

ArchitectsandEngineersProfessionalLiabilityInsurancePolicy

Notice

Excepttosuchextentasmayotherwisebeprovidedherein,thecoverageofthisPolicyislimitedgenerally to liability for only those **CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED WHILE THE POLICYISINFORCE.**

Please review the Policy carefully and discuss the coverage thereunder with your insurance agent or broker.

TheCompan yagreeswiththeInsured,inconsiderationofthepaymentofthepremium,theundertakingof the Insured to pay the deductible as described herein and in the amount shown in the Declarations, in reliance upon the statements in the application made a part hereof, and subject to the limits of liability shownintheDeclarations,andsubjecttoallthetermsofthisinsuranceasfollows:

INSURINGAGREEMENTS

- I. **Coverage: Claims Made Provision.** The Company will pay on behalf of the Insured all sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as Damages by reason of any act, error or omission committed or alleged to have been committed by the Insured, or any person or organization for whom the Insured is legally liable, provided always that:
- (a) Claim is first made against the Insured during the Policy Period by reason of such act, error or omission, and
 - (b) The Insured's legal liability arises out of the performance of professional services as described in the Declarations, and
 - (c) The Insured has no knowledge of such act, error or omission on or prior to the effective date of this Policy.

II. **Territory.** The insurance afforded applies worldwide.

III. **Limits of Liability.** The liability of the Company for the combined total of Damages and Claims Expenses for each Single Claim FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD shall not exceed the amount stated in the Declarations for "each Single Claim", and subject to the limit of liability of the Company for each Claim, the total limit of liability of the Company for the combined total of Damages and Claims Expenses for all Claims FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD shall not exceed the amount stated in the Declarations as "Aggregate."

The inclusion herein of more than one Insured or the making of Claims or the bringing of suits by more than one person or organization, shall not operate to increase the limit of the Company's liability for each Single Claim and/or in the aggregate.

IV. **Deductible.** The deductible amount stated in the Declarations as Deductible shall be applicable to the combined total of Damages and Claims Expenses for each Single Claim. Such deductible amount shall not reduce the limits of liability of the Company. Deductible payments or portions thereof shall be paid by the Insured within ten (10) days of demand.

The determination by the Company as to the reasonableness of the Claims Expenses shall be conclusive on the Insured.

V. **Defense, Settlement, Cooperation.**

- (a) The Company shall defend any Claim against the Insured seeking Damages to which this Policy applies, even if any of the allegations of the Claim are groundless, false or fraudulent and it is agreed that the Company may make such investigation and settlement of any Claim

as it deems expedient, but the Company shall not be obligated to pay any Damages or to defendortocontinuetodefendanyClaimortopayClaimsExpensesaftertheapplicablelimit oftheLiabilityoftheCompanyhasbeen exhaustedbypayment(s)ofDamagesand/orClaims Expenses.

- (b) Selection of defense counsel shall be made by the Company; provided, however, if the CompanyisrequiredbylawtoallowtheInsuredtoselectdefensecounsel,thentheInsured shallmakesuchselectionfromalist,providedbytheCompany,ofindependentattorneysor law firms who shall act solely on behalf of the Insured. The Insured agrees to direct such defensetocounselto cooperatewiththe Company.Suchcooperationshallinclude:

- (1) Providing on a regular basis, but not less frequently than every six months, written reportsonclaimedDamages,potentialliability,progressofanylitigation,anysettlement demands,oranyinvestigationdevelopments thatmateriallyaffecttheClaim;
- (2) Providingfullyitemizedbillingonaperiodicbasis;
- (3) ProvidinganyotherinformationreasonablyrequestedbytheCompany.

The fees and costs incurred by such counsel, including those fees and costs generated by cooperation with the Company, as set forth above, shall be included in Claims Expenses. Such Claims Expenses shall be included within the Policy limit of liability and not in addition thereto.SuchClaimsExpensesshallreducetheavailablelimitofliability.

- (c) The Company shall not settle any Claim without the consent of the Insured. If, however, the Insured shall refuse to consent to any settlement recommended by the Company and shall elect to contest the Claim or continue any legal proceedings in connection with such Claim, then the Liability of the Company for such Claim shall not exceed the sum of (1) the amount for which such Claim could have been so settled plus (2) Claims Expenses incurred up to the date of such refusal. Such amounts are subject to the provisions of paragraphs III and IV of the Insuring Agreements.
- (d) The Insured shall not, with respect to any Claim covered under this Policy, except at the Insured's personal cost, make any payment, admit liability, settle Claims, assume any obligation, waive any rights or incur Claims Expenses without prior written Company approval. Any costs and expenses incurred by the Insured prior to the Insured giving written notice of the Claim to the Company shall be borne by the Insured and will not constitute satisfaction of the deductible either in whole or in part.

EXCLUSIONS

The Insuring Agreements and all other provisions of this Policy shall not apply to:

- I. Liability assumed by the Insured by agreement, whether written or oral, including, but not limited to, hold harmless and indemnity clauses, warranties, guarantees, certifications or penalty clauses, unless such liability arises from an error, omission or negligent act of the Insured and would have attached in the absence of such agreement.
- II. Any Claim in any way based upon, involving or arising out of the conduct by an individual, corporation, business enterprise, partnership or joint venture of which an Insured is an owner, partner, officer, member, manager or employee, which is not designated in Item 1 of the Declarations as an Insured, unless specifically endorsed hereon.
- III. Notwithstanding anything contained in this Policy to the contrary, the coverage herein shall not apply to a Claim made against the Insured:
 - (a) by a person, firm or organization (or its subrogee, assignee, contractor, subcontractor, subsidiary, affiliate or division) that wholly or partly owns, operates, manages or otherwise controls an Insured, whether directly or indirectly, or that is wholly or partly owned, operated, managed or otherwise controlled by an Insured, whether directly or indirectly; or

- (b) by a firm or organization (or its subrogee, assignee, contractor, subcontractor, subsidiary, affiliate or division) of which any principal, partner, director, officer or stockholder of a Named Insured directly or indirectly maintains ownership, or who directly or indirectly operates, manages or otherwise controls such firm or organization; or
 - (c) by a principal, partner, director, officer, stockholder or employee of an Insured (or any subrogee or assignee of such person).
 - (d) by any person or entity identified as an Insured against any person or entity identified as an Insured.
- IV.** Any Claim alleging bodily injury or Personal Injury to, or sickness, disease or death of any employee of the Insured arising out of and in the course of such employment by the Insured, or any obligation for which the Insured or any carrier as the Insured's Insurer may be liable, under any Worker's Compensation, Unemployment Compensation, Employers Liability, Disability Benefits Law or under any similar law.
- V.** Any Claim in any way based upon, involving or arising out of the insolvency or bankruptcy of the Insured.
- VI.** Any Claim in any way based upon, involving or arising out of the advising or requiring of, or failure to advise or require, or failure to maintain any form and/or amount of insurance, suretyship or bond.
- VII.** Any Claim in any way based upon, involving or arising out of the ownership, rental, leasing, operation, maintenance, use or repair of any real or personal property, including damage to property at any time owned by, occupied by, or rented or leased to the Insured.
- VIII.** Any Claim in any way based upon, involving or arising out of the ownership, maintenance, operation or use, including loading and unloading, by, on behalf of, or at the direction of the Insured, of watercraft, automobiles, motor vehicles, aircraft, spacecraft or mobile vehicles of any kind.
- IX.** Any Claim in any way based upon, involving or arising out of express warranties or guarantees.
- X.** Any Claim in any way based upon, involving or arising out of any loss caused intentionally by or at the direction of the Insured; or any claim in any way based upon, involving or arising out of dishonest, fraudulent, criminal, malicious or knowingly wrongful acts, errors or omissions committed by, or at the direction of the Insured.
- XI.** Any Claim alleging bodily injury or Personal Injury to, or sickness, disease or death of any person, based upon, involving or arising out of the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any Claim based upon, involving or arising out of any private, governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants; however, this exclusion shall not apply when any such Claims result from the performance of professional services by the Insured in connection with the design of:
- (a) treatment systems for domestic sewage, including those receiving industrial waste, but only if such industrial waste is pretreated in accordance with applicable governmental or regulatory standards; or
 - (b) potable water systems; or
 - (c) storm water systems for runoff from rain, hail, snow or sleet.

DEFINITIONS

- I. Policy Period.** "Policy Period" whenever used in this Policy shall mean the period from the inception date of this Policy to the Policy expiration date, as set forth in the Declarations as "Policy Period" or its earlier termination date, if any.
- II. Insured.** "Insured" whenever used in this Policy shall mean each Named Insured so designated in Item 1 of the Declarations and any present or former owner, partner, director, officer, or employee of

the Named Insured while acting in the course of those duties conducted for and on behalf of the Named Insured solely in the professional capacity described in the Declarations; and/or the heirs, executors, administrators and legal representatives of such Insured, only while acting in their capacity as such, in the event of such Insured's incapacity, death, insolvency or bankruptcy, but only for Claims arising out of such Insured's duties conducted for and on behalf of the Named Insured in the performance of the Professional Services stated in the Declarations.

III. Claim. "Claim" whenever used in this Policy shall mean a written demand received by the Insured for money or remedial professional services, including the service of suit or institution of arbitration or mediation proceedings against the Insured. A Claim is first made against the Insured at the earliest of the following:

- (a) The first receipt by the Insured of notice of a Claim from a claimant, his legal representative or agent; or
- (b) The first report by the Insured of a circumstance, act, error, or omission reasonably expected to give rise to a Claim, to any insurer regardless of whether such insurer affords coverage for such circumstance, act, error or omission or for any Claim relating to such circumstance, act, error or omission.

Any Claim relating to any circumstance referred to in answer to any question on the application for this insurance or any prior application for insurance shall be deemed to have been first made prior to the Policy Period, and therefore, shall not be subject to coverage hereunder.

IV. Single Claim. Two or more Claims arising out of a single act, error or omission shall be treated as a Single Claim. Each separate act, error or omission shall be treated as a separate Claim.

V. Claims Expenses. "Claims Expenses" whenever used in this Policy shall mean (1) fees charged by any attorney designated by the Company (2) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, if incurred by the Company, and (3) fees charged by any attorney designated by the Insured with the written consent of the Company. However, "Claims Expenses" does not include salary charges of regular employees or officials of the Company or fees and expenses of independent adjusters, or any supervisory counsel retained by the Company.

VI. Damages. "Damages" whenever used in this Policy shall mean the monetary portion of any judgment, award, or settlement entered into with the prior written consent of the Company, but does not include:

- (a) punitive or exemplary damages, any damages which are judicially or statutorily increased or multiplied, or fines, penalties, taxes or sanctions; or
- (b) the restitution, return, withdrawal or reduction of fees, profits, charges for services rendered, consideration and/or expenses paid to the Insured for services or goods; or
- (c) judgments, awards or settlements or portions thereof which are uninsurable under the law pursuant to which this Policy shall be construed.

VII. Personal Injury. "Personal Injury" whenever used in this Policy shall mean bodily injury or emotional distress; or false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, malicious prosecution or humiliation; or the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; or discrimination.

VIII. Pollutants. "Pollutants" whenever used in this Policy shall mean any solid, liquid, gaseous or thermal irritant or contaminant or hazardous substance or material including but not limited to radon, asbestos, lead, PCB's, Dioxin, mercury, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, including material to be recycled, reconditioned or reclaimed.

CONDITIONS

I. Insured's Duties in the Event of a Claim. It is a condition precedent to the application of all insurance afforded herein that the Insured shall:

- (a) Give immediate written notice containing particulars sufficient to identify the Insured and claimant and full information with respect to the time, place and circumstances of the event complained of, and the names and addresses of the injured and of available witnesses, to the Company.
- (b) Immediately forward to the Company every demand, notice, summons or other process received by an Insured or its representative, if Claim is made against an Insured.
- (c) Cooperate with the Company and upon the Company's request, shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meetings with such representatives for the purpose of investigation and/or defense, and all without charge to the Company.
- (d) Exercise any contractual right to either reject or demand the arbitration or mediation of any Claim made against the Insured in accordance with the instructions of the Company.

II. Cancellations. This Policy may be canceled by the Named Insured by surrender thereof to the Company or to Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015 or by mailing to the aforementioned written notice stating when there after such cancellation shall be effective. If canceled by the Named Insured the Company shall retain the customary short rate proportion of the premium.

This Policy may be canceled by the Company or Shand, Morahan & Company, Inc., by mailing to the Named Insured written notice stating when, not less than thirty (30) days thereafter such cancellation shall be effective. However, if the Company cancels the Policy because the Named Insured has failed to pay a premium when due, this Policy may be canceled by the Company by mailing a written notice of cancellation to the Named Insured stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The mailing of notice as aforementioned shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice by the Named Insured, the Company, or Shand, Morahan & Company, Inc. shall be equivalent to mailing. If canceled by the Company or Shand, Morahan & Company, Inc., earned premiums shall be computed pro-rata.

Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter. The check of the Company or any of its representatives, mailed or delivered, shall be sufficient tender of any refund due the Named Insured.

Subrogation. In the event of any Claim 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. The Insured shall do nothing after loss to prejudice such rights.

IV. Audit. The Company may examine and audit the Insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter of this Policy.

V. Action Against Company. No action shall be maintained against the Company by the Insured to recover for any loss under this Policy unless as a condition precedent thereto, the Insured shall have fully complied with all the terms and conditions of this Policy, nor until the amount of such loss shall have been fixed or rendered certain either by final judgment against the Insured after trial of the issues and the time to appeal therefrom shall have expired without an appeal having been taken or, if an appeal shall have been taken, then until after the appeal has been determined, or by agreement between the parties with the written consent of the Company. In no event, shall any action be maintained against the Company by the Insured or any other persons unless brought

within twelve months after the right of action accrued hereon. Nothing contained in this Policy shall give any person or organization any right to join the Company as a defendant or co-defendant or other party in any action against the Insured to determine the Insured's liability.

- VI. Other Insurance.** This insurance shall be excess insurance over any other valid and collectible insurance available to the Insured whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise, unless such other insurance specifically applies as excess insurance over the Limits of Liability provided in this Policy.
- VII. Assignment.** This Policy shall be void if assigned or transferred without the prior written consent of the Company. However, if the Insured shall die or be adjudged incompetent this Policy shall cover the Insured's legal representatives as the Insured with respect to liability previously incurred and covered by this Policy.
- VIII. Application.** By acceptance of this Policy, all Insureds and any successor agree that the statements in the application are their agreements, representations and warranties, that they shall be deemed material and part of the Policy, and that this Policy is issued in reliance upon the truth thereof. This Policy embodies all agreements existing between the persons insured and the Company or any of its agents or representatives, relating to this Policy.
- IX. Discovery Clause.** If during the Policy Period the Insured first becomes aware of any injury and/or damage which has arisen from a circumstance, act, error or omission of the Insured as a result of which a Claim might reasonably be expected to be made for which insurance is otherwise provided by this Policy, and if during the Policy Period, the Company receives written notice from the Insured as described below, then any Claim subsequently made arising out of such injury and/or damage shall be considered to have been made on the date on which such written notice is received by the Company.

It is a condition precedent to the coverage afforded by this Discovery Clause that the aforementioned written notices shall contain the following information:

- (a) the injury and/or damage;
- (b) the circumstance, act, error or omission of the Insured giving rise to such injury and/or damage;
- (c) the name(s) of the person(s) and/or entity(ies) subject to such injury and/or damage; and
- (d) the manner in which the Insured first became aware of (a), (b) and (c) above.

The Insured shall cooperate fully with the Company as set forth in Paragraph V of the INSURING AGREEMENTS, Defense, Settlement, Cooperation, and paragraph I of the CONDITIONS, Insured's Duties in the Event of a Claim, and any investigation conducted by the Company or its representatives shall be subject to the terms set forth in this policy as applicable to a Claim.

- X. False or Fraudulent Claims.** If the Insured shall proffer any Claims knowing same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all insurance hereunder shall be forfeited.
- XI. Changes.** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company 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 the Policy, nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.
- XII. Conformity to Statute.** Terms of this Policy which are in conflict with any applicable statutes of the state where in this Policy is issued are hereby amended to conform to such statutes.
- XIII. Notice of Claim.** The Insured, upon notice of any Claim shall give immediate written notice thereof, to Shand Morahan & Company, Ten Parkway North, Deerfield, Illinois 60015.

XIV. Service of Suit. Except with respect to Policies issued for Named Insureds domiciled in Illinois, it is agreed that in the event of the failure of the Company hereon to pay any amount claimed to be due hereunder, the Company hereon, at the request of the Named Insured will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court. Nothing in this Clause constitutes nor should be understood to constitute a waiver of the Company's right to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court, as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, 150 East 42nd Street, New York, New York 10017 -5639**, and that in any suit instituted against them upon this contract, the Company will abide by the final decision of such court or any appellate court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the Named Insured they will enter a general appearance upon the Company's behalf in the events such as suit shall be instituted.

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

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations page by a duly authorized representative of the Company.

SPECIMEN

Secretary

SPECIMEN

President

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROADFORM)

This endorsement modifies the provisions of this policy.

It is agreed that:

1. This policy does not apply:

- A. Under any Liability Coverage, to bodily injury or property damage
 - (1) with respect to which an Insured under this policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its term of limitation upon exhaustion of its limit of liability; or
 - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B. Under any Medical Payments Coverage, or any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if
 - (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (b) has been discharged or dispersed therefrom;
 - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or
 - (3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

2. As used in this endorsement:

"hazardous properties" includes radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-sustaining chain reaction or to contain a critical mass of fissionable material; -supporting

"property damage" includes all forms of radioactive contamination of property.