

Non-Owned Aircraft Liability Insurance Policy

POLICY PROVISIONS



Endurance American Insurance Co.
A Stock Company
Wilmington, DE

In consideration of payment of the premium and in reliance upon the statements in the Declarations and subject to the limits of liability, exclusions, conditions and other terms of the policy, the Company agrees with the Named Insured with respect to those coverages for which a premium is charged, as reflected in the Declarations, as follows:

Type of Coverage

Coverage A – Single Limit Bodily Injury and Property Damage

To pay on behalf of the **Insured** all sums, which the **Insured** shall become legally obligated to pay as damages:

1. because of **bodily injury** sustained by any person (excluding any **passenger** unless the words "including passengers" appear in Item 3 of the Declarations);
2. because of **property damage**;

caused by an **occurrence** during the policy period and arising out of the occupancy or operation of the **non-owned aircraft** as described in this policy or while boarding or deplaning the **non-owned aircraft** or while occupying the premises immediately adjacent, provided those premises are not owned by or leased to the **Insured**.

Coverage B – Physical Damage Liability

To pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as damages for direct loss of or damage to the **non-owned aircraft**, including the loss of use thereof, caused by an **occurrence** during the policy period and arising out of the occupancy or operation of the **non-owned aircraft** as described in this policy.

Coverage C — Medical Payments

To pay to or on behalf of each **passenger**, who sustains **bodily injury** caused by an **occurrence** during the policy period, reasonable medical and funeral expenses for **bodily injury** as follows:

- a. if such **bodily injury** shall require medical, surgical, x-ray or dental services including prosthetic devices, hospital confinement, or the employment of a professional nurse, the Company will reimburse each injured **passenger** for the reasonable and necessary expense of such services, including hospital and ambulance charges and nursing services actually incurred within one year from the date of **occurrence**; and
- b. if such **bodily injury** shall within one year from the date of **occurrence** result in the death of any **passenger**, the Company will pay to the surviving spouse of the deceased, if surviving, otherwise to his or her estate, the reasonable funeral expenses.

The total payment under parts (a) and (b) hereof on behalf of any one **passenger** for any one **occurrence** shall not exceed the sum stated in the Declarations as applicable to each **passenger**. On policies issued in Canada such benefits payable under this coverage are payable only to the extent that they are in excess of and do not duplicate the cost of any such service covered under the terms of any Statutory Plan of Health Services Insurance.

Defense and Settlement and Supplementary Payments

The Company shall have the right and duty to defend any suit against the **Insured** seeking damages on account of such **bodily injury** or **property damage** which occurred during the policy period, even if any of the allegations of the suit are groundless, false or fraudulent. It may make such investigation and

settlements of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by settlements, tendered into Court of Law, or payment of judgments.

During such times as the Company is obligated to defend a claim or claims under the provisions of the preceding paragraph, the Company will pay with respect to such claims, in addition to the applicable limits of liability:

- a. all expenses incurred by the Company, all costs taxed against the **Insured** in any suit defended by the Company and all interest accruing after judgment upon that portion of the judgment falling within the policy limits before the Company has paid, tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- b. premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy and the cost of bail bonds required of the **Insured** because of an occurrence or violation of law or a regulation for civil aviation arising out of the use of the aircraft, but the Company shall have no obligation to apply for or furnish any such bonds;
- c. expenses incurred by the **Insured** for first aid to others at the time of an **occurrence**, for **bodily injury** to which this policy applies; and
- d. all reasonable expense incurred by the **Insured** at the Company's request, other than for loss of earnings or for wages or salaries of employees of the **Insured**.

Exclusions

This policy does not apply:

1. While the **non-owned aircraft** is being operated with the knowledge and consent of the **Insured** or any executive officer or partner thereof, for any purpose or use not stated in the Declarations or endorsed on the policy;
2. As respects Coverage B, while the **non-owned aircraft** is **in-flight** unless the pilot(s) of the **non-owned aircraft** meet(s) the requirements of the **Federal Aviation Administration** to operate the **non-owned aircraft**;
3. To liability assumed by the **Insured** under any contract or agreement: (1) except a written agreement required by a governmental authority as a condition to the use of an airport, or (2) unless such liability would have attached to the **Insured** even in the absence of such contract or agreement. The **Insured** must send a copy of any contract or agreement, other than an airport contract, to the **Aviation Managers** within 30 days after the **Insured** receives it for approval by the **Aviation Managers**. However failure to send copies of contractual agreements will not operate to void this coverage provided the **Insured** submits contracts as soon as possible after determining that one exists.

The subrogation section as shown in Condition 6 shall not apply to any written contract or agreement, except any contract or agreement with a person or organization which had been entered into after a loss.
4. To any obligation for which the **Insured** or any carrier as his or her insurer may be held liable under any worker's compensation, employer's liability, unemployment compensation or disability benefits law, or under any similar law;
5. To **bodily injury** or death of any employee of the **Insured** arising out of and in the course of his or her employment by the **Insured**. This exclusion applies with the same force and effect to any claim made by the deceased employee's heirs or legal representative;

6. To **bodily injury** or **property damage** resulting from assault and/or battery if committed by or at the direction of the **Insured**, or a partner or executive officer of the **Insured**, unless committed for the purpose of preventing or eliminating danger in the operation of the **non-owned aircraft**;
7. To **non-owned aircraft** possessing other than a valid **Standard Airworthiness Certificate** issued by the **Federal Aviation Administration** or an equivalent valid certificate issued by another equivalent civil aviation authority;
8. To the operation of **non-owned aircraft** with more than fifty (50) total seats;
9. To injury to or destruction of property owned, rented, occupied or used by or in the care, custody or control of the **Insured** or carried in or on any **non-owned aircraft** with respect to which insurance is afforded by this policy;
10. To any loss or damage 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 or discharge 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 commotion or labor disturbances;
 - d. Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional;
 - e. Any malicious act or act of sabotage;
 - f. Confiscation, nationalization, 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 **non-owned aircraft** or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the **non-owned aircraft** acting without the consent of the **Insured**;

It is further agreed that this policy shall not apply to any loss whatsoever while the **non-owned aircraft** is outside the control of the **Insured** by reason of any of the perils specified in paragraph 10. The **non-owned aircraft** shall be considered back in the control of the **Insured** when it has been safely returned to the **Insured** at an airfield, which is entirely suitable for the operation of the **non-owned aircraft** and is within the territorial limits covered by this policy. Safe return shall also require that the **non-owned aircraft** be parked with all engines shut down and not under any restrictions;

11. To any loss or damage directly or indirectly caused by or as a result of:
 - a. Noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith;
 - b. Pollution or contamination of any kind whatsoever, whether or not caused by an insured peril. This also includes any Governmental direction or request that the Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, fuel, oil, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;

- c. Electrical and/or electromagnetic interference;
- d. Interference with the use of property;

unless caused by a crash, collision, fire, explosion or a recorded **in-flight** emergency causing abnormal operation of a **non-owned aircraft** insured within this policy;

- 12. To loss of or damage to any **non-owned aircraft** or **non-owned aircraft** engines including all parts thereof or equipment owned, or held or used under written lease for one (1) year or more, by the **Insured** or his or her immediate family or employees or partners, if the **Insured** is a partnership, or by officers or directors of the corporation if the **Insured** is a corporation;
- 13. To **bodily injury** arising out of the rendering of any professional services or the omission thereof, including any medical or surgical treatments by a doctor, nurse, medical practitioner or other professional attendant unless such **bodily injury** is a direct and foreseeable result of a covered occurrence;
- 14. To the operation of homebuilt non-owned aircraft, ultralights, military non-owned aircraft or hang gliders;
- 15. To claims in respect to the death, **bodily injury**, illness or disease of any person or persons and/or damage to or destruction of property caused by or resulting from the use by the **Insured** or his agent of any forms of chemical dispersed from the aircraft;
- 16. As respects **Coverage B**,
 - a. To loss or damage due to conversion, embezzlement or secretion by any person in possession of the **non-owned aircraft** under a bailment, lease, conditional sale, purchase agreement, mortgage, or other encumbrance, nor for any loss or damage during or resulting therefrom;
 - b. To loss or damage which is due and confined to wear and tear, deterioration, freezing, mechanical, hydraulic, pneumatic, structural or electrical breakdown or failure, or to tires unless damaged by fire, malicious mischief, vandalism or theft unless any such loss or damage is the direct result of other physical damage covered by this policy;
 - c. To damage to turbine engines (including a turbine auxiliary power unit if it is a part of the **non-owned aircraft**) caused by heat from operation, attempted operation or shutdown of the engine unless caused by objects, materials or substances which were not a part of the engine or its accessories or controls, and the damage is the result of a single incident.

Policy Conditions

- 1. **Policy Territory:** This policy applies only to **occurrences**, accidents or losses, which happen within the territory as, stated on the Declarations. Worldwide means anywhere in the world.
- 2. **Terms of Policy Conform to Statute:** Terms of this policy which are in conflict with statutes of the State or Province wherein this policy is issued are hereby amended to conform to such statutes.
- 3. **Fraud and Misrepresentation:** This policy shall be void if the **Insured** has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by any **Insured** touching any matter relating to this insurance or the subject thereof, whether before or after a loss.
- 4. **Cancellation:** This policy may be cancelled by the Named Insured by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Named Insured at the address shown in this policy written notice stating when not less than sixty (60) days thereafter such cancellation shall be effective, provided that when

cancellation is for non-payment of premium, not less than ten (10) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.

If the Named Insured cancels, earned premium shall be computed on a short-rate basis. If the Company cancels, including cancellation for non-payment of premium, earned premium shall be computed pro-rata. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

5. **Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.
6. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefore against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights as required by the Company. The **Insured** shall do nothing after a loss to prejudice such rights.
7. **Assignment:** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon in writing; if, however, the Named Insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy unless cancelled, shall, if written notice be given to the Company within sixty (60) days after the date of such death or adjudication, cover the Named Insured's legal representative as the Named Insured.
8. **Action Against Company:** No action shall lie against the Company unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the Claimant and the Company. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the **Insured** to determine the **Insured's** liability nor shall the Company be impeded by the **Insured** or his or her legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.
9. **Financial Responsibility Law:** Such insurance as is afforded by this policy for **bodily injury** or **property damage** shall comply with the provisions of any financial responsibility law of any State or Province which shall be applicable with respect to any such liability arising out of the occupancy or operation of the **non-owned aircraft** during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The **Insured** agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.
10. **Other Insurance:** If the **Insured** has other insurance (except insurance purchased to apply in excess of the limit of liability hereunder) against a loss covered by this policy, that insurance is primary and the insurance afforded by this policy shall be excess insurance over any other valid and collectable insurance available to the Named Insured either as an **Insured** under a policy applicable with respect to the **non-owned aircraft** or otherwise, against a loss covered hereunder. If collectible insurance (other than insurance purchased to apply in excess hereof) under any other policy of the Company or any Company, as listed in the policy or any subsidiary Company thereof, is available to the **Insured** covering a loss also covered hereunder, the Company's total liability shall in no event exceed the greater or greatest limit of liability applicable to such loss under this or any other such policy.

11. **Report of Leased Non-owned aircraft: Non-owned aircraft** held under written lease for more than thirty (30) days must be reported to the Company within thirty (30) days after the lease comes to the attention of the **Insured**. Additional premium computed in accordance with the Company's rating program is payable thereon. Compliance with this section is a condition precedent to the Company's obligation to provide insurance regarding any such **non-owned aircraft**.
12. **Limit of Liability - Coverage A:** The limit of liability stated in the Declarations for all damages, including damages for care and loss of services, because of **bodily injury** sustained by any one **passenger** as the result of any one **occurrence** shall not exceed the limit of liability stated in the Declarations as applicable to "each **passenger**". Subject to this provision respecting "each **passenger**" the limit of liability stated in the Declarations for each **occurrence** is the limit of the Company's liability as a result of any **occurrence** for all damages, including amounts payable for care and loss of services because of **bodily injury** sustained by one or more **passengers**, and for all damages arising out of **property damages**.
13. **Limit of Liability – Coverage B:** The limit of liability stated in the Declarations as applicable to "any one aircraft" is the limit of the Company's liability as the result of any one **occurrence** for direct loss of or damage to the **non-owned aircraft**, including the loss of use thereof.
14. **Insured's Duties In the Event of Occurrence, Claim or Suit – Coverages A & B:** In the event of an **occurrence**, claim or suit the **Insured** shall:
- a. give written notice to the Company or any of its authorized agents as soon as practicable containing particulars sufficient to identify the **Insured** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses. The Named Insured shall promptly take at his or her expense all reasonable steps to prevent other **bodily injury** or **property damage** from arising out of the same or similar conditions, but such expenses shall not be recoverable under this policy;
 - b. immediately forward to the Company every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative; and
 - c. cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of **bodily injury** or **property damage** with respect to which insurance is afforded under this policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not, except at his or her own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the **occurrence**.

Knowledge of an **occurrence** by an agent, servant, or employee of the **Insured** will not in itself constitute knowledge by the **Insured** unless such notice has been received by the **Insured's** Risk and/or Insurance Manager.

The **Insured's** rights under this policy will not be affected if it fails to give notice of an accident or **occurrence** solely because it reasonably believed that the accident or **occurrence** was not covered under this policy.

15. **Salvage and Repair – Coverage B:** In the event the **non-owned aircraft** is damaged beyond the geographical limits described in Condition 1 and such loss constitutes a covered claim under this policy, the Company shall not be liable for any expense incurred in the salvaging of the insured **non-owned aircraft** or for the transportation of salvage or new replacement parts from the locus of the accident to the nearest Port of Entry in the Continental United States or Canada in excess of 15% of the amount of determined loss exclusive of such transportation and salvage costs. The Company however shall be liable for such transportation expenses from the nearest Port of Entry to the place where repairs are affected in the Continental United States or Canada.

In no event, however, shall the foregoing provision operate to increase the Company's limit of liability as stated elsewhere in the policy.

- 16. Medical Reports, Proof and Payment of Claim – Coverage C:** As soon as practicable the injured person or someone on his or her behalf shall give the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require.

The Company may pay either the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute admission of liability of the **Insured** or, except hereunder, of the Company.

- 17. Declarations:** By acceptance of this policy the **Insured** agrees that the statements in the Declarations are his or her agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to the insurance.
- 18. Inadvertent Errors or Omissions:** Notwithstanding any other provisions of this policy, inadvertent errors or omissions and/or failure in furnishing information, notification or reports required would not prejudice the coverage afforded by this policy provided the **Insured** shall notify the Company once the error or omission is discovered.

Definitions

Aviation Managers means W. Brown & Associates Insurance Services.

Bodily injury means bodily injury, sickness, disease sustained by a living person, including death sustained at any time by any person resulting therefrom, and if arising out of the foregoing, **mental anguish**.

Federal Aviation Administration is defined as the duly constituted authority of the United States of America having jurisdiction over civil aviation or its duly constituted equivalent in any other country.

Industrial Aid or Pleasure and Business means personal, pleasure, family or business uses, and transportation of executives, employees, guests and customers, excluding any operations for which a charge is made.

In-Flight means the period of time commencing with the actual take-off run and continuing thereafter until it has completed its landing run, or if the non-owned aircraft is a rotorcraft, from the time the rotors start to revolve under power for the purpose of flight until they subsequently cease to revolve.

Not-In-Flight means a non-owned aircraft that is under all other circumstances other than **In-Flight**.

In-Motion means when a non-owned aircraft is moving under its own power, or momentum therefrom and if the non-owned aircraft is a rotorcraft any time that the rotors are moving under its own power, or momentum therefrom.

Not-In-Motion means a non-owned aircraft that is under all other circumstances other than **In-Motion**.

Insured means not only the "Named Insured" as shown in Item 1 on the Declarations, but also any executive officer, director, stockholder, employee or agent thereof while acting within the scope of his or her duties as such, and if the Named Insured is a partnership the word **Insured** includes any partner therein, but only as respects his or her liability as such. The insurance with respect to any person other than the Named Insured does not apply to:

1. liability claims filed against an **Insured** by any other **Insured** as named on the Declarations or endorsed onto the policy;

2. any partner, executive officer, director, employee or agent with respect to injury or death of another partner, executive officer, director, employee or agent of the same employer injured in the course of his or her duties or employment;
3. any partner, executive officer, director, employee or agent with respect to any aircraft owned in full or in part by:
 - a. such partner, executive officer, director, employee or agent, or
 - b. any member of the family of such partner, executive officer, director, employee or agent.

The insurance provided herein applies separately to each **Insured** against whom claim is made or suit is brought, but the inclusion herein of more than one **Insured** shall not operate to increase the limit of the Company's liability.

Mental Anguish means mental or emotional pain, distress, anxiety or fright which is the result of an **occurrence**. The Limit of Liability stated in the Declarations for **bodily injury** to a **passenger** is the Limit of Liability applicable to any claim of **mental anguish** arising from **bodily injury** to a **passenger**, regardless of whether said claim is made by a **passenger** or by another who claims to have suffered mental anguish as the result of **bodily injury** to a **passenger**.

Non-owned aircraft means aircraft which are neither owned in whole or in part by the Named Insured, nor held by the Named Insured under lease for a term of one (1) year or more and includes the engines, propellers, tools and repair equipment therein which are designated standard by the manufacturer for the make and type of the aircraft, and operating and navigation instruments and radio equipment usually attached to the aircraft, including parts temporarily detached and not replaced by similar parts.

Occurrence means an accident, including injurious exposure to conditions, which results, during the policy period, in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **Insured**. For the purpose of determining the limit of the Company's liability all **bodily injury** and **property damage** arising out of the continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

Passenger means any person or persons while in or boarding the non-owned aircraft for the purpose of riding, operating the non-owned aircraft, or flying therein, or while alighting from the non-owned aircraft after a flight or attempted flight therein.

Property damage means physical injury to or destruction of tangible property, and/or the loss of use thereof.

Standard Airworthiness Certificate shall mean the same as defined by the United States Federal Aviation Regulations and shall also include an equivalent certificate issued by another government.