoever directly or indirectly relating to, arising out of or in consequence of:

- (1) the actual, alleged or threatened presence of asbestos in any form whatsoever, or any material or product containing, or alleged to contain, asbestos; or
- (2) any obligation, request, demand, order, or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, neutralize, protect against or in any other way respond to the actual, alleged or threatened presence of asbestos or any material or product containing, or alleged to contain, asbestos.

However, this exclusion shall not apply to any claim caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation.

Notwithstanding any other provisions of this policy, Insurers will have no duty to investigate, defend or pay defence costs in respect of any claim excluded in whole or in part under paragraphs (1) or (2) hereof.

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## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

### 5 DATE RECOGNITION EXCLUSION CLAUSE

This policy does not cover any claim, damage, injury, loss, cost, expense or liability (whether in contract, tort, negligence, product liability, misrepresentation, fraud or otherwise) of any nature whatsoever arising from or occasioned by or in consequence of (whether directly or indirectly and whether wholly or partly):

- (a) the failure or inability of any computer hardware, software, integrated circuit, chip or information technology equipment or system (whether in the possession of the Insured or of any third party) accurately or completely to process, exchange or transfer year, date or time data or information in connection with any change of year, date or time; whether on or before or after such change of year, date or time;
- (b) any implemented or attempted change or modification of any computer hardware, software, integrated circuit, chip or information technology equipment or system (whether in the possession of the Insured or of any third party) in anticipation of or in response to any such change of year, date or time, or any advice given or services performed in connection with any such change or modification;
- (c) any non-use or unavailability for use of any property or equipment of any kind whatsoever resulting from any act, failure to act or decision of the Insured or of any third party related to any such change of year, date or time;

and any provision in this policy concerning any duty of the Insurers to investigate or defend claims shall not apply to any claims so excluded.

AVN 2000A 14.03.01 (Amended)

## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

### 6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 EXCLUSION CLAUSE

The rights of a person who is not a party to this insurance or reinsurance to enforce a term of this insurance or reinsurance and/or not to have this insurance or reinsurance rescinded, varied or altered without his consent by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from this insurance or reinsurance.

AVN 72 9.2.00

# AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

## ENDORSEMENT

### INSURER DOWNGRADE CLAUSE

Each individual subscribing Insurer shall at all times during the Policy Period maintain an Insurer Financial Strength (IFS) rating from Standard & Poor's of 55 Water Street, New York, NY 10041 USA ("S&P") equal to or greater than A- as applied by S&P to that individual subscribing Insurer.

Any individual subscribing Insurer who does not have an IFS rating from S&P but who maintains during the Policy Period a rating from A.M. Best Company of Ambest Road, Oldwick, New Jersey 08858 USA ("Bests") shall also be considered as falling within the terms of this clause.

In the event that a rating should be given to an individual subscribing Insurer by both S&P and Bests which differ to the extent that one of the ratings is inferior to the other then the rating of S&P shall prevail.

In the event of any explicit downgrading of an individual subscribing Insurer to a rating lower than A- being applied by S&P or Bests the Insured may, subject to provisions of this endorsement, elect to cancel the participation of that individual subscribing Insurer. The effective date of such cancellation shall be determined at the discretion of the Insured provided that the date so determined shall not be earlier than the date upon which the insured issues notice to the individual subscribing Insurers.

For the avoidance of doubt the status of Credit Watch as defined by S&P or a rating modifier of 'u' (Under Review) applied to a rated Company as defined by Bests shall not, of itself, be construed as a downgrading for the purposes of this clause.

With regard to any Lloyd's Underwriters participating hereunder the rating applicable to each individual Lloyd's Underwriter shall be the S&P IFS rating applicable to the Lloyd's Corporation as a whole.

If, for an Insurer with a rating lower than A- or no rating by S&P or Bests, in the judgement of the Insured the security of such Insurer has materially deteriorated since inception of this policy, the Insured shall have the same right of cancellation as set out above.

The Insured may also elect to cancel the participation of any individual subscribing Insurer that ceases underwriting. The effective date of such cancellation shall be determined at the sole discretion of the Insured provided that the date so determined shall not be earlier than the date upon which the Insured issues notice to the individual subscribing Insurer that has ceased underwriting.

After the date of cancellation, the liability of the individual subscribing Insurer hereunder shall cease outright other than in respect of losses which have occurred prior thereto.

All notices of cancellation served in accordance with any of the provisions of this clause shall be by means of instantaneous communication that provides a permanent record of such communication, and shall be deemed to be served upon despatch or where communications between the parties are interrupted upon attempted despatch.

All notices of cancellation served in accordance with any of the provisions of this clause shall be addressed to the party concerned at its Head Office or at any other address previously designated by that party.

In the event of this Insurer Downgrade Clause being invoked at any date prior to the Expiration Date of the Policy Period the premium due to the Insurer shall be calculated upon the Premium of the policy up to the date of cancellation or pro rata temporis of the minimum premium, whichever is the greater, or pro rata temporis of the flat premium, if applicable, however in the event that the Insured or his representative at any time give notice of a claim or suit arising out of an Occurrence under the policy prior to the date of

## AIRCRAFT BUILDERS COUNCIL - EXCESS LIABILITY POLICY

cancellation, the Premium shall be deemed earned in full by the Insurer.

For the purposes of this Insurer Downgrade Clause where the participation by any individual subscribing company Insurer is accepted through the intermediary of an underwriting agent, the following shall apply:

- a) the underwriting agent shall be given the option to put forward alternative Insurer(s), provided that such alternative Insurer(s) shall comply with the criteria set out in this clause and be recognised as eligible surplus lines or admitted Insurer(s) at the Insured's address as stated in this policy.
- b) all notices of cancellation served in accordance with any of the provisions above shall be addressed to the underwriting agent at its Head Office or at any other address previously designated for such purpose.