

Tokio Marine & Nichido Fire Insurance Co., Ltd.

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Tel. 81-(0)3-3212-6211



# **AVIATION PRODUCTS, GROUNDING AND OTHER AVIATION LIABILITIES INSURANCE**

## **PLEASE READ YOUR POLICY**

and if incorrect return for immediate rectification. Carefully note conditions requiring immediate notice of every accident, of every claim and of every suit.

Whereas the above-named Assured has made to TOKIO MARINE & NICHIDO FIRE INSURANCE COMPANY LIMITED (hereinafter called "the Company") a written proposal and declaration, bearing the date specified in the DECLARATIONS, which is hereby agreed to be the basis of this contract and is deemed to be incorporated herein, and has paid to the Company the premium or consideration (subject to adjustment as hereinafter provided) specified in the DECLARATIONS.

## **PART I. STANDARD POLICY**

### **AVIATION PRODUCTS, GROUNDING AND OTHER AVIATION LIABILITIES INSURANCE**

Tokio Marine & Nichido Fire Insurance Company Limited (hereinafter called "the Company"), in consideration of the payment of premium and in reliance upon the information provided by the Insured to the Company and subject to the terms, conditions, limitations and exclusions of this Policy, agree as follows:

#### **DEFINITIONS**

Certain words and phrases used in this Policy have special meanings which can be found in the Definitions below:

(A) Aircraft

The term "Aircraft" means a fixed wing or rotary wing aircraft and shall be deemed to include Missiles, Unmanned Aerial Vehicles and lighter-than-air aircraft.

(B) Aviation Product

The term "Aviation Product" means

- (i) a completed Aircraft, Unmanned Aerial System, Space Vehicle or Satellite and any article forming part thereof, or supplied for installation in, or for use in connection with, or for spare parts for, an Aircraft or Unmanned Aerial System or Space Vehicle or Satellite including ground handling tools and equipment used in connection therewith.
- (ii) training aids, instructions, manuals, blueprints, engineering or other data or any article in respect of which engineering or other advice and services and labour have been given or supplied by the Insured in connection with an Aircraft, Unmanned Aerial System or Space Vehicle or Satellite.

(C) Bodily Injury

The term "Bodily Injury" means bodily injury, sickness or disease, including death at any time resulting therefrom.

(D) Flight

The term "Flight" means from the time the Aircraft moves forward in taking off or attempting to take off, whilst in the air, and until Aircraft completes its landing run. A rotary wing aircraft shall be deemed to be in Flight when the rotors are in motion as a result of engine power, the momentum generated therefrom, or autorotation. A VTOL aircraft shall be deemed in Flight from the time commencing when engine thrust is applied in attempting to lift the aircraft from a supporting surface and continuing thereafter until the aircraft is again returned to the condition of being supported by a surface.

(E) Grounding

The term "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 issued by the Federal Aviation Administration of the United States of America (FAA), the European Aviation Safety Agency (EASA), the Japan Civil Aviation Bureau (JCAB) or any similar civil airworthiness authority, because of an existing, alleged or suspected like defect, fault or condition affecting the safe operation of two or more like 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.

The effective date of all airworthiness directives or mandatory orders relating to the same existing, alleged or suspected like defect, fault or condition shall be deemed to commence on the date of the first such airworthiness directive or mandatory order.

In the event of a Grounding claim, such claim shall fall under the Period of Insurance in which the last Occurrence, which gives rise to the first airworthiness directive or mandatory order takes place and for the purposes of coverage hereunder, shall have the effective loss date as such last Occurrence, irrespective of the actual date upon which the airworthiness directive or mandatory order is issued.

A Grounding shall be deemed to continue until the date on which the last such airworthiness directive or mandatory order relating to the same existing, alleged or suspected like defect, fault or condition is withdrawn or becomes ineffective.

(F) Insured

The term "Insured" means the Insured specified in the DECLARATIONS and shall include directors, officers and employees of the Insured while acting within the scope of their duties on behalf of the Insured.

(G) Launch Vehicle

The term "Launch Vehicle" means any vehicle, including parts detached during or after launch, which is designed, constructed or intended to place

(i) a Satellite into orbit

or

(ii) a Space Vehicle above the Karman Line

(H) Military Aircraft

The term "Military Aircraft" means an Aircraft owned by or used by or in the possession of the armed services of any government. However an Aircraft leased to or chartered by the armed services of any government shall be deemed not to be a Military Aircraft provided such Aircraft has been certificated for commercial use.

(I) Missile

The term "Missile" means any non-manned, self-propelled device (other than a Launch Vehicle or an Unmanned Aerial Vehicle) which can be classified as a

guided weapon or similar one-shot device designed for the delivery of munitions and which is capable of free flight, whether self-controlled or not. The term "Missile" includes any ground support or control equipment used in connection therewith.

(J) Occurrence

The term "Occurrence" means an accident (other than Grounding) or a continued or repeated exposure to conditions occurring during the Period of Insurance, which results in Bodily Injury and/or Property Damage which is neither expected nor intended from the standpoint of the Insured.

All liability arising out of such exposure to substantially the same general conditions shall be deemed to arise out of one Occurrence.

(K) On the Ground

The term "On the Ground" means at all times the Aircraft is not in Flight.

(L) Owned By

With respect to property, the term "Owned By" means property which is owned by the Insured but shall be deemed not to include an Aviation Product to which the Insured has retained title under a conditional sales contract, lease contract, chattel mortgage or similar lien.

In respect of Missiles, after the arrival of a Missile at a launching site, such Missile shall be deemed not to be Owned By the Insured.

When the Insured removes a Missile from a launching site or recovers a Missile after completion of its flight, for the purpose of returning it to the Insured's premises other than a launching site, such Missile shall be deemed to be Owned By the Insured until such Missile again arrives at a launching site or the Insured surrenders possession of such Missile to a person or organisation who is not an Insured under Section One.

(M) Prime Manufacturer

The term "Prime Manufacturer" means any manufacturer which sells its Aviation Product directly to and/or enters into a contract of sale with an Aircraft purchaser.

(N) Product Hazard

The term "Product Hazard" means the hazard arising out of the handling or use of (other than by the Insured) or the existence of any condition in an Aviation Product provided, as regards Section One Coverage A such Aviation Product has ceased to be in the possession or under the control of the Insured.

However, a completed Aircraft which

(i) temporarily returned to the Insured for modification or repair;

or

(ii) being flown by aircrew of the Insured after acceptance by a purchaser or lessee shall be deemed not to be in the possession or under the control of the Insured.

In respect of Missiles, after the arrival of a Missile at a launching site, such Missile

shall be deemed not to be in the possession or under the control of the Insured.

When the Insured removes a Missile from a launching site or recovers a Missile after completion of its flight, for the purpose of returning it to the Insured's premises other than a launching site, such Missile shall be deemed to be in the possession or control of the Insured until such Missile again arrives at a launching site or the Insured surrenders possession of such Missile to a person or organisation who is not an Insured under Section One Coverage A.

(O) Property Damage

The term "Property Damage" means physical loss of or damage to or destruction of tangible property, including the resultant loss of use of such property. However resultant loss of use shall not be included in Property Damage under SECTION TWO COVERAGE B – HANGARKEEPERS LIABILITY.

(P) Satellite

The term "Satellite" means an object, including parts detached en route, designed to be placed in orbit around the earth. A Space stations designed to be placed in orbit around the earth shall be deemed to be a Satellite.

(Q) Space Vehicle

The term "Space Vehicle" means vehicle (other than a Satellite), including parts detached en route, designed fly above the Karman Line.

(R) Unmanned Aerial System

The term "Unmanned Aerial System" means an Unmanned Aerial Vehicle plus the control station, data links, telemetry, communications, navigation equipment and all of the associated support equipment necessary to operate the Unmanned Aerial Vehicle.

(S) Unmanned Aerial Vehicle

The term "Unmanned Aerial Vehicle" means a powered, aerial vehicle which

- (i) does not have a human pilot on board;
- (ii) flies autonomously or is piloted remotely;
- (iii) uses aerodynamic forces to provide vehicle lift;
- (iv) is not classified as a guided weapon or similar one-shot device designed for the delivery of munitions;
- (v) complies with the weight limitations specified in the DECLARATIONS

**SECTION ONE  
AVIATION PRODUCTS AND GROUNDING LIABILITY INSURANCE**

**COVERAGE A - AVIATION PRODUCTS LIABILITY**

The Company agrees to pay the Insured all sums which the Insured shall become legally liable to pay as damages for Bodily Injury or Property Damage caused by an

Occurrence arising out of the Products Hazard in connection with the aviation business or operations as specified in the DECLARATIONS.

### **EXCLUSIONS APPLICABLE TO COVERAGE A**

This Coverage A does not apply to:

- a. Bodily Injury or Property Damage arising from the handling or use of any Aviation Product which is Owned By or loaned to the Insured.
- b. Property Damage to property owned, rented, leased, occupied or used by or in the care, custody or control of the Insured.

This exclusion does not apply to Property Damage to a completed Aircraft not owned, rented or leased by the Insured which is temporarily returned to the Insured for modification or repair or which is being flown by aircrew of the Insured after acceptance by a purchaser or lessee

- c. the cost of repairing or replacing any defective Aviation Product manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured or any defective part or parts thereof.
- d. loss arising out of improper or inadequate performance, design or specification but this exclusion shall be deemed not to apply to Bodily Injury or Property Damage insured hereby resulting therefrom.
- e. Property Damage to goods or products specified in the DECLARATIONS arising out of it or any part of it.
- f. liability imposed upon the Insured solely by reason of the Insured's ownership of an Aviation Product.
- g. liability arising from any restriction on or withdrawal from use of an Aviation Product.
- h. loss of use of any Aircraft, Space Vehicle or Satellite which has not been damaged or destroyed.
- i. Property Damage to
  - (i) any Space Vehicle or Satellite or any Aviation Product forming a part of such Space Vehicle or Satellite whether partially or wholly completed nor to any expenses incurred incidental to or resulting from the replacement or repair of such Space Vehicle or Satellite and
  - (ii) any Space Vehicle or Satellite belonging to a third party whether partially or wholly completed after such Space Vehicle or Satellite has been delivered to a launch site, but this exclusion shall not apply if such Property Damage is caused by an Aircraft or an Aviation Product forming a part of such Aircraft.
- j. Property Damage to any Launch Vehicle or any Aviation Product forming a part of such Launch Vehicle or to any expenses incurred incidental to or resulting from the replacement or repair of such Launch Vehicle, but this exclusion shall not apply if such Property Damage is caused by an Aircraft or an Aviation

Product forming part of such Aircraft.

## **COVERAGE B - GROUNDING LIABILITY**

The Company agrees to pay the Insured all sums which the Insured shall become legally liable to pay as damages for the loss of use of completed Aircraft, caused by a Grounding resulting from an Occurrence arising out of the Products Hazard for which coverage is, or could be, afforded under Coverage A.

### **EXCLUSIONS APPLICABLE TO COVERAGE B**

This Coverage B does not apply to:

- a. loss of use of any Aircraft occurring prior to delivery to and acceptance by a purchaser or purchasers or operator or operators of such Aircraft for Flight operations.
- b. loss of use of any Aircraft occurring during maintenance, routine overhaul or alteration, or whilst being modified for purposes other than those relating to Grounding.
- c. loss of use of any Military Aircraft.
- d. loss of use of any Missile, Unmanned Aerial Vehicle, Space Vehicle, Satellite or Launch Vehicle.
- e. loss of use of any Aircraft after it is designated by the Prime Manufacturer or required by the direction of the Federal Aviation Administration of the United States of America (FAA), the European Aviation Safety Agency (EASA), the Japan Civil Aviation Bureau (JCAB) or any similar civil airworthiness authority to be removed from all flight operations due to its certificate of airworthiness being withdrawn by reason of the Aircraft's safe operational life having been reached or exceeded.

### **EXCLUSIONS APPLICABLE TO COVERAGES A AND B**

This Section One does not apply to the loss of use of any Aircraft:

- a. caused by the culpable failure of the Insured to perform any obligation with respect to making available or delivering an Aviation Product to the purchaser or operator of such Aircraft.
- b. occurring during the period that the Insured does not use reasonable diligence to find and eliminate the cause of the loss of use.

## **SECTION TWO AVIATION PREMISES AND HANGARKEEPERS' LIABILITY INSURANCE**

This insurance is only in place when an amount is inserted against the appropriate Limit of Liability in the DECLARATIONS.

The Company agrees to pay the Insured all sums which the Insured shall become legally liable to pay as damages for Bodily Injury or Property Damage caused by an

Occurrence and arising out of the hazards set forth in Coverages A and B below.

## **COVERAGE A – AVIATION PREMISES LIABILITY**

Bodily Injury or Property Damage occurring in or about the Insured's aviation premises specified in the DECLARATIONS as a direct result of the services granted by the Insured, caused by the fault or negligence of the Insured or by any defect in the Insured's premises, machinery or plant used in the Insured's aviation business.

### **EXCLUSIONS APPLICABLE TO COVERAGE A**

This Coverage A does not apply to:

- a. Property Damage to property owned by, rented to, leased or occupied by, whilst being handled, serviced or maintained by the Insured, but this exclusion shall be deemed not to apply to vehicles that are not the property of the Insured whilst on the Insured's premises.
- b. Bodily Injury or Property Damage caused by any ships, vessels, craft or aircraft owned, chartered, used or operated by or on account of the Insured, but this exclusion shall not apply to aircraft owned by others whilst such aircraft are on the ground and for which coverage is afforded under Coverage B of this Section, whether Coverage B is insured hereunder or not.
- c. liability for which compulsory insurance or security is required by any applicable law governing road traffic or, in the absence of any applicable law, to liability arising from the use of any vehicle upon the public highway.  
In respect of any such liability arising from an Occurrence within the confines of an airport or airfield this exclusion does not apply:
  - (i) if there is no such applicable law;
  - (ii) to the liability of the Insured to pay an amount which is excess of:
    - (a) any prescribed limit that is required to be insured where insurance may be effected to comply with the law whether the Insured effects an insurance policy in respect of such liability or not
    - (b) the limit of liability of the insurance policy effected by the Insured insuring such liabilitywhichever is the greater.
- d. Bodily Injury or Property Damage arising out of any air meet, air race, or air show or any stand used for the accommodation of spectators in connection therewith.
- e. Bodily Injury or Property Damage arising out of the construction of, demolition of or alterations to buildings, runways or installations by the Insured or their contractors or sub-contractors (other than normal maintenance operations) .
- f. Bodily Injury or Property Damage arising out of any goods or products manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured after such goods or products have ceased to be in the possession or under the control of the Insured, but this exclusion shall be deemed



not to apply to the supply, by the Insured, of food or drink at the Insured's premises.

- g. any obligation for which the Insured or their Insurer may be held liable under any Employers' Liability or Workers' Compensation law, unemployment compensation or disability benefits law, or under any similar law, or to Bodily Injury of any employee of the Insured arising out of and in the course of the employee's employment by the Insured.
- h. liability arising out of the operation of an airfield control.

## **COVERAGE B – HANGARKEEPERS LIABILITY**

Property Damage to aircraft or aircraft equipment not owned, rented or leased by or loaned to the Insured occurring whilst On the Ground in the care, custody or control of or whilst being serviced, handled or maintained by the Insured.

### **EXCLUSIONS APPLICABLE TO COVERAGE B**

This Coverage B does not apply to:

- a. Property Damage to robes, wearing apparel, personal effects or merchandise of any description.
- b. Property Damage to aircraft or aircraft equipment, owned, rented or leased by or loaned to the Insured.

### **EXCLUSION APPLICABLE TO COVERAGES A AND B**

This Section does not apply to the cost of making good any faulty workmanship for which the Insured, their contractors or sub-contractors may be liable (but this limitation shall not exclude resulting damage arising out of such faulty workmanship).

## **DEFENCE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS**

With respect to such coverage as is afforded under this Policy the Company shall

1. Have the right and obligation to defend at their expense in the name of and on behalf of the Insured any claim or legal proceedings brought against the Insured. However, the Company shall also have the right to make such investigation, negotiation and settlement of any claim or legal proceedings as they deem expedient. Furthermore, the Company shall pay all expenses incurred by the Insured with the Company approval (other than the salaries of the Insured's employees and the Insured's normal office expenses) in respect of any such claim or legal proceedings brought against the Insured. Such expenses are payable in full by the Company in addition to the applicable limit of the Company liability as specified in the DECLARATIONS.

Notwithstanding the above, in the event any claim or legal proceedings is brought or made against the Insured within the territories where the Company is prevented by law or otherwise from performing the obligation to defend, the Company shall be obligated neither to defend any such claim or legal proceedings nor pay on behalf of the Insured any damages, and the Company will instead reimburse the Insured,

in addition to the Insurer's liability, for settlement, judgement or reasonable expenses incurred with written consent of the Company.

2. Pay all premiums on bonds to release attachments for an amount not in excess of the applicable Limit of Liability as specified in the DECLARATIONS and all premiums on appeal bonds required in any such defence, but without any obligation to apply for or furnish any such bonds.
3. Pay all costs assessed against the Insured in any claim or legal proceedings and all interest accruing after entry of judgement until the Company have paid, tendered or deposited in court, such part of such judgement as does not exceed the applicable limit of the Company's liability as specified in the DECLARATIONS. If the amount of any or all judgement (s) or settlement(s) in respect of the same Occurrence exceeds the applicable limit of the Company's liability then the liability of the Company in respect of the said costs shall be limited to such proportion as the applicable limit of the Company's liability under this Policy bears to the total amount paid or awarded in the settlement of such claim(s) or legal proceedings. All costs paid by Company under this paragraph 3 are within and not in addition to the applicable limit of the Company's liability as specified in the DECLARATIONS.

However with respect to any coverage under this Policy which is subject to an aggregate limit of liability, the Company shall not be obligated to defend any claim or legal proceedings nor to pay any judgements, costs, interest or expenses after such aggregate limit of liability has been exhausted and in this event the Insured shall have the right to take over control of proceedings from the Company.

## **GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS**

This Policy does not apply to:

- (a) liability assumed by the Insured by agreement under any contract unless such liability would have attached to the Insured even in the absence of such agreement.
- (b) any obligation for which the Insured or their insurer may be held liable under any Employers' Liability or Workers' Compensation law, unemployment compensation or disability benefits law, or their employment by the Insured.
- (c) legal liability for Property Damage to any property of any government which in the absence of this insurance is assumed by any government under any contract or agreement of otherwise, nor does the premium for this insurance contemplate such coverage.

## **CONDITIONS PRECEDENT APPLICABLE TO ALL SECTIONS**

It is necessary that the Insured observes and fulfils the following conditions precedent before the Company have any liability to make any payment under this Policy.

- (a) Notification of event likely to give rise to a claim

Notice of any event likely to give rise to a claim under this Policy shall be given to the Company as soon as possible. In all cases the Insured shall

- (i) furnish full particulars in writing of such event and forward immediately notice of any claim with any letters or documents relating thereto
  - (ii) give notice of any impending prosecution
  - (iii) render such further information and assistance as the Company may reasonably require
  - (iv) not act in any way to the detriment or prejudice of the interest of the Company.
- (b) Admission of Liability
- The Insured shall not make any admission of liability, payment, offer or promise of payment without the written consent of the Company.
- (c) Reasonable Care
- The Insured shall at all times exercise reasonable care in seeing that the ways, implements, plant, machinery and appliances used in the Insured's business are substantial and sound and in proper order and fit for the purpose for which they are used, and that all reasonable safeguards and precautions against Occurrences are provided and used.
- (d) Compliance
- The Insured shall comply with all applicable international and government regulations and civil instructions.

## **GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS**

- (a) Missing Aircraft
- In respect of an Occurrence involving a missing or unreported Aircraft, the Occurrence shall be deemed to occur at the time such Aircraft commences Flight or is last reported, whichever last occurs.
- (b) Limit of Liability
- The Limit of Liability of the Company for damages shall be as set forth in the DECLARATIONS.
- Notwithstanding the inclusion herein of more than one Insured, whether by endorsement or otherwise, the total liability of the Company in respect of any or all Insureds shall not exceed the limits as specified in the DECLARATIONS.
- (c) Material Change
- Should there be any material change in the circumstances or nature of the risks which are the basis of this contract the Insured shall give immediate notice thereof to the Company and no claim arising subsequent to such change shall be recoverable hereunder unless such change has been accepted by the Company
- (d) Assignment
- This Policy shall not be assigned in whole or in part except with the prior agreement of the Company.

(e) Assistance and Co-operation of the Insured

The Insured shall co-operate with the Company and, upon the Company requests, 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 legal proceedings.

(f) Action against the Company

No action shall lie against the Company unless 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 judgement against the Insured after actual trial or award against the Insured in any arbitration proceedings against which the Company do not wish to appeal or by written agreement of the Insured, the claimant and the Company.

Nothing contained in this Policy shall give any person or organisation any right to join the Company as a co-defendant in any action against the Insured to determining the Insured's liability.

(g) Subrogation

Upon a payment being made under this Policy, the Company shall be subrogated to the rights and remedies of the Insured who shall co-operate with and do all things necessary to assist the Company to exercise such rights and remedies.

(h) Other Insurance

If the Insured has other insurance against loss covered by this Policy, the Company shall not be liable for a greater portion of such loss than the portion which the Limit of Liability stated in the DECLARATIONS bears to the limit of indemnity of all valid and collectible insurance against such loss.

(i) Law and Jurisdiction

This Policy shall be governed by the laws of Japan whose courts shall have exclusive jurisdiction in any dispute arising hereunder between the parties to this contract.

(j) Cancellation

This policy may be cancelled by notice in writing. The Insured may give notice at any time. The Company shall give 30 days or where 30 days notice is contrary to the law or statute then the minimum period that is permitted shall be substituted therefor.

If the Policy shall be cancelled by the Insured, the Company shall be entitled to the proportion of the premium calculated in accordance with the short scale held by the Company.

If the Policy shall be cancelled by the Company, the Company shall be entitled to the premium for the period that this Policy has been in force, calculated pro-rata. Notice of cancellation by the Company shall be effective even though the Company make no payment or tender of return premium.

(k) Non-payment of Premium

In the event of the Insured failing to pay the premiums on due date, the Company shall not be liable for any loss, damage or liability in respect of any Occurrence occurring after the due date.

If, within one month after the Company becomes exempted from payment of the claim hereof, the Insured makes a request for reinstatement of this insurance contract, accompanied by payment of the premium as required, and the Company agrees thereto, this insurance contract shall be deemed to have been continuously effective; provided, however, that the Company shall not be liable for any loss, damage or liability in respect of any accident occurring between the date on which the Company became exempted from payment of the claim and the time when the Company agrees to the request.

In the event that, after one month from the due date, the Insured has still not paid the premium, the Company may cancel this Policy at any time, which shall take effect only from the date when the premium was due and not be retroactive.

(l) Fraud

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 claim hereunder shall be forfeited.

(m) Reasonable Acts

The coverage provided by this Policy shall not be invalidated by any reasonable act by or on behalf of the Insured for the purpose of protecting persons or property.

## **PART II. STANDARD CLAUSES**

### **1. NUCLEAR RISKS EXCLUSION CLAUSE (AVN38B)**

- (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 nature
- directly 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 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 Company 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:

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

- (iv) notwithstanding the cancellation provision contained in this Policy, the cover afforded hereby may be cancelled at any time by the Company giving seven days' notice of cancellation.

## **2. NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE (AVN46B)**

- (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.
- (2) With respect to any provision in this Policy concerning any duty of the Company to investigate or defend claims, such provision shall not apply and the Company shall not be required to defend
  - (a) claims excluded by Paragraph (1) or
  - (b) a claim or claims covered by this Policy when combined with any claims

excluded by Paragraph (1) (referred to below as "Combined Claims").

- (3) In respect of any Combined Claims, the Company shall (subject to proof of loss and the limits of this Policy) reimburse the Insured for that portion of the following items which may be allocated to the claim or claims covered by this 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.

### **3. WAR, HIJACKING AND OTHER PERILS EXCLUSION CLAUSE (AVIATION)(AVN48B)**

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 labour 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) Hijacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured.

Furthermore this Policy does not cover claims arising whilst the 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).

### **4. DATE RECOGNITION EXCLUSION CLAUSE (AVN2000A)**

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 Company to investigate or defend claims shall not apply to any claims so excluded.

## **5. 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:

- (a) the actual, alleged or threatened presence of asbestos in any form whatsoever, or any material or product containing, or alleged to contain, asbestos; or
- (b) 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, the Company will have no duty to investigate, defend or pay defence costs in respect of any claim excluded in whole or in part under paragraphs (a) or (b) hereof.

## **6. WILFUL MISCONDUCT EXCLUSION CLAUSE**

This Policy does not cover any liability for bodily injury or property damage caused by wilful misconduct of the Insured.

## **7. PUNITIVE AND THE LIKE DAMAGES EXCLUSION CLAUSE**

This Policy does not cover any claims for fines, penalties, or punitive, vindictive or exemplary damages.

## **8. THE INSURED'S DUTIES AND PAYMENT OF EXPENSES CLAUSE**

- (1) In the event of any accident which gives rise or may give rise to a claim under this Policy:

The Insured shall endeavour to prevent or minimize any loss, damage or liability which may result in a claim hereunder.

the Insured shall do whatever is necessary for the preservation or exercise of any of their rights of recovery against any person(s) or organization.

- (2) The Company will pay the following expenses, within and as a part of the applicable Limit of Liability specified in the DECLARATIONS:-
- (a) Sue and Labour Charges necessary or useful for preventing or minimizing loss, damage or liability.
  - (b) Expenses incurred for first aid, medical care, nursing or other immediate relief even if the liability of the Insured for such alleged damages shall have thereafter been found not to exist.
  - (c) Expenses (Other than for loss of earnings or for wages or salaries of any employee of the Insured) for preservation or exercise of any right of recovery.

## **9. SEVERABILITY OF INTEREST CLAUSE**

Where more than one Insured is included hereunder, this Policy shall operate in all respects as if a separate policy had been issued covering each party insured.

Notwithstanding the foregoing the total liability of the Company in respect of any and all Insureds shall not exceed the applicable Limit of Liability specified in the DECLARATIONS.

## **10. PREMIUM ADJUSTMENT CLAUSE**

This Clause shall only be applicable where the premium hereunder is computed based on Turnover.

- (1) Definition:

The term "Turnover" hereunder means the gross amount of money including taxes charged by the Insured or by others trading under his name for all business or operations specified in the DECLARATIONS and for all goods or products specified in the DECLARATIONS.

- (2) Where the premium adjustment is defined in the DECLARATIONS and/or any other part of this Policy, the deposit premium shall be adjusted at expiry based on the

actual Turnover for the Policy Period, subject to any applicable minimum premium stated in the DECLARATIONS.

- (3) Except in the case stipulated in the preceding Article, the premium shall be fixed at inception based on the actual Turnover latest available on the basis of the Insured's fiscal year or such period as agreed by the Company.

## **11. JAPANESE INSURANCE CONTRACT ACT CLAUSE**

It is hereby understood and agreed that this Clause shall override anything contained to the contrary in any other part of this Policy.

### **Duty of Disclosure**

- (1) The person effecting this Policy or the Insured must disclose to the Company, before this Policy is concluded, every material circumstance (which is known to the person effecting the Policy and/or the Insured), and the person effecting the Policy and/or the Insured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by the person effecting the Policy or the Insured. Every circumstance is material which would influence the judgment of the Company in fixing this Policy terms and conditions, or determining whether the Company will take the risk.
- (2) In the event the person effecting the Policy and/or the Insured do not disclose every material circumstance by a willful or malicious act when this Policy is concluded, the Company shall be entitled to cancel this Policy, by giving notice in writing, regardless of notice to the Company by the Insured.
- (3) The provision written in (2) above shall not apply in any of the following cases:
  - (a) When the circumstance written in (2) above dissolve.
  - (b) When the Company has already acknowledged the circumstance written in (2) above and expressly waived the breach or the Company has not acknowledged the circumstance by fault.
  - (c) When the person effecting the Policy and/or the Insured give notice of any material change or alteration in the circumstances or nature of risks to the Company and the said change or alteration has been expressly approved by the Company prior to a loss occurring. Provided always that the said change or alteration is deemed to be approved by the Company.
  - (d) In the event that after a month has passed from the time when the Company notified the circumstance set out in (2) above occurred or in case five years had passed from the time at which this Policy was concluded.
- (4) The Company shall not apply the provision set out in (2) above in the event that the aforementioned material circumstances or nature of risks shall be irrelevant to the 'significant circumstances' listed in the document which is provided by the Company when this Policy is concluded. However, provided always that the provision set out in (2) above shall apply to any material circumstances or nature of risks of any other similar Policy.

- (5) The Company shall not pay any insurance proceeds in the event the Company cancels this Policy by the reason set out in (2) above. In case the Company has already paid any proceeds, the Company is entitled to ask for the return of the said amount and that amount shall be due to be repaid to the Company.

#### **Duty of Notification**

- (1) Should there be any change in the content of disclosure during the period of this Policy, the person effecting this Policy and/or the Insured shall give notice in writing thereof and obtain the express approval of the Company, who shall be entitled to additional premium in consideration of such approval. Such notice shall be given as soon as practicable.
- (2) In case any change or alteration in the circumstances or nature of risks occurs during the currency of this Policy, the Company shall be entitled to cancel this Policy by giving notice of cancellation in writing, in accordance with policy conditions, regardless of notice of the circumstance to the Company by the person effecting the Policy and/or the Insured.
- (3) The Company shall not cancel this Policy in the event that a month had passed from the time the Company had been notified of the circumstance set out in (2) above occurred or if five years had passed from the date of any material change or alteration in the circumstances or nature of risks occurring.
- (4) Errors, omissions or failure to give any notice to the Company as required under this Policy shall not relieve the Company of liability under this Policy, provided that such error or omission is not occasioned by a willful or malicious act on the part of the person effecting the Policy and/or the Insured and shall be corrected as soon as discovered.

#### **Lien**

- (1) These paragraphs shall be applied in the event the Company becomes liable to indemnify the Insured for any damage caused by reason of the Insured becoming liable (hereinafter referred as "Liability Damage").
- (2) In case where the Liability Damage Claimant (who is defined as the person who has the right to demand from the Insured for liability damage, hereinafter to be so interpreted) has lien over the right of the Insured to claim insurance proceeds against the Company (which is limited to Liability Damage, hereinafter to be so interpreted) based upon the Insurance Contract Act in Japan, the Company shall pay insurance proceeds (which is limited to Liability Damage, hereinafter to be interpreted) should any of the following cases apply:
  - (a) In the event that the Company pays Liability Damage to the Insured, after the Insured paid such damage to the Liability Damage Claimant. However, the indemnity to be paid by the Company shall be limited to the amount which the Insured has paid or is due to pay to the Liability Damage Claimant.
  - (b) In the event that the Company pays Liability Damage directly to the Liability Damage Claimant in accordance with the payment order by the Insured, before the Insured pays such damage to the Liability Damage Claimant.

- (c) In the event that the Company pays Liability Damage directly to the Liability Damage Claimant by reason of the Liability Damage Claimant exercising lien over the right to claim insurance proceeds, before the Insured pays such damage to the Liability Damage Claimant.
  - (d) In the event that the Company pays Liability Damage to the Insured based upon the agreement by the Liability Damage Claimant for the Company to do so, before the Insured pays such damage to the Liability Damage Claimant. However, the indemnity to be paid by the Company shall be limited to the amount agreed by the Liability Damage Claimant.
- (3) The right of the Insured to claim insurance proceeds from the Company shall not be removed as a pledge except as set out in (c) above, provided always that the said right shall not convey to any other third parties except to the Liability Damage Claimant. However, always excepting the case when the Insured can claim insurance proceeds against the Company by the provision of (a) and (d) above.
  - (4) In an instance where the Liability Damage Claimant has lien or the same kind of special right which shall limit the right of the Insured to claim insurance proceeds against the Company based upon Foreign Laws or Treaties, the indemnity to be paid by the Company shall be subject to such laws or treaties.

#### **Right of Subrogation**

- (1) The aircraft including aircraft equipment, spacecraft including Launch Vehicle and cargo shall at all time remain the property of the Insured. The Company may however at its option elect to take over the aircraft including aircraft equipment, spacecraft including Launch Vehicle and cargo upon payment of a total loss or arranged total loss or constructive total loss.
- (2) The Company, upon an indemnity or a payment being made to the Insured under this Policy, or as stipulated within policy conditions, shall be subrogated to the extent of such indemnity or payment to any rights of recovery of the Insured.

#### **Time to Provide Insurance Benefits**

- (1) The Company shall pay no later than thirty (30) days after the invoice date but including the said date by confirming that the said loss or damage can be satisfactorily proved payable under this Policy as follows:
  - (a) Check for cause or circumstance of an Occurrence, damage or injury and circumstance relevant to Insured in order to verify the said loss, damage or claim is an Occurrence which the Company shall indemnify.
  - (b) Check for cause or circumstance of an Occurrence in order to verify the said loss, damage or claim is an Occurrence not excluded from this Policy coverage.
  - (c) Check for amount of damage, degree of injury, relationship between Occurrence and damage/claim and course of treatment in order to verify the amount payable by this Policy.
  - (d) Check for presence of circumstance which this Policy set as for events for

cancellation or abeyance in order to verify the effect of this Policy.

- (e) Check for existence of other similar policy(ies), the right of the Insured to claim proceeds against in order to verify the amount payable by this Policy excluding (a), (b), (c) or (d) above.
- (2) Notwithstanding of the provision of the preceding paragraph, in the event the Company shall need special investigation in order to verify (a), (b), (c), (d) or (e) stated above, the Company shall provide insurance benefits within one of the following periods from the invoice date but including the said date. The Company shall notify the Insured or the person who has a right to claim insurance proceeds against the Company the circumstance which needed to be investigated and the projected completion date. In the event several cases apply, the maximum amount of days shall be adopted.
- (a) Referral to police, prosecutor, fire authority and any other public organizations in order to verify (a), (b), (c) and (d) in the preceding paragraph. Including referrals based on Lawyers Act and on any other laws: 180 days
  - (b) Referral to medical agency, inspection institute and any other specialized agencies in order to verify (a), (b), (c) and (d) in the preceding paragraph: 90 days
  - (c) Referral to medical agency or specialized agency in order to verify the content and the degree of residual disability stated in the preceding paragraph (c): 120 days
  - (d) Surveillance of disaster-stricken region where Disaster Relief Act is applied in order to verify (a), (b), (c), (d) and (e) in the preceding paragraph: 60 days
  - (e) Investigation of (a), (b), (c), (d) and (e) in the preceding paragraph outside Japan when no other alternative measures exist within Japan: 180 days
  - (f) In addition to the provision of (a), (b), (c), (d) and (e) stated above, the Company shall require number of days in order to verify (a), (b), (c), (d) and (e) in the preceding paragraph, in the event the accident site is restricted by police, prosecutor, fire authority or any other public organizations for a long term, or in the event the damaged subject of insurance or the cause of the Occurrence is unique or a great number of subjects of insurance are damaged or a great number of claims of damage occur by a single accident, or by any other similar circumstances: 180 days
- (3) The Company shall extend the period of investigation stated in the preceding paragraph by mutual agreement with the Insured or the person who has a right to claim insurance proceeds against the Company in the event it becomes apparent that insurance benefits shall not be provided within the period stated in the preceding paragraph.
- (4) In the event the policyholder or the Insured prevents the Company from carrying out such an investigation or does not accept such an investigation without any good reason, the Company shall not be responsible for the period when the provision of insurance benefits is delayed as a result of such an act of prevention or

none acceptance stated in the preceding paragraphs (1), (2) and (3) above.

## **12. SANCTIONS AND EMBARGO CLAUSE (AVN111)**

Notwithstanding anything to the contrary in this Policy the following shall apply:

1. If, by virtue of any law or regulation which is applicable to the Company 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, the Company 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 the Company to provide coverage under this Policy, but the payment of a valid and otherwise collectable claim may breach an embargo or sanction, then the Company will take all reasonable measures to obtain the necessary authorisation to make such payment.
3. In the event of any law or regulation becoming applicable during the period of this Policy which will restrict the ability of the Company to provide coverage as specified in paragraph 1, then both the Insured and the Company shall have the right to cancel this Policy in accordance with the laws and regulations applicable to this Policy provided that in respect of cancellation by the Company a minimum of 30 days notice in writing be given.

In the event of cancellation by either the Insured or the Company, the Company shall retain the pro rata proportion of the premium for the period that this 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 Company, and in the absence of a more specific provision in this Policy relating to the return of premium, any return premium shall be subject to mutual agreement. Notice of cancellation by the Company shall be effective even though the Company makes no payment or tender of return premium.

## **13. AMENDMENT OF NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE (AVN46B)**

- (1) Paragraph 1(b) of NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE (AVN46B) does not apply to pollution or contamination of goods or products sold or supplied by the Insured.
- (2) Paragraph 1(b) of NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE (AVN46B) does not apply to claims for Bodily Injury or Property Damage caused by goods or products sold or supplied by the Insured with pollution or contamination thereto. Such Bodily Injury or Property Damage does not include pollution or contamination caused by the actual, alleged or threatened discharge, dispersal, seepage, migration release or escape of the above mentioned goods or products at any time.

#### **14. COMPLETED OPERATION COVERAGE CLAUSE** **[APPLICABLE TO COVERAGE A OF SECTION ONE ONLY]**

Notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that the Company shall pay the Insured all sums which Insured shall become legally liable to pay as damage for Bodily Injury or Property Damage caused by an Occurrence arising out of the Completed Operations Hazard in connection with the aviation business or operations as specified in the DECLARATIONS.

In relation to paragraph above the following Definition will apply:

##### **Completed Operations Hazard**

The term "Completed Operations Hazard" means Bodily Injury and Property Damage arising out of the Completed Operations or reliance upon a representation or warranty at any time with respect thereto, but only if the Bodily Injury or Property Damage occurs after such operations have been completed or abandoned and occurs away from premises Owned by or rented to the Insured. The Completed Operations Hazard does not include Bodily Injury or Property Damage arising out of the existence of tools, uninstalled equipment or abandoned or unused materials.

##### **Completed Operations:**

The term "Completed Operation" means work, including services and labor performed by the Insured in connection with Aircraft, Unmanned Aerial System, Space Vehicle, Satellite or Missile. Operations including materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following items:

- A) When all operations to be performed by or on behalf of the Insured under the contract have been completed;
- B) When all operations to be performed by or on behalf of the Insured at the site of the operations have been completed; or
- C) When the portion of the work out of which the Bodily Injury or Property Damage arises have been put to its intended use by any person or organization other than another contractor or subcontractor engaged for a principal as a part of the same project.

Operations which may require further service, maintenance, work, correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The Limit of Liability applicable to this Clause is within the Limit of Liability of Coverage A in Section One and not in addition hereto.

#### **15. LIMITATION OF DEFENCE OBLIGATION CLAUSE**

With respect to DEFENCE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS, it is hereby understood and agreed that the Company's obligation to defend on behalf of the Insured shall apply only to the claim, the amount of which is exceeding any deductible amounts shown in the DECLARATIONS.



The deductible amounts shown in the DECLARATIONS apply to damages.

## **PART III. SPECIAL CLAUSES**

### **1. ADDITIONAL INSURED CLAUSE**

It is hereby understood and agreed that this Policy is extended to cover persons or organizations specified in the DECLARATIONS as Additional Insured(s), but only with respect of specifics in the DECLARATIONS and only in respect of the coverage provided under this Policy.

It is further understood and agreed that notwithstanding the inclusion herein of more than one Insured, the total liability of the Company in respect of any or all Insureds shall not exceed the applicable Limit of Liability specified in the DECLARATIONS.

Subject otherwise to all the terms, conditions, exclusions and limitations of this Policy

### **2. BAGGAGE, CARGO AND MAIL LIABILITY COVERAGE CLAUSE [APPLICABLE TO COVERAGE A OF SECTION TWO ONLY]**

- (1) Notwithstanding of the provision of Exclusion a. of Exclusions Applicable to Coverage A to Section Two of the Standard Policy, it is hereby understood and agreed that the Company agree to pay the Insured, subject to the provisions hereinafter, all sums which the Insured shall become legally liable to pay for loss of or damage to passenger baggage, cargo or mail, which is not owned, hired, leased by or loaned to the Insured, whilst in the care, custody or control by the Insured or of any servant of the Insured.
- (2) The extended coverage provided by the preceding Paragraph does not include any claim for indirect, consequential or economic loss in respect of the lost or damaged property.

### **3. BENEFITING POLICY CLAUSE**

Notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that this Policy shall have the benefit of the insurance policy(ies) specified in the DECLARATIONS and does not cover any claim to the extent recoverable from such insurance policy(ies).

### **4. CLAIMS MADE BASIS CLAUSE**

- (1) This Policy applies only to claims made during the Policy Period against the Insured in respect of Bodily Injury or Property Damage caused by Occurrence which occurs on and after the Retrospective Date specified in the DECLARATIONS, only provided that if any Insured did not know or could not have reasonably foreseen such accident prior to the inception date of the first policy issued by the Company.
- (2) A claim by a person or organization seeking damages will be deemed to have been made at either one of the following times, whichever comes first:

- (i) when notice of such claim is received and recorded by the Company or by any Insured; or
- (ii) when the Company notices or any Insured notices (or reasonably presumed to have noticed) any circumstances which the Company considers may develop into such claim in the future.

## **5. CO-INSURANCE CLAUSE**

### **(1) Independent Liability**

This insurance contract is a co-insurance contract underwritten by the insurance companies described in the DECLARATIONS of this Policy (hereinafter referred to as “Co-insurers”) and the Co-insurers, each for its own part and not one for another, have rights and obligations emanating from this insurance contract severally and independently according to their respective participation shares as specified in the DECLARATIONS of this Policy.

### **(2) Matters handled by the Leading Insurer**

Tokio Marine & Nichido Fire Insurance Co., Ltd., as the Leading Insurer, handles the following matters for all the other Co-insurers.

- (a) Accepting filled-in application forms for insurance and issuing and delivering insurance policies and the like.
- (b) Receiving or returning insurance premiums.
- (c) Approval of changing the contents of insurance contract or canceling the insurance contract.
- (d) Receiving documents and the like concerning declaration and notice made subject to stipulations of the insurance contract and approving such declaration or notice.
- (e) Receiving documents and the like concerning notice of assigning rights of insurance claims and the like or approving such assignment, or receiving documents and the like concerning notice of putting in, assigning or extinction of pledge of insurance claims, and approving such putting in, assigning or extinction.
- (f) Issuing and delivering letters of approval or endorsing policies and the like concerning the insurance contract.
- (g) Investigating matters concerning the insurance contract such as the subject matter of insurance and the like.
- (h) Receiving documents and the like concerning notice of occurrence of accidents or losses, or receiving documents concerning insurance claims.
- (i) Investigating losses, adjusting loss claims, paying insurance claims and the like, and taking measures necessary to secure the rights of the Co-insurers.
- (j) Handling other matters accompanying the business from (a) through (i)

mentioned above.

(3) Effects of what was done by the Leading Insurer

The matters done by the Leading Insurer concerning this insurance contract as mentioned in the preceding article are deemed to have been done by all the Co-insurers.

(4) Effects of what was done by the Insured and the like

What was noticed or other matters that were done by the Insured to the Leading Insurer are deemed to have been done to all the Co-insurers.

**6. COMPLETED OPERATIONS COVERAGE CLAUSE**  
**[APPLICABLE TO COVERAGE A OF SECTION TWO ONLY]**

Notwithstanding of the provision of Exclusions Applicable to Coverage A of Section Two of the Standard Policy, it is hereby understood and agreed that the Company agree to pay the Insured all sums which the Insured shall become legally liable to pay for Bodily Injury or Property Damage arising out of the work carried out by the Insured or his employees in connection with the business or operations specified in the DECLARATIONS after such work has been finished or abandoned.

**7. CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999 EXCLUSION CLAUSE (AVN72)**

The rights of a person who is not a party to this insurance to enforce a term of this insurance and/or not to have this insurance 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.

**8. CONTRACTUAL LIABILITY COVERAGE CLAUSE**

Notwithstanding the provisions of General Exclusions Applicable to All Sections (a) of the Standard Policy, the Company will indemnify the Insured by reason of contractual liability assumed by the Insured under Contract designated in the DECLARATIONS, subject to all the other terms and conditions of this Policy.

**9. DAMAGE TO PROPERTY IN THE CARE, CUSTODY OR CONTROL COVERAGE CLAUSE**  
**[APPLICABLE TO COVERAGE A OF SECTION TWO ONLY]**

(1) Notwithstanding of the provision of Exclusion a. of Exclusions Applicable to Coverage A, it is hereby understood and agreed that the Company agree to pay the Insured, subject to the provisions hereinafter, all sums which the Insured shall become legally liable to pay for loss of or damage to any property other than aircraft and aircraft equipment, which is not owned, hired, leased by or loaned to the Insured, whilst in the care, custody or control by the Insured or of any servant of the Insured.

- (2) The extended coverage provided by the preceding Paragraph does not include any claim for indirect, consequential or economic loss in respect of the lost or damaged property.

#### **10. DATE RECOGNITION LIMITED COVERAGE ENDORSEMENT (AVN2002A)**

WHEREAS this Policy of which this Endorsement forms part includes the Date Recognition Exclusion Clause (Clause AVN 2000A), it is hereby understood and agreed that, subject to all terms and provisions of this Endorsement, Clause AVN 2000A shall not apply to any sums which the Insured shall become legally liable to pay, and (if so required by this Policy) shall pay (including costs awarded against the Insured) in respect of:

- (1) accidental bodily injury, fatal or otherwise, or loss of or damage to property caused by an aircraft accident occurring during the Policy Period and arising out of a risk insured under this Policy; and/or
- (2) accidental bodily injury, fatal or otherwise, or loss of or damage to property caused by an accident, other than an aircraft accident, occurring during the Policy Period and arising out of a risk insured under this Policy. For the avoidance of doubt, solely for the purposes of this paragraph (2) and without prejudice to the meaning of the words in any other context, "bodily injury" shall mean only physical corporeal injury and unless arising directly therefrom shall not include mental or psychological injury.

PROVIDED THAT:

1. Coverage provided pursuant to this Endorsement shall be subject to all terms, conditions, limitations, warranties, exclusions and cancellation provisions of this Policy (except as specifically provided herein), and nothing in this Endorsement extends coverage beyond that which is provided by this Policy.
2. Nothing in this Endorsement shall provide any coverage:
  - (a) applying in excess of any declared underlying insurance and/or in respect of any non aviation risks; and/or
  - (b) in respect of grounding of any aircraft; and/or
  - (c) in respect of loss of use of any property unless it arises out of physical damage to or destruction of property in the accident giving rise to a claim under this Policy.
3. The Insured agrees that it has an obligation to disclose in writing to the Company during the Policy Period any material facts relating to Date Recognition Conformity of the Insured's operations, equipment and products.

#### **11. DEFENCE RELATED EXPENSES COVERAGE CLAUSE**

It is hereby understood and agreed that the Company shall pay the following expenses and costs properly incurred by the Insured in the defence of any suit brought in Japan alleging the Insured's legal liability, which would be covered under this Policy if it were to

exist. The limit of liability applicable to this Clause shall not exceed JPY 10,000,000 or the Limit of Liability applicable to each Section and Coverage which this Clause attached, whichever is the lesser, any one Occurrence being within the Limit of Liability applicable to each Section and Coverage which this Clause attached and not in addition to thereto.

- a. Overtime allowance for the Insured's employees, transportation expenses, accommodation expenses and temporary employment expenses.
- b. Lease expenses for the additional photocopy machines.
- c. Expenses for the "accident reappearance test" performed by the Insured.
- d. Expenses for the "accident reappearance test" performed by the external organization.
- e. Expenses for investigating the cause of the accident.
- f. Expenses for producing legal documents.

## **12. EXCESS POLICY CLAUSE**

WHEREAS the Insured has in force the insurance policy stated in the DECLARATIONS (hereinafter referred to as the "Underlying Policy"), the Company shall indemnify the Insured against all sums which the Insured shall become legally liable to pay up to the Limits as set forth in the DECLARATIONS, subject to the same warranties, exclusions, definitions, terms and conditions (except as regards the premium, amount and limits of liability other than deductible or self-insurance provision where applicable, and except as otherwise provided herein) of the Underlying Policy, provided always that liability attaches to the Company only after the Underlying Policy insurers have paid or have been held liable to pay the full amount of the Ultimate Net Loss liability as set forth in the DECLARATIONS.

The term "Ultimate Net Loss" means the amount payable in settlement of the liability of the Insured and costs and expenses after making deductions for all recoveries and other valid and collectible insurances than the Underlying Policy and shall exclude all costs and expenses if the Underlying Policy pays costs and expenses in addition to the limit of liability, but shall include costs and expenses if the Underlying Policy includes costs and expenses within the limit of liability.

It is a condition of this Policy that the Underlying Policy shall be maintained in full effect during the currency of this Policy except for any reduction or exhaustion of the aggregate limits contained therein solely by payment of claims in respect of accidents during the Policy Period. However, failure of the Insured to comply with this condition shall not invalidate cover under this Policy but in the event of such failure the Company shall only be liable to the same extent as they would have been had the Insured complied with this condition.

### **13. EXTENDED COVERAGE ENDORSEMENT (AVIATION LIABILITIES) (AVN52G)**

(1) WHEREAS the Policy of which this Endorsement forms part includes the War, Hi-Jacking and Other Perils Exclusion Clause (Clause AVN 48B), IN CONSIDERATION of an Additional Premium stated in the DECLARATIONS, it is hereby understood and agreed that with effect from the inception all sub-paragraphs other than (b) of Clause AVN 48B forming part of this Policy are deleted SUBJECT TO all terms and conditions of this Endorsement.

(2) EXCLUSION applicable only to any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B.

Cover shall not include liability for damage to any form of property on the ground situated outside Canada and the United States of America unless caused by or arising out of the use of aircraft.

(3) LIMITATION OF LIABILITY

The limit of Company's liability in respect of the coverage provided by this Endorsement shall be a sub-limit which is written in the DECLARATIONS or the applicable Policy limit whichever the lesser any one accident and in the annual aggregate. This sub-limit shall apply within the full Policy limit and not in addition thereto.

(4) AUTOMATIC TERMINATION

To the extent provided below, cover extended by this Endorsement shall TERMINATE AUTOMATICALLY in the following circumstances:

(i) All cover

- upon the outbreak of war (whether there be a declaration of war or not) between any two or more of the following States, namely, France, the People's Republic of China, the Russian Federation, the United Kingdom, the United States of America

(ii) Any cover extended in respect of the deletion of sub-paragraph (a) of Clause AVN 48B

-upon the hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the Insured Aircraft may be involved

(iii) All cover in respect of any of the Insured Aircraft requisitioned for either title or use

- upon such requisition

PROVIDED THAT if an Insured Aircraft is in the air when (i), (ii) or (iii) occurs, then the cover provided by this Endorsement (unless otherwise cancelled, terminated or suspended) shall continue in respect of such an Aircraft until completion of its first landing thereafter and any passengers have disembarked.

(5) REVIEW AND CANCELLATION

(a) Review of Premium and/or Geographical Limits (7 days)

The Company may give notice to review premium and/or geographical limits - such notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which notice is given.

(b) Limited Cancellation (48 hours)

Following a hostile detonation as specified in 4 (ii) above, the Company may give notice of cancellation of one or more parts of the cover provided by paragraph 1 of this Endorsement by reference to sub-paragraphs (c), (d), (e), (f) and/ or (g) of Clause AVN 48B - such notice to become effective on the expiry of forty-eight hours from 23.59 hours GMT on the day on which notice is given.

(c) Cancellation (7 days)

The cover provided by this Endorsement may be cancelled by either the Company or the Insured giving notice to become effective on the expiry of seven days from 23.59 hours GMT on the day on which such notice is given.

(d) Notices

All notices referred to herein shall be in writing.

**14. INITIAL EXPENSES COVERAGE CLAUSE**

It is hereby understood and agreed that the Company shall pay the following expenses and costs excluding normal expense properly incurred by the Insured in the event of an Occurrence, to which this Policy applies or is understood to apply, happening in Japan. The limit of liability applicable to this Clause shall not exceed JPY 5,000,000 or the Limit of Liability applicable to each Section and Coverage to which this Clause attached, whichever is the lesser, (subject JPY 100,000 any one person in respect of item e) any one Occurrence being within the overall Limit of Liability applicable to each Section and Coverage to which this Clause attached and not in addition thereto.

- a. Expenses for the preserving, researching, taking record and photos of accident site and accident investigation costs.
- b. Wreck removal expenses at the accident site.
- c. Transportation and accommodation expenses for sending the Insured's employees to the accident site.
- d. Communication expenses.
- e. "Sympathy payment" for the Bodily Injury of third party.
- f. Other expenses or costs relating to above items



**15. IN-TEST-FLIGHT HANGARKEEPER'S LIABILITY COVERAGE CLAUSE**  
**[APPLICABLE TO COVERAGE B OF SECTION TWO ONLY]**

It is hereby understood and agreed that "On the Ground" in Paragraph 1 of Coverage B of Section Two of the Standard Policy is deleted. ONLY IN RESPECT OF test flight carried out by the Insured.

**16. MECHANICALLY PROPELLED VEHICLE LIABILITY EXCLUSION CLAUSE**  
**[APPLICABLE TO COVERAGE A OF SECTION TWO ONLY]**

This Policy does not cover any claims caused by any mechanically propelled vehicle owned, chartered, used or operated by or on account of the Insured, to the extent of claims being recoverable from the Insured's automobile insurance policy.

**17. OVERRIDING TERMS AND CONDITIONS CLAUSE**

It is hereby understood and agreed that the provisions of the particulars of conditions written in Japanese annexed hereto shall override anything contained to the contrary in any other part of this Policy.

**18. PAYMENT OF DEFENCE COSTS WITHIN THE LIMIT CLAUSE**

Notwithstanding the provisions of Defence, Settlement and Supplementary Payments of the Standard Policy, it is hereby understood and agreed that the Company will pay, all expenses, within and as a part of the applicable Limit of Liability of each Section and Coverage, and the Company shall in no case be obligated to pay any settlement, judgment or such expenses or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of settlements, judgments or such expenses.

It is also understood and agreed that paragraph 3 of Defence, Settlement and Supplementary Payments of the Standard Policy shall be deleted.

**19. PERSONAL INJURY EXTENDED COVERAGE CLAUSE**  
**[APPLICABLE TO SECTION TWO ONLY]**

(1) The insurance provided by this Policy extends to indemnify the Insured for legal liability for damages awarded to any person arising out of one or more of the following offences committed during the Policy Period but only where such offences are committed in connection with that part of the Insured's aviation operations or interests for which other coverage is granted by the Policy:-

- (a) False arrest, restraint, detention or imprisonment.
- (b) Malicious prosecution.
- (c) Wrongful entry, eviction or other invasion of the right of private occupancy.
- (d) Inadvertent discrimination with respect to withholding or refusal of

transportation except with respect to overbooking.

- (e) The publication or utterance of a libel or slander or of other defamatory or disparaging material in violation of an individual's right of privacy except publication or utterance in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Insured.
  - (f) Incidental medical malpractice error or mistake by a physician, surgeon, nurse, medical technician or other person performing medical services but only for or on behalf of the Insured in the provision of emergency medical relief.
- (2) The following additional exclusions shall apply to this extension:-
- (i) liability assumed by the Insured by the agreement under any contract unless such liability would have attached to the Insured even in the absence of such agreement.
  - (ii) liability arising out of the wilful violation of penal statute or ordinance committed by or with the knowledge or consent of the Insured.
  - (iii) liability arising out of offence (e) above
    - (X) if the first injurious publication or utterance of the same or similar material was made prior to the effective date of this insurance
    - (Y) if such publication or utterance was made by or at the direction of the Insured with the knowledge of the false nature thereof.
  - (iv) liability directly or indirectly related to the past, present or potential employment of any person by the Insured.
- (3) The limit of liability applicable to this extension shall be US\$ 25,000,000 or the Limit of Liability applicable to each Section and Coverage to which this Clause attached, whichever is the lesser, any one offence and in the aggregate during the Policy Period being within the Limit of Liability applicable to each Section and Coverage to which this Clause attached and not in addition thereto.
- (4) Any exclusion provision contained in this Policy referring to Bodily Injury shall also apply to this Clause.

## **20. PREMIUM INSTALLMENT CLAUSE**

- (1) The premium under this Policy shall be paid in installments pursuant to the schedule described in the DECLARATIONS.
- (2) In the event of a loss for which the Company is liable hereunder occurring before the completion of the payment of the whole premium by the Insured and when the amount payable by the Company in settlement of such a claim (plus the amount already paid by the Company if any) exceeds the premiums already received by the Company, the Insured shall immediately pay to the Company the next installment of premium (plus any further installment or installments if the aggregate of such next installment and the premiums already received is still insufficient to meet the amount of the claim).

- (3) Even after the commencement of the Policy Period, the Company shall not be liable for any loss, damage or liability in respect of any Occurrence occurring prior to the receipt of the first installment premium as provided for in Paragraph (1) hereof.
- (4) In the event of the Insured failing to pay the second or any of the subsequent installment premiums on each due date, the Company shall not be liable for any loss, damage or liability in respect of any Occurrence occurring after the due date.
- (5) If, within one month after the Company becomes exempted from payment of the claim under the provision of paragraph (4) hereof, the Insured makes a request for reinstatement of this insurance contract, accompanied by payment of the premium as required, and the Company agrees thereto, this insurance contract shall be deemed to have been continuously effective; provided, however, that the Company shall not be liable for any loss, damage or liability in respect of any accident occurring between the date on which the Company became exempted from payment of the claim and the time when the Company agrees to the request.
- (6) In the event that, after one month from the due date, the Insured has still not paid installment premium, the Company may cancel this Policy at any time, which shall take effect only from the date when the instalment premium was due and not be retroactive.
- (7) In the event of the provision of paragraph (6) hereof being activated, the Company shall calculate the earned premium in accordance with rating plans, minimum premium and other Company's rules for the period between the date of inception and the date when the installment premium was due but not paid, and the aforementioned earned premium shall be set against the premium already received by the Company and an additional or return premium, as the case may be, shall be paid.
- (8) If, prior to the completion of the payment of the annual premium, the Insured cancels, under the provisions of Article (j) of General Conditions Applicable to All Section , the insurance contract and if a claim has arisen (or is outstanding), the Insured shall pay the unpaid installment premium up to the amount of the claim less premium already paid or the minimum premium less premium already paid whichever is the greater.

**21. PROPERTY DAMAGE EXTENDED COVERAGE CLAUSE**  
**[NOT APPLICABLE TO COVERAGE B OF SECTION ONE]**

- (1) The insurance provided by this Policy extends to include all sums which the Insured shall become legally obligated to pay or by final judgement be adjudged to pay to any person or persons in respect of damages for loss of use of tangible property of others, caused by accident, that is not physically injured.
- (2) All such loss of use shall be deemed to occur at the time of the accident that caused it.
- (3) The following additional exclusions shall apply to the insurance provided by this extension:-

- (a) Any wilful or malicious act or the wilful or malicious breach of any applicable law or regulations by the Insured.
  - (b) Law or regulations of a Government or public organizations.
  - (c) Loss of, damage to or loss of uses of data or computer programme.
  - (d) Infringement of patent, copyright, trademark or any other right of the third party.
  - (e) Wholly or partially nonfulfilment or delay of supply of energy, materials or service by the Insured or their subcontractors.
  - (f) Loss of use of the same tangible property after 30 days from the first accident.
- (4) The limit of liability applicable to this extension shall be JPY 10,000,000 or the Limit of Liability applicable to each Section and Coverage to which this Clause attached, whichever is the lesser, any one accident and in the aggregate during the Policy Period being within the overall Limit of Liability applicable to each Section and Coverage to which this Clause attached and not in addition thereto.

**22. SPACE VEHICLE LIMITED COVERAGE CLAUSE**  
**[APPLICABLE TO COVERAGE A OF SECTION ONE ONLY]**

Notwithstanding the contents of Standard Policy, it is hereby understood and agreed that

- (1) Exclusion Applicable to Coverage A i of Coverage A in Section One of this Policy is deleted.
- (2) Notwithstanding clause 1 of this Clause, Coverage A does not apply to Property Damage to any Space Vehicle or Satellite or any Aviation Products forming a part of such Space Vehicle or Satellite after the Operational Life of such Space Vehicle or Satellite has expired.

(3) Definition applicable to this Clause:

Operational Life

Operational Life means such period of time as the manufacturer of any Space Vehicle or Satellite specifies in the original sales contract as the operational/service life of such Space Vehicle or Satellite.

(4) The Limit of Liability

The following sub-limitations apply to the coverage afforded under this Clause:

- (a) The Limit of Liability for Property Damage to any one Satellite after such Satellite has been delivered to a launch site arising out of an Aviation Product installed on or used in connection with such Satellite is applicable Limit of Liability specified in the DECLARATIONS (except as provided in clause (b) below).
- (b) The Limit of Liability for Property Damage suffered by two or more Satellites on the same launch during the period from completed integration of the Satellite on

board the Launch Vehicle until physical separation from the Launch Vehicle arising out of an Aviation Product installed on or used in connection with any of such Satellites is Limited to applicable Limit of Liability specified in the DECLARATIONS.

Notwithstanding the foregoing provision the aggregate Limit of Liability applicable to Coverage A of Section One shown in the DECLARATIONS shall not be exceeded.

- (5) This Clause does not apply to Property Damage to any Satellite removed from a launch site prior to its launch from the time of its removal until it arrives again at a launch site.

All other terms and conditions remain unchanged.

### **23. TENANT'S LIABILITY COVERAGE CLAUSE** **[APPLICABLE TO COVERAGE A OF SECTION TWO]**

Notwithstanding of the provision of Exclusion Applicable to Coverage A a to Section Two of the Standard Policy, it is hereby understood and agreed that the Company agree to pay the Insured, subject to the provisions hereinafter, all sums which the Insured shall become legally liable to pay for Property Damage to the premise which is not owned but leased or rented by the Insured.

### **24. WAIVER OF SUBROGATION CLAUSE**

It is hereby understood and agreed that the Company shall waive its right of subrogation against the party written in the DECLARATIONS, but only to the extent of scope which is also written in the DECLARATIONS.

### **25. AMENDMENT OF DEFINITION OF INSURED CLAUSE**

With respect to WILFUL MISCONDUCT EXCLUSION CLAUSE and (J) Occurrence in DEFINITIONS, (F) Insured in DEFINITIONS shall be deleted and replaced by following wording:

"The term "Insured" means the Insured specified in the DECLARATIONS and shall include directors and officers of the Insured while acting within the scope of their duties on behalf of the Insured."

### **26. AVIATION PREMISES CLAUSE**

Notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that the aviation premises which is not owned by the Insured is also included in the "Insured's aviation premises specified in the DECLARATIONS" in Coverage A - AVIATION PREMISES LIABILITY of SECTION TWO in Standard Policy as far as such premises is specified in the DECLARATIONS.