AIR TRAFFIC CONTROL LIABILITY INSURANCE

SECTION ONE - LIABILITY COVERAGE

Subject always to the applicable limits of the Insurers’ liability and the applicable deductible as set forth in the Policy Schedule, Exclusions, Conditions and other terms of this Policy:-

1. Coverage

The Insurers will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages arising from Bodily Injury and/or Property Damage and/or Personal Injury caused by an Occurrence arising out of

(a) the performance of their functions and duties at various locations including but not limited to ACC’s, Approach/Terminal and Control towers, and the performance of any other aviation related activities including but not limited to Air Traffic Control, Communication, Navigation, Surveillance, Meteorology and Aeronautical Information Services.

(b) any aircraft used by the Insured provided the Insured

(1) has no interest in the aircraft as owner in whole or in part;
(2) exercises no part in the servicing or maintenance of the aircraft;
(3) exercises no part in the appointment or provision of personnel for the operation of the aircraft;

It is understood and agreed that coverage under this policy is provided in respect of the ACC Regions, ATC Units, Approach/Terminal and Control Tower Operations as declared in the Policy Schedule, other ACC Regions, ATC Units, approach and control tower operations within China subject to agreement of Insurers at terms to be agreed by Insurers.

2. Exclusions

This Section One does not cover

(a) liability for Property Damage to property owned by, rented to, leased to, loaned to or occupied by the Insured. This exclusion (a) does not apply to liability for Property Damage to aircraft described in Clause 1. (b) above.

(b) liability for Bodily Injury and/or Property Damage caused by any mechanically propelled vehicle where such liability is required to be insured under any law appertaining to road traffic.

(c) as regards Clause 1. (a), liability for Bodily Injury and/or Property Damage caused by any ships, vessels, craft or aircraft owned by, chartered to, used by or on account of the Insured. This exclusion does not apply to aircraft owned by others while on the ground in the care, custody or control of the Insured.

(d) as regards Clause 1. (b), liability for Bodily Injury and/or Property Damage arising out of:

(1) aircraft when used by the Insured for hire or reward;
(2) any product manufactured, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured.
(e) liability for the cost of repairing or replacing any defective goods or products manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured or any defective part or parts thereof.
This exclusion (e) does not apply to goods or products involved in an Occurrence.

(f) liability arising out of improper or inadequate performance, design or specification or for the cost of making good any faulty workmanship for which the Insured or any contractor or sub-contractor of the Insured may be liable.
This exclusion (f) does not apply to Bodily Injury and/or Property Damage resulting from such improper or inadequate performance, design or specification or faulty workmanship.

(g) liability arising under any Employers’ Liability, Workman’s Compensation or other similar enactment or Bodily Injury to any employee of the Insured arising out of and in the course of their employment by the Insured.

3. Defence, Settlement and Supplementary Payments

With respect to the insurance afforded under this Section One the Insurers shall

(a) have the right and obligation to defend in the name of and on behalf of the Insured any suit or other proceedings against the Insured, even if any of the allegations thereof are groundless, false or fraudulent, but the Insurers shall have the right to make such investigation, negotiation and settlement of any claim or suit as they deem expedient;

(b) pay all costs taxed against the Insured in any such suit or proceedings and all interest accruing after entry of judgement until the Insurers have paid, tendered or deposited in court, such part of such judgement as does not exceed the applicable limit of the Insurers’ liability; provided that in the event of the amount of such judgement exceeding the applicable limit of the Insurers’ liability, the Insurers shall only be liable to pay for that proportion of the said costs and interests which the applicable limit of the Insurers’ liability bears to the amount of such judgement;

(c) pay all expenses incurred by the Insurers for investigation, adjustment and defence, and reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred at the Insurers’ request;

(d) reimburse the Insured for the cost of sustenance, first aid, hospital and medical services, burial, repatriation and any other acts of humanity, reasonably incurred with their consent following an Occurrence to which this insurance applies;
Funeral and repatriation expenses and humanitarian expenses where such expenses result from an Occurrence subject to coverage hereunder are subject to a sub-limit of USD5,000,000 any one occurrence. Such expenses include costs of transportation and accommodation for visits to the accident scene after an Occurrence subject to coverage hereunder, within one year of the date of the accident.

(e) pay all expenses incurred by the Insured for representation at any public enquiry or similar proceedings called to investigate an Occurrence to which this insurance applies.

The amounts incurred under this Clause 3. (except funeral and repatriation expenses and humanitarian expenses, settlements of claims and suits) are payable by the Insurers as part of the limits of liability applicable to this Section One and not in addition thereto. Nevertheless, in respect of coverage subject to an aggregate limit the Insurers shall not be obligated to defend any suit or pay any costs, charges and expenses incurred after such aggregate limit has been exhausted and in this event the Insured shall have the right to take over control of proceedings from the Insurers.

4. Definitions
(a) The term “Bodily Injury” means bodily injury, mental anguish, fright, shock, sickness, disease or disability, including death at any time resulting therefrom.

(b) The term “Insured” means

(1) the Insured as named in Item 1. of the Policy Schedule;

(2) any board member, director, officer, employee or agent of the Insured whilst acting within the scope of his duties on behalf of the Insured identified in (1) above;

(c) The term “Occurrence” means an accident or a continuous or repeated exposure to conditions occurring during the Policy Period which results in Bodily Injury and/or Property Damage provided such Bodily Injury or Property Damage is accidentally caused.

All Bodily Injury and/or Property Damage arising out of substantially the same general conditions shall be deemed to arise out of one Occurrence.
(d) The term “Property Damage” means physical injury to tangible property including all resulting loss of use of that property or the loss of use of tangible property which has not been physically injured provided such loss of use is caused by an Occurrence.

5. Extensions of Coverage

(a) Personal Injury Liability Extension

The insurance provided by this Section One is extended to apply to such Insured’s legal liability for damages awarded to any person arising out of one or more of the following offences committed during the Policy Period:

(1) False arrest, restraint, detention or imprisonment

(2) Malicious prosecution

(3) Wrongful entry, eviction or other invasion of the right of private occupancy

(4) Inadvertent discrimination with respect to withholding or refusal of transportation except with respect to overbooking

(5) The publication or utterance of a libel or slander or 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.

(6) 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.

The following additional exclusions shall apply to the insurance provided by this Extension 5. (a)

(1) liability assumed by the Insured under any contract or agreement

(2) personal injury arising out of the wilful violation of penal statute or ordinance committed by or with the knowledge or consent of the Insured

(3) personal injury arising out of offence (5) above,
(i) if the first injurious publication or utterance of the same or similar material was made prior to the effective date of this Insurance
(ii) if such publication or utterance was made by or at the direction of the Insured with the knowledge of the false nature thereof

(4) liability for personal injury sustained by any person directly or indirectly related to the past, present or potential employment of such person by the Insured.

It is agreed that, except as specifically provided in the foregoing to the contrary, the coverage provided by this Extension 5. (a) is only applicable in connection with the coverage provided under Item 1. of Section One of this Policy.
SECTION TWO - RANSOM AND EXTORTION COVERAGE

Subject always to the applicable limit set forth in the Policy Schedule the Insurers will pay on behalf of the Insured ninety percent (90%) of:

(a) any payment properly made by the Insured in respect of any ransom or extortion demand or the like arising out of threats against persons or property; or

(b) extra expenses necessarily incurred arising out of such threats whether any ransom or extortion or the like be paid or not.

No cover shall be provided in any territory where such insurance is not lawful, and the Insured is at all times responsible for ensuring that no arrangements of any kind are made which are not permitted by the proper authorities.

It is warranted that

(a) ten per cent (10%) of any payment made or expenses incurred under the terms of this Section Two shall be retained by the Insured uninsured.

(b) the existence of this Coverage shall not be revealed by personnel responsible for insurance matters to any person other than board members and directors of the Insured.
GENERAL EXCLUSIONS

This Policy does not cover -

(a) claims excluded by the War, Hi-Jacking and Other Perils Exclusion Clause (Aviation) AVN 48B attached to this Policy.

(b) claims excluded by the Nuclear Risks Exclusion Clause AVN 38B attached to this Policy.

(c) claims excluded by the Noise and Pollution and Other Perils Exclusion Clause AVN 46B (not applicable to Passenger Liability) attached to this Policy, but paragraph 1. (b) of this Clause AVN 46B does not apply to pollution and/or contamination of goods sold or supplied by the Insured.

(d) claims excluded by the Asbestos Exclusion Clause LSW 2488 AGM 00003 attached to this Policy.
GENERAL POLICY CONDITIONS

1. Compliance with applicable Regulations and Instructions

The Insured shall take all reasonable steps to ensure that all applicable international and government regulations and civil instructions are complied with by the Insured.

2. Due Diligence

The Insured shall and will 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 accidents and occurrences are provided and used.

3. Material Alterations

If after this Insurance has been effected, the risk is materially altered, such alteration must be notified in writing to the Insurers immediately.

4. Claims - Insured’s Duties

(a) Upon the happening of an event likely to give rise to a claim hereunder notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof shall be given by or for the Insured to the Insurers at the address as set forth in the Policy Schedule as soon as reasonably possible (within 48 hours) after the same have come to the knowledge of the Insured.

(b) If a claim is made or a suit is brought against the Insured, the Insured shall immediately forward to the Insurers every demand, notice, summons or other process received by them or their representatives.

(c) No admission, arrangement, offer, promise or payment shall be made by the Insured without the written consent of the Insurer who shall be entitled, if they so desire, to take over and conduct in the name of the Insured the defence of any claim, and shall have full discretion in the conduct of any negotiations or proceedings or the settlement of any claim.

(d) The Insured shall co-operate with the Insurers and upon request will assist in making settlements, and in the conduct of suits and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

(e) The Insured shall render such further information and assistance as the Insurers may reasonably require and shall not act in such a way that will have a material adverse effect on the interest of the Insurers.

5. Assignment

This Policy shall not be assigned in whole or in part except with the consent of the Insurers verified by endorsement hereon.

6. Subrogation
In the event of any payment under this Policy, the Insurers may exercise their rights of recovery against any responsible party, and will advise the Insured of their intention so to do. However, should the Insured request the Insurers not to pursue a recovery then such request will not be unreasonably denied.

7. Contractual Agreements
This Policy incorporates the requirements of contracts and/or agreements for the inclusion of additional Insureds, hold harmless agreements, indemnities, waivers of subrogation, breach of warranty provisions and other contractual agreements entered into by the Insured which fall within the scope of the Insured’s normal operations. The requirements of contracts and/or agreements falling outside the scope of the Insured’s normal aviation operations which the Insured require to enter into during the Policy Period will be held covered hereunder subject to being agreed by Insurers thereafter.
Nothing contained in this condition shall be considered to extend the coverage of this Policy to risks not otherwise insured hereunder.

8. Other Insurance
If at the time of any Bodily Injury, Property Damage or Personal Injury claim there is or but for the existence of this Policy would be any other policy of indemnity or insurance in favour of or effected by or on behalf of the Insured applicable to such claim, the liability of the Insurers shall be limited to their rateable proportion of such claim.

9. Cross Liability
The inclusion of more than one Insured in this Policy shall not affect the rights of any Insured as respects any claim or suit by any other Insured, or by any employee of such other Insured. The Policy shall insure each Insured in the same manner as though a separate policy had been issued to each and the Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any party insured hereon arising out of an Occurrence in respect of which a valid claim is made hereunder. Provided nevertheless that nothing contained herein shall operate to increase the Insurers’ liability as set forth in the Policy Schedule beyond the amount or amounts for which the Insurers would have been liable if only one Insured had been named.

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

11. Law and Jurisdiction
This Policy shall be governed by the laws of the People’s Republic of China whose courts shall have jurisdiction in any dispute arising hereunder.
12. False or Fraudulent Claims
If the Insured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise this Policy shall become void and all claims hereunder shall be forfeited.

13. Reasonable Acts
The coverage provided by this Policy will not be invalidated by any reasonable action by, at the direction of, or on behalf of the Insured for the purpose of protecting persons or property.

14. Cancellation
This Policy may be cancelled by the Insured by surrender thereof by forwarding to the Insurers written notice stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Insurers by forwarding by registered mail to the Insured, written notice stating when not less than thirty days thereafter such cancellation shall be effective.

The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the Policy Period. Delivery of such written notice either by the Insured or by the Insurers shall be equivalent to mailing.

If this Policy is cancelled by the Insured the Insurers shall retain the short rate proportion of the annual premium for the period during which such cancellation is effective calculated in accordance with the following scale:

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<thead>
<tr>
<th>Period on Risk</th>
<th>% of Annual Premium</th>
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<tbody>
<tr>
<td>1 month</td>
<td>20%</td>
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<tr>
<td>2 months</td>
<td>30%</td>
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<tr>
<td>3 months</td>
<td>40%</td>
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<td>4 months</td>
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<td>8 months</td>
<td>80%</td>
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<td>9 months</td>
<td>85%</td>
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<tr>
<td>Over 9 months</td>
<td>Equivalent to Annual</td>
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</table>

If this Policy is cancelled by the Insurers they shall return pro rata of the annual premium for the period during which such cancellation is effective.

15. Claims Handling
It is understood and agreed that all claims involving Occurrences under this policy shall be handled by ______________.

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

AVN 72 9.2.2000