

3624HSX00002A - Aviation Warranty Recall Insurance

**AIRCRAFT BUILDERS
COUNCIL, INC.**

Endorsed by The Aircraft Builders Council Board of Trustees as the carrier to offer products recall coverage for ABC insureds.

Policy number

1. Named Insured

Name

Address

2. Insured's components

3. Estimated annual turnover

4. Policy period

From: / / (inception date)

To: / / (expiry date)

Both dates at 12:01a.m., Standard Time at the address of the **Named Insured**.

5. Limits of liability

Each INSURED EVENT

Aggregate policy limit of liability:

In no case shall the Insurers' liability exceed the Aggregate Policy Limit of Liability stated above, regardless of the number of losses or the number of INSURED EVENTS that occur during the PERIOD OF INSURANCE

6. Self-insured retention

Each INSURED EVENT

The Self-Insured Retention applies to each occurrence of an INSURED EVENT.

7. Policy currency

8. Specified Insured Component(s):

As per Application form signed and dated / / and held on file with the Insurers.

9. Law and jurisdiction

a. Governing law of the insurance contract:

b. Jurisdiction:

10. Retroactive date

11. Policy territory

12. Co-insurance

%

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13. Premium:

US\$

14. Additional clauses and endorsements forming part of the Policy at inception:

Words shown in this Policy in upper case have the meaning given to them in clause 3 of the Policy.

In consideration of the premium paid and in reliance upon the information given and statements made to the Insurer by the INSURED in the Application for this insurance, its attachments, all underwriting information submitted and the material incorporated in it and forming a part of it, and subject to the LIMIT OF LIABILITY and all other terms and conditions set forth in this Policy, the Insurers agree as follows:-

1. Insured Event

The Insurers will indemnify the INSURED for its LOSS in excess of the applicable SELF-INSURED RETENTION in respect of an INSURED EVENT, where the requirement for the INSURED EVENT is discovered by the INSURED during the PERIOD OF INSURANCE and notified to the Insurers in accordance with Condition 5.5 Notice of a Claim, provided that as of inception of this insurance the INSURED were not and could not reasonably have been aware of circumstances which may give rise to LOSS under this insurance.

If a circumstance or series of circumstances arising from the same originating cause affects more than one INSURED COMPONENT, during the PERIOD OF INSURANCE or at any other time, the INSURED shall be entitled to claim only in respect of one INSURED EVENT and such claim shall be subject to the LIMIT OF LIABILITY.

The INSURED EVENT under this Policy is:

- (i) the
 - a. repair or replacement of,
 - b. refund or issuance of customer credits for,
 - c. withdrawal, recall, recovery of possession or control or disposal of,
 an INSURED COMPONENT by the INSURED, including for a THIRD PARTY, or
- (ii) the purposeful destruction of an INSURED COMPONENT by the INSURED, including from a THIRD PARTY;

provided that:

- 1. the use or anticipated use of the INSURED COMPONENT has caused an OCCURRENCE or resulted in a GROUNDING, or
- 2. the INSURED COMPONENT has failed to perform the function for which it was manufactured, designed, sold, supplied, installed, repaired, altered or treated, after it has been dispatched or delivered by or on behalf of the INSURED to a THIRD PARTY.

2. Definition of loss:

LOSS under this Policy includes only the following reasonable and necessary expenses or costs incurred by the INSURED directly and solely in connection with a covered INSURED EVENT as provided below and subject to the LIMIT OF LIABILITY.

LOSS under this Policy includes:

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2.1 Recall and Replacement

RECALL EXPENSES and REPLACEMENT EXPENSES incurred by the INSURED solely and directly due to an INSURED EVENT and THIRD PARTY RECALL EXPENSES and REPLACEMENT EXPENSES that the INSURED is legally obligated to indemnify the THIRD PARTY for, whether by judgement, binding settlement or contractual obligation solely due to an INSURED EVENT.

Cover under this Policy for such RECALL EXPENSES, REPLACEMENT EXPENSES and THIRD PARTY RECALL EXPENSES commences on the first day costs are incurred and shall continue until the incurring of costs is no longer required, subject to a maximum indemnification period of eighteen (18) months.

2.2 Defense Costs

DEFENSE COSTS incurred by the INSURED solely and directly due to an INSURED EVENT.

3. Other definitions:

As used in this Policy:

- 3.1 BODILY INJURY means clearly identifiable internal or external physical symptoms of an objectively manifested physical condition that is recognised by a licenced medical doctor specialising in the care and treatment of the body function impacted by such a condition.
- 3.2 CLAIM means a written demand or civil suit, including arbitral proceedings and proceedings involving alternative dispute resolution, alleging liability on the INSURED's part for THIRD PARTY losses.
- 3.3 CORPORATE ACT OF THE INSURED means any deliberate act, including any dishonest, willful, illegal, fraudulent, criminal or malicious act, which has been expressly or impliedly approved, condoned, ratified or endorsed by any two or more members of the INSURED'S MANAGEMENT and which results directly or indirectly in an INSURED EVENT or LOSS.
- 3.4 DEFENSE COSTS means reasonable legal fees, expenses and disbursements incurred in the investigation and defense of any CLAIM including investigator's, adjuster's and expert's fees but excluding the INSURED's internal costs of investigation or defense of a CLAIM. DEFENSE COSTS form part of and will not be in addition to the LIMIT OF LIABILITY of the Policy and are subject to the SELF-INSURED RETENTION.

The Insurers shall have no liability for any DEFENSE COSTS incurred without their prior written consent.
- 3.5 END PRODUCT means the aircraft or the sub-system of the aircraft of which the INSURED COMPONENT is a part.
- 3.6 GROUNDING means the complete and continuous withdrawal from all flight operations at or about the same time of one or more aircraft due to an Airworthiness Directive or Mandatory Order of the Federal Aviation Administration of the United States of America (FAA), the European Aviation Safety Agency (EASA), or any similar competent civil airworthiness authority, because of an existing, alleged or suspected like defect, fault or condition affecting the safe operation of two or more like model aircraft, and which results from an OCCURRENCE. An Airworthiness Directive or Mandatory Order issued by one civil airworthiness authority shall apply as though issued by the civil airworthiness authority of any other country.
- 3.7 INSURED means the sole proprietorship, partnership or corporation stated in the Schedule.
- 3.8 INSURED EVENT means the event described in clause 1.
- 3.9 INSURED COMPONENT(S) means the aviation components covered hereunder listed in the Schedule to this Policy and in the Application for this insurance, but subject always to the exclusions contained in clause 4 of the Policy.

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3.10 INSURED'S MANAGEMENT

- (i) For the purpose of any act which constitutes a CORPORATE ACT OF THE INSURED, INSURED'S MANAGEMENT means the INSURED's past or present Chairman, Chief Executive Officer, President, Managing Director, any executive or non-executive Director of the INSURED and any person who holds or has held an equivalent position or who has or had authority to make decisions about the operation or management of the INSURED's business on behalf of the INSURED.
- (ii) For the purpose of any other reference to the INSURED'S MANAGEMENT herein, INSURED'S MANAGEMENT means, in addition to those named in Definition (i) above, any Department or Division of the INSURED, including any legal, compliance, risk management, internal audit or insurance department or division.

3.11 LIMIT OF LIABILITY means the maximum amount the INSURED can collect under the Policy as specified in the Schedule to the Policy and as per Condition 5.9.

3.12 LOSS means only those expenses and costs described in clause 2 of the Policy.

3.13 OCCURRENCE means an accident including injurious exposure to conditions (other than a GROUNDING) which causes, during the PERIOD OF INSURANCE, BODILY INJURY or PROPERTY DAMAGE, which is neither expected nor intended from the standpoint of the INSURED. A series of accidents or OCCURRENCES following as a consequence of one OCCURRENCE, shall with such OCCURRENCE, be deemed to be one OCCURRENCE.

3.14 PERIOD OF INSURANCE means the period of time between the inception date shown in the Schedule and the expiry date shown in the Schedule or the effective date of termination or cancellation, if earlier.

3.15 PROPERTY DAMAGE means physical damage to or destruction of tangible property other than INSURED COMPONENT(S). PROPERTY DAMAGE does not include loss, impairment or deprivation of the use of any form of non-tangible property.

3.16 RECALL EXPENSES means the reasonable and necessary costs incurred by the INSURED by reason of an INSURED EVENT exclusively for the recall, withdrawal, removal, recovery of possession or control, or purposeful destruction of the INSURED COMPONENT(S). These costs include but are not limited to the following:

- (i) communications to notify others of an INSURED EVENT, including but not limited to, radio and television announcements and printed advertisements;
- (ii) the cost of shipping the INSURED COMPONENT(S) from any purchaser, distributor or user to the place or places the INSURED designates;
- (iii) the actual cost of disposal of the components, but only to the extent that specific methods of disposal other than those usually employed for trash discarding or disposal are required to avoid BODILY INJURY or PROPERTY DAMAGE as a result of such disposal;
- (iv) the extra expense to rent additional warehouse or storage space;
- (v) the cost to hire additional persons other than the INSURED's regular employees to assist in the process of communication, shipping and other ancillary responsibilities arising out of a INSURED EVENT:
 - a. remuneration paid to the INSURED's regular employees, other than salaried employees, at basic rates of salary or wage for necessary straight time or overtime;
 - b. expense incurred by employees, including transportation and accommodation;

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- c. remuneration paid to independent personnel to assist the INSURED in handling the INSURED EVENT including but not limited to crisis management personnel, lawyers and reverse logistic personnel,
- for (i), (ii) and (iii) above.
- (vi) the cost of inspecting INSURED COMPONENT(S) to determine whether an INSURED EVENT has occurred
- 3.17 REPLACEMENT EXPENSES means the reasonable and necessary costs incurred by the INSURED by reason of an INSURED EVENT, if such costs are incurred exclusively for the refund, repair or replacement of the INSURED COMPONENT(S). These costs are limited to the following:
 - (i) the total amount of refunds including customer credits the INSURED gives to the THIRD PARTY, not to exceed the cost of the INSURED COMPONENT(S) sold; and
 - (ii) the costs to repair the INSURED COMPONENT(S), including the cost to return the INSURED COMPONENT(S) to the THIRD PARTY, and the cost to repair unsold stock; or
 - (iii) if the INSURED COMPONENT(S) cannot be replaced, the cost to produce or acquire an equivalent replacement product, including the cost to return the INSURED COMPONENT(S) to the THIRD PARTY, not to exceed the cost of goods sold; and
 - (iv) the costs incurred to re-install the replacement product into the END PRODUCT, as a result of an INSURED EVENT.
- 3.18 RETROACTIVE DATE is the date from which finished manufactured products can be considered to be INSURED COMPONENTS. This includes all finished products held on site prior to being sold to a THIRD PARTY and is specified in item 10 of the Schedule to the Policy.
- 3.19 SPECIFICATIONS means the criteria set by the THIRD PARTY for the parts, construction, appearance and standard of workmanship required in the manufacture of the INSURED COMPONENTS.
- 3.20 SELF-INSURED RETENTION means the APPLICABLE amount stated in the Schedule and as per Condition 5.10.
- 3.21 SUB-LIMIT means the maximum amount the INSURED can collect under a specified section of the Policy and as per Condition 5.11.
- 3.22 TERRORISM means an act of actual, alleged or threatened, intentional, malicious and wrongful alteration or contamination of any product(s), not limited to INSURED COMPONENT(S), of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes, including the intention to influence any government and/or to put the public or any section of the public in fear.
- 3.23 THIRD PARTY means the party or parties with whom the INSURED has:
 - (a) directly contracted to supply INSURED COMPONENTS to, and/or
 - (b) indirectly supplied with INSURED COMPONENTS via the INSURED's customer.
- 3.24 THIRD PARTY RECALL EXPENSES means the reasonable and necessary costs incurred by a THIRD PARTY by reason of an INSURED EVENT, if such costs are incurred exclusively for the recall, removal, recovery of possession or control, or disposal of the INSURED COMPONENT(S). These costs include but are not limited to:
 - (i) communications to notify others of an INSURED EVENT, including but not limited to, radio and television announcements and printed advertisements;
 - (ii) the cost of shipping the INSURED COMPONENT(S) from any purchaser,

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distributor or user to the place or places the INSURED designates;

- (iii) the actual cost of disposal of the components, but only to the extent that specific methods of disposal other than those usually employed for trash discarding or disposal are required to avoid BODILY INJURY or PROPERTY DAMAGE as a result of such disposal;
- (iv) the extra expense to rent additional warehouse or storage space;
- (v) the cost to hire additional persons other than the THIRD PARTY's regular employees to assist in the process of communication, shipping and other ancillary responsibilities arising out of a INSURED EVENT:
 - a. remuneration paid to the THIRD PARTY's regular employees, other than salaried employees, at basic rates of salary or wage for necessary straight time or overtime;
 - b. expense incurred by employees, including transportation and accommodation;
 - c. remuneration paid to independent personnel to assist the INSURED in handling the INSURED EVENT including but not limited to crisis management personnel, lawyers and reverse logistic personnel,
 for (i), (ii) and (iii) above.

4. Exclusions

This Policy does not apply to any LOSS arising out of, based upon, attributable to or consisting of, directly or indirectly:

- 4.1 the INSURED COMPONENT(S) being similar to, or the INSURED COMPONENTS(S) having the same trade name or reference number as but being of a different batch than the component which has been, or is being, recalled;
- 4.2 an intentional act or omission that the INSURED knew or should have known could reasonably lead to an INSURED EVENT;
- 4.3 wear and tear;
- 4.4 the INSURED'S dishonest, wanton, fraudulent, criminal or malicious act, error or omission;
- 4.5 any pre-existing condition or situation that the INSURED knew or should have known of prior to the initial attachment of coverage under this Policy or any predecessor policy issued by the Insurers or any affiliated companies, which could cause a INSURED EVENT;
- 4.6 the sale of the INSURED COMPONENT(S) after the INSURED knew or should have known that the INSURED COMPONENT(S) had been banned or declared unsafe by any governmental authority in the Policy Territory;
- 4.7 the supply of INSURED COMPONENT(S) manufactured prior to the RETROACTIVE DATE;
- 4.8 any INSURED EVENT which the INSURED was aware of prior to inception of this Policy;
- 4.9 any INSURED EVENT caused by any actual or alleged failure, malfunction or inadequacy of computer hardware, software, and networks belonging to the INSURED'S direct or indirect customers.
- 4.10 an actual or alleged act of TERRORISM except where the INSURED or an INSURED COMPONENT is the direct target of the act or alleged act of TERRORISM;
- 4.11 the manufacture, mining, use, sale, installation, removal, distribution, of or exposure to asbestos products, asbestos fibres or asbestos dust, or to any obligation of the INSURED to indemnify any party because of damages arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos products, asbestos fibres or asbestos dust;
- 4.12 the presence, ingestion, inhalation or absorption or exposure to lead in any form or products containing lead or leaded materials;

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- 4.13 fines or penalties, punitive or exemplary damages, or the multiplied portion of multiplied damages;
- 4.14 any failure of an INSURED COMPONENT(S) to meet customer and/or THIRD PARTY SPECIFICATIONS, unless the failure to meet such SPECIFICATIONS is due to an unintended mistake, error or flaw in the manufacturing process that is not discovered until after delivery of the INSURED COMPONENT(S);
- 4.15 destructive testing of the INSURED COMPONENT;
- 4.16 the failure by any THIRD PARTY to adhere to instructions, directions or procedures prescribed by the INSURED regarding the use, incorporation, manufacture, preparation, production or storage of the INSURED COMPONENT(S);
- 4.17 any INSURED COMPONENT supplied for, used in connection with, relating to or installed in any:
 - (i) spacecraft, satellite or spaceship; or
 - (ii) launch vehicle for any spacecraft, satellite or spaceship; or
 - (iii) ground support or control equipment used in connection with any spacecraft, satellite or spacecraft.
- 4.18 Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled or resulting from any act or condition incident to any of the foregoing
- 4.19 war, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

5. Conditions

5.1 Due Diligence

The INSURED will exercise due diligence to do all things reasonable and practical to avoid any happening or circumstances covered by this Policy and to make all reasonable efforts to mitigate any LOSS arising as a result of an INSURED EVENT.

5.2 Authorisation Clause

By acceptance of this Policy, the first INSURED listed on the Schedule agrees to act on behalf of all other INSURED(S) with respect to the giving and receiving of any return premiums that may become due under this Policy, the acceptance of endorsements and the giving or receiving of any other notice provided for in this Policy; all other INSURED(S) agree that the first INSURED listed on the Schedule will act on their behalf.

5.3 Notices

Except as may be indicated to the contrary in this Policy, all notices, applications, demands or requests provided for in this Policy will be in writing.

5.4 Concealment, Misrepresentation, Non-Disclosure and Fraud

Without prejudice to the Insurers' other rights, howsoever arising, this Policy is null and void in case of concealment, misrepresentation or non-disclosure by any INSURED, whether or not fraudulent, of a material fact concerning:

- (i) this insurance or the procurement of it, or
- (ii) the INSURED COMPONENT(S) or the INSURED's interest in the INSURED COMPONENT(S) or
- (iii) any INSURED EVENT or any LOSS or CLAIM under this Policy.

5.5 Notice of a Claim

Upon determination that an INSURED EVENT has actually occurred, the INSURED shall



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give written notice to the Insurers (as stated in the **"WHAT TO DO IN A CRISIS"** endorsement attached to this Policy) within thirty (30) days of any of the INSURED'S MANAGEMENT becoming aware of an INSURED EVENT with periodic and timely updates concurrent with activity occurring during the incident; and if it appears to be in the best interest of the INSURED or to be required by law, the INSURED shall notify law enforcement authorities or any other governmental agencies having jurisdiction over the matter.

5.6 Computation of Loss

- (i) In the event of any insured LOSSES, detailed claims for payment by the Insurers shall be made by the INSURED as soon as practicable and shall be accompanied by a computation of loss, which sets out in detail how the LOSS has been calculated and what assumptions have been made. The INSURED shall produce any documentary evidence, books of account, bills, invoices and other vouchers and copies of the same which Insurers or their representatives, including forensic accountants, may require and the INSURED shall afford them every assistance in their investigations including reasonable access to the INSURED's premises, personnel and necessary documents for the purpose of the computation of loss.
- (ii) The Insurers shall determine the amount of any insured LOSSES, taking into account any savings or recoveries or offsetting or make-up of LOSSES which have been made or which the INSURED could reasonably have been expected to make and the ability of the INSURED to resume operations.
- (iii) In determining the amount of any insured LOSSES, Insurers shall apply standard accounting principles as recognised by the relevant regulatory authorities in the INSURED's jurisdiction. Where an INSURED is present in more than one jurisdiction the relevant principles to be applied will be those of the jurisdiction in which the entity that has suffered the LOSS is based.
- (iv) Where insured LOSSES are paid by the Insurers in currency other than the currency in which the premium is paid, the rate of exchange for payment of LOSS shall be based on the published wholesale exchange rate on the date written notice of the INSURED EVENT is received by the Insurers.

Nothing in this clause shall be deemed to override the provisions of Condition 5.5 Notice of a Claim.

5.7 Assistance and Co-Operation

The INSURED will cooperate with the Insurers in all matters relating to this Insurance, including attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.

5.8 Examination under Oath

The INSURED, as often as may be reasonably required, shall exhibit to any person designated by the Insurers all affected INSURED COMPONENT(S) whether salvageable or otherwise and shall submit to examinations under oath by any person named by the Insurers and subscribe the same and, as often as may reasonably be required, shall produce for examination all books of account, vouchers, bills, invoices, schedules, accounting information and any documentation relating to the INSURED's calculation of its LOSS or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Insurers or their representative and shall permit extracts and copies thereof to be made.

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5.9 Limits of Liability

The Insurers' liability under this insurance will be limited to the amounts stated in the Schedule.

5.10 Self-Insured Retention

The SELF-INSURED RETENTION stated in the Schedule will apply separately to each and every INSURED EVENT. The SELF-INSURED RETENTION is to be borne by the INSURED and remain uninsured.

5.11 Calculation of the Amount Payable under a Sub-Limit

Any amount payable for LOSS under any SUB-LIMIT of this Policy will be calculated as follows:

First the apportioned SELF-INSURED RETENTION as calculated under Condition 5.10 will be subtracted from the applicable section of LOSS. The amount payable will be the lesser of either the SUB-LIMIT or the amount remaining. No amount of LOSS will be paid in excess of the SUB-LIMIT.

5.12 Subrogation

In the event of any payment under the Policy, the Insurers will be subrogated to the extent of such payment to all the INSURED's rights of recovery. In such case the INSURED will execute all documents required and will do everything necessary to secure and preserve such rights including the executions of such documents necessary to enable the Insurers effectively to bring suit in the name of the INSURED.

5.13 Salvage

Any salvage or other recovery, after expenses incurred in salvage or recovery are deducted, will accrue entirely to the benefit of the Insurers until the sum paid by the Insurers has been recovered. In case of damage to property bearing a brand or trademark or which in any way carries or implies the guarantee or the responsibility of the INSURED, the salvage value of such damaged property will be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics, the costs of which will be borne by the INSURED.

The goodwill and public image of the INSURED will be considered in determining whether any INSURED COMPONENT(S) should be involved in salvage recovery. The Insurers' right to salvage will not be restricted by the INSURED. The INSURED will have full right to the possession of all components involved in any LOSS under this Policy and will retain control of all damaged components. There can be no abandonment of any property to the Insurers.

5.14 Additional Exposures

The INSURED will give the Insurers written notice as soon as practicable or permissible of any

- (i) consolidation or merger with, or
- (ii) acquisition of the majority stock ownership of, or
- (iii) acquisition of the assets of, or
- (iv) creation of

any other entity whose revenues are in excess of 10% of the gross revenue of the INSURED as of the date of consolidation, merger, creation or acquisition.

Additional exposure such as is otherwise covered by this Policy resulting from any of the above will be covered automatically from the date of consolidation, merger, creation or

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acquisition, as the case may be, but only until:

- a. the Insurers notify the INSURED in writing of their election to reject such additional exposure, or
 - b. the INSURED and the Insurers agree new terms and conditions for the permanent cover of the additional exposure, or
 - c. ninety (90) calendar days have elapsed,
- whichever occurs first.

No claim arising out of the additional exposure will be covered unless the INSURED, at the time it gave notice thereof to the Insurers, did not know nor could reasonably have been expected to know of the INSURED EVENT giving rise to the claim.

5.15 Non-Assignment

This Policy may not be assigned or transferred without the written consent of the Insurers.

5.16 Changes

Notice to any representative of the Insurers or knowledge possessed by any representative or by any person will not effect a waiver or a change in any part of the Policy or stop the Insurers from asserting any right under the terms of this Policy nor can the terms of this Policy be waived or changed unless agreed to in writing by an authorised representative of the Insurers.

5.17 Non-Accumulation of Liability

Regardless of the number of years this Policy may continue in force and of the number of premiums which may be payable or paid or of any other circumstances whatsoever, the Aggregate Policy Limit of Liability of the Insurers under this Policy with respect to any INSURED EVENTS will not be cumulative from year to year or period to period. When there is more than one INSURED, the aggregate Limit of Liability of the Insurers for LOSS(ES) sustained by any or all of them will not exceed the amount for which the Insurers would be liable if all LOSS(ES) were sustained by any one of them.

5.18 Cancellation

This Policy may be cancelled by the INSURED by giving at least ten (10) days' advance written notice to the Insurers, stating when after that date such cancellation will be effective.

This Policy may be cancelled by the Insurers by delivering to the INSURED or by mailing to the INSURED by registered or certified mail, at the INSURED'S address stated in the Schedule, written notice stating when, not less than one hundred and twenty (120) days after that date, the cancellation will be effective, except in the case of cancellation for non-payment of premium by the INSURED, in which case the Insurers will provide at least fifteen (15) days' written notice. The mailing of such notice will be sufficient proof of notice and this Policy will terminate at the date and hour specified in such notice.

If this Policy is cancelled by the INSURED, the Insurers will retain the short rate portion of the premium hereon as determined by the table appended to this Policy but this shall not be less than the amount of any claims paid or outstanding at the effective date of cancellation. If this Policy is cancelled by the Insurers, the Insurers will retain the pro-rata portion of the premium hereon. Payment or tender of any unearned premium by the Insurers will not be a condition precedent to the effectiveness of cancellation, but such payment will be made as soon as practicable.

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5.19 Other Insurance

It is intended that coverage under this Policy always applies in excess of any amount payable under any Aviation Liabilities insurance available to the INSURED ('the Aviation Liabilities Policy').

It is therefore made a condition of this insurance that where an INSURED EVENT occurs which may result in LOSS covered both under the Aviation Liabilities Policy and under this Policy, the INSURED must first seek to recover the LOSS under the Aviation Liabilities Policy. Nothing in this clause shall operate to waive the requirement for the INSURED to notify an INSURED EVENT in accordance with the terms and conditions of this Policy, but it is understood that despite any such notification, the Insurers will not make any payment under this Policy for any part of any LOSS where the INSURED is entitled to be paid for such LOSS under the Aviation Liabilities Policy.

In addition, the Insurers will not make any payment under this Policy where the INSURED would be entitled to be paid under any other insurance if this Policy did not exist except in respect of any amount in excess of the amount that would have been payable under such other insurance had this Policy not been effected. If such other insurance is provided by the Insurers of this Policy the most the Insurers will pay under this Policy will be reduced by the amount payable under such other insurance.

5.20 Action against the Insurers

No suit, action or proceedings for recovery of any claim under this Policy will be sustainable in any court of law, equity or other tribunal unless all the requirements of this Policy are complied with and the same is commenced within twenty four (24) months after a final statement of LOSS has been submitted to the Insurers by the INSURED in accordance with Condition 5.6 Computation of Loss.

5.21 Choice of Law and Forum

The construction, validity and performance of this Policy will be governed by the laws of the country or state specified for the purpose in the Schedule. Subject to the provisions of any Service of Suit Clause attached to this Policy, the Insurers and the INSURED hereby expressly agree that all claims and disputes will be litigated in the court or courts specified for the purpose in the Schedule.

5.22 Territory

This Policy applies to an INSURED EVENT occurring in the Territory specified in the Schedule, unless specifically changed by endorsement with the written agreement of the Insurers.

5.23 Severability, Construction and Conformance to Statute

- (i) If any provision contained in this Policy is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is deemed to be severed and to have no effect on any other valid legal and enforceable provision of this Policy.
- (ii) If any provision contained in this Policy can be construed as being invalid, illegal or unenforceable for any reason, it will be construed by limiting it so as to be valid, legal and enforceable to the extent compatible with applicable law.
- (iii) Any provisions of this Policy which are in conflict with the laws of the state or country governing this Policy in accordance with Condition 5.21 Choice of Law and Forum are hereby amended to conform to such statutes or regulations.

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5.24 Control of Defense

In the event that a CLAIM is being made against the INSURED, the Insurer will, without that CLAIM is in excess of the INSURED'S RETENTION, have the right (but not the obligation) to investigate and defend the CLAIM on behalf of the INSURED, conducting settlement negotiations, and settling the CLAIM, including the payment of the CLAIM, after the LIMIT OF LIABILITY is exhausted, negotiation of the CLAIM, and payment of the DEFENSE COSTS, the LIMIT OF LIABILITY is exhausted, whether by way of payment of a CLAIM or by payment of DEFENSE COSTS, when the Insurers will pass control of the CLAIM to the INSURED.

5.25 Non-Admission of Liability

The INSURED shall make no admission of liability or offer to settle or otherwise compromise any CLAIM without the Insurer's prior written consent.

5.26 Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.