

**Shand Morahan & Company, Inc.**

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**Lawyers Professional  
Liability Insurance Policy**

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Underwriting Manager: Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015

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**Insurer:**

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**Evanston Insurance Company**

[A stock insurance company, herein called the Company, which except in Illinois is a non-admitted insurer, writing pursuant to the surplus lines laws and not under the jurisdiction of the Insurance Commissioner.]

# CONDITIONS PRECEDENT

As conditions precedent to the availability of any coverage under this policy, the payment of the premium must be made when due, and the application attached hereto and made a part hereof and all information in whatever form communicated by The Insured to the Company must be accurate. Subject to this policy's Declarations and all the terms of this insurance, the Company and The Insured agree as follows:

## DEFINITIONS

Wherever used in this policy the following words and phrases shall be defined as set forth below:

**Act:** The performance of or omission of a duty or obligation by The Insured while rendering legal advice or legal services for others.

**Claim:** A demand received by The Insured for Damages.

**Claim Expenses:** Subject to Company approval which shall not be unreasonably withheld, all reasonable fees, costs and expenses resulting directly from the investigation, adjustment, defense and appeal of a Claim. Provided, however, Claim Expenses do not include: salary charges of regular employees or officials of the Company; fees and expenses of supervisory counsel retained by the Company; salaries or compensation of any individual or entity identified within THE INSURED.

**Damages:** The monetary portion of any judgment, award or settlement and does not include:

- (a) punitive or exemplary damages, any damages which are a multiple of compensatory damages, statutory treble damages, or fines, penalties or sanctions including, but not limited to, fines awarded pursuant to Rule 11 of the Federal Rules of Civil Procedure; or
- (b) the restitution of consideration and expenses paid to The Insured for services or goods; or
- (c) judgments or awards deemed uninsurable by law.

**Of Counsel:** Any lawyer or professional corporation or any lawyer who is an employee of such professional corporation who is specifically identified on the application as "Of Counsel," but solely with respect to acts on behalf of The Firm.

**The Firm:** The entity listed in the Declarations as "Named Insured".

**Personal Injury:** False arrest, false imprisonment, malicious prosecution, malicious abuse of process, wrongful detention, wrongful entry or eviction or other invasion of private occupancy, libel, slander or breach of privacy by The Insured all while rendering legal advice or legal services for others.

**Policy Period:** The period from the inception date of this policy to the policy expiration date as stated in the Declarations or the policy's earlier termination date, if any.

**Extended Reporting Period:** Whenever used in this policy means the period of coverage described in THE COVERAGE 4., which if purchased, incepts on the effective date of cancellation or non-renewal of this policy and expires upon the completion of the number of months indicated in the Declarations as "Policy Period" or at any earlier termination date effected pursuant to THE COVERAGE 4. (e).

**Predecessor Firm:** Any legal entity which was engaged in the practice of law to whose financial assets and liabilities the Firm is the majority successor in interest and which is designated in the application as a predecessor firm.

## COMPANY DESIGNEE

With respect to notices required to be given to the Company as provided for in INSURED DESIGNEE, THE COVERAGE 3. and 4., CLAIMS 1. and OTHER CONDITIONS 2. and 6., the Company has appointed Shand Morahan and Company, Inc., Ten Parkway North, Deerfield, Illinois 60015 to be the exclusive representative of the Company for the purpose of receiving such notices. All notices required by this Policy shall be made in writing to the Company Designee.

## INSURED DESIGNEE

**S** The attorney signing the application which is attached to the Policy shall be deemed the Insured Designee. The Insured Designee for this policy shall be the sole representative of The Insured.

**P** The Firm or the Insured Designee may change the Insured Designee at any time. The Company must be advised in writing of any change in the Firm's Designee as soon as practicable after such change. In the event of the failure of the Firm to advise the Company, any notice or communication transmitted by the Company to the attorney signing the attached application shall be sufficient notice and shall be deemed notice to the Firm.

## THE INSURED

**E** **Insured**, wherever used in this policy means:

- C** 1. The entity listed in the Declarations as ANamed Insured@, such entity to be known as the "Firm" but only for Claims arising out of legal advice or services provided on behalf of the Firm or any Predecessor Firm by any other Insured; and
- I** 2. Any lawyer or professional corporation that is a partner, officer, director, Of Counsel or employee of the Firm but only for Claims arising out of legal advice or legal services rendered on behalf of the Firm or any Predecessor Firm; and
- M** 3. Any lawyer who is an employee of a professional corporation that is a partner, officer, director, Of Counsel or employee of the Firm but only for Claims arising out of legal advice or legal services rendered on behalf of the Firm or any Predecessor Firm; and
- E** 4. Any lawyer or professional corporation who is a former partner, officer, director, Of Counsel or employee of the Firm or any Predecessor Firm or of any professional corporation but only for Claims arising out of the legal advice or legal services rendered on behalf of the Firm or any Predecessor Firm; and
- N** 5. Any other present or former employee of the Firm or any Predecessor Firm or of any professional corporation insured by this policy solely while acting on behalf of the Firm or any Predecessor Firm; and
6. As respects the liability of The Insured as otherwise covered herein, the heirs, executors, administrators, assigns and legal representatives of The Insured as defined in Items 1. through 5. above in the event of death, incapacity or bankruptcy.

## THE COVERAGE

### 1. Professional Liability Claims Made and Reported Coverage:

The Company shall pay on behalf of The Insured, subject to the limits of liability, sums in excess of the deductible amount which The Insured shall become legally obligated to pay as Damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED IN ACCORDANCE WITH THE PROVISION OF CLAIMS 1:

- (a) because of any Act; or
- (b) because of any Personal Injury,

PROVIDED ALWAYS THAT such Act or Personal Injury happens,

- (aa) during the Policy Period; or
- (bb) prior to the Policy Period provided that, on or prior to the effective date of this policy, no Insured was aware of any facts or circumstances from which a reasonable person would have anticipated a Claim;

PROVIDED FURTHER THAT no other policy which provides insurance for such liability or Claim resulting from such Act or Personal Injury is available to the Insured whether or not the available limits of liability of any such other insurance are sufficient to pay any such liability or claim or whether or not the deductible provisions and amount of any such other insurance are different from this policy, unless such other insurance is written only as specific excess insurance over the limits of liability provided by this policy.

Subject to all other terms and conditions of this policy, when The Insured renders services as an administrator, conservator, executor, guardian, trustee, The Insured's Acts in such capacity shall be deemed for the purpose of this section to be the performance of legal services for others, provided that this coverage shall not apply to any loss sustained by The Insured as the beneficiary or distributee of any trust or estate.

## 2. **Defense, Investigation and Settlement of Claims:**

The Company shall investigate and defend any Claim to which coverage under this policy applies pursuant to the following provisions:

- (a) Claim Expenses incurred in investigating and defending such Claim shall be included within the per claim policy limit of liability set forth in the Declarations and shall not be in addition thereto. Such Claim Expenses shall reduce the available limit of liability. THE COMPANY SHALL NOT BE OBLIGATED TO PAY ANY DAMAGES OR TO DEFEND OR TO CONTINUE TO DEFEND ANY CLAIM OR TO PAY CLAIM EXPENSES AFTER THE LIMIT OF THE COMPANY'S LIABILITY HAS BEEN TENDERED TO THE INSURED OR INTO THE COURT OR EXHAUSTED BY PAYMENT(S) OF DAMAGES AND/OR CLAIM EXPENSES.
- (b) Selection of defense counsel shall be made by the Company. Provided, however, that if the law of the state of the Firm's domicile (as designated on the Declarations page) allows the Insured to control the selection of counsel where a conflict of interest has arisen between the Insured and the Company, the Company will provide a list of attorneys or law firms from which The Insured may designate counsel who shall act solely in the interest of The Insured, and The Insured agrees to direct such defense counsel to cooperate with the Company. Such cooperation shall include:
  - (1) Providing on a regular basis, not less frequently than every six months, written reports on claimed Damages potential liability, progress of any litigation, any settlement demands, or any investigation developments that materially affect the Claim;
  - (2) Providing any other reasonable information requested and fully itemized billing on a periodic basis;
  - (3) Cooperating with the Company and The Insured in resolving any discrepancies;

and 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 Claim Expenses. Such Claim Expenses shall be included within the policy limit of liability and not in addition thereto. Such Claim Expenses shall reduce the available limit of liability.

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(c) The Insured shall cooperate with the Company in the defense, investigation and settlement of any Claim. The Insured will assist the Company in effecting any rights of indemnity, contribution or apportionment available to The Insured or the Company. Upon the Company's request, The Insured shall: (i) submit to examination and interview by a representative of the Company, under oath if required; (ii) attend hearings, depositions and trials; (iii) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of suits; (iv) give a written statement or statements to the Company's representatives and meet with such representatives for the purpose of determining coverage and investigating and/or defending any Claim, all without charge to the Company.

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(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, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur Claim 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.

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(e) The Company shall not settle any Claim without the consent of the Insured Designee. If, however, the Insured Designee 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 Company shall not be obligated to pay Claim Expenses incurred subsequent to such refusal. Furthermore, the Company's liability for such Claim shall not exceed the amount for which the Claim could have been so settled and Claim Expenses incurred up to the date of such refusal. Such amounts are subject to the provisions of the section LIMITS OF LIABILITY.

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**3. Discovery of Potential Claims:**

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If, during the Policy Period, The Insured first becomes aware of any Act or Personal Injury for which a Claim might reasonably be expected to be made for which insurance is otherwise provided by this policy and gives written notice of such Act or Personal Injury which is received by the Company during the Policy Period, then any Claim subsequently made arising out of that Act or Personal Injury shall be considered to have been made on the date such written notice is received by the Company.

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Such written notice shall include a description of:

- 1) the specific Act or Personal Injury; and
- 2) the injury or damage that has or may reasonably result from 1) above; and
- 3) the circumstances by which The Insured first became aware of 1) and 2) above.

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The Insured shall cooperate fully with the Company as set forth in THE COVERAGE 2., Defense, Investigation and Settlement of Claims, 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.

**4. Extended Reporting Period:**

If the Company cancels or non-renews this policy, the Firm, for an additional premium charge, shall have the right to extend the period during which Claims must be first made and reported to apply to CLAIMS FIRST MADE AGAINST THE INSURED DURING THE PERIOD OF MONTHS INDICATED IN THE DECLARATIONS immediately following the effective date of such cancellation or non-renewal and REPORTED IN ACCORDANCE WITH CLAIMS 1., provided:

- (a) The Extended Reporting Period applies only to Acts or Personal Injuries committed prior to the effective date of cancellation or non-renewal of this policy which are otherwise covered by this policy; and
- (b) Cancellation or non-renewal does not result from the Firm's non-payment of premium and/or deductible or other non-compliance with the terms and conditions of the policy; and
- (c) Written notice of intent to exercise this option and the premium for the Extended Reporting Period is received by the Company from the Firm within ten (10) days of the effective date of cancellation or non-renewal. This premium shall be calculated at the percentage stated in the Declarations of the full annual premium of the policy; and
- (d) The full annual premium of this policy and any deductibles that are due have been paid by the Firm; and
- (e) The coverage afforded by this Extended Reporting Period shall terminate immediately when the Firm purchases a lawyers professional liability policy providing coverage in whole or in part for Acts or Personal Injuries committed prior to the end of the Policy Period. If coverage is so terminated, the Company shall refund pro rata any unearned premium charged for the Extended Reporting Period coverage; otherwise, the premium for the Extended Reporting Period shall be fully earned at the time of payment; and
- (f) The quotation of a different premium and/or deductible and/or limits of liability for renewal does not constitute a cancellation or refusal to renew for the purpose of this policy provision; and
- (g) The exercise of this Extended Reporting Period Option shall not in any way increase or be in addition to the limits of liability set forth in the Declarations.

## THE EXCLUSIONS

### The policy does not apply:

- (a) to payment of Damages arising out of a judgment or award against an individual or entity identified in THE INSURED section of the policy who has been finally adjudicated to have committed an intentionally dishonest or fraudulent Act; however, notwithstanding the forgoing, the Company, subject to the Limits of Liability and other terms and conditions, will pay Claim Expenses for any such Claim, and shall not exclude coverage to the Firm or to any other Insured who is not so adjudged to have committed such Act as described above. This policy shall then pay only in excess of the deductible and in excess of the full extent of the capital and assets in the Firm of any such individual or entity who was so adjudged to have committed such Act as described above, and any other personal assets of such individual or entity recovered by the Firm shall inure, to the extent of the amount paid by this policy, to the benefit of the Company,
- (b) to any Claim made by an Insured or any individual or entity acting on behalf of any Insured.
- (c) to any Claim resulting from the rendering of legal advice or legal services for any individual or entity where such individual or entity either holds an ownership interest in or is considering acquiring an ownership interest in a business enterprise, pension, profit sharing, mutual or investment fund or trust;
  - 1) which, at the time such advice or services were rendered, was more than 5% owned, controlled, managed or operated by any single individual or entity or any combination of individuals or entities within THE INSURED, alone or in conjunction with any

spouse or any other immediate family member of any individual or entity identified within THE INSURED; or

2) for which any individual or entity identified within THE INSURED serves or served at the time such advice or services were rendered as an officer, director, partner, manager or employee or as a trustee in bankruptcy;

(d) to any Claim arising out of The Insured's capacity as a public official or an employee of a governmental body, subdivision or agency unless The Insured is deemed to be such solely because The Insured has rendered legal advice or legal services to such governmental body and the remuneration for such legal advice or legal services inures to the benefit of the Firm;

(e) to any Claim for bodily injury, sickness, disease or death of any person, or injury to or destruction of any tangible property or loss of use resulting therefrom;

(f) to any Claim based on or arising out of the rendering of investment advice by any Insured in connection with the purchase or sale of any investment or property, including but not limited to securities, real property, syndications, limited partnerships, commodities or franchises; or to any claim based on or arising out of any Insured's services or capacity as a securities broker, dealer, financial planner, investment advisor, accountant, real estate broker or real estate agent;

(g) to any Claim based upon or arising out of a contract for, or other right relating to, payment of or division of fees or fee apportionment;

(h) to any Claim based on or arising out of discrimination of any kind by any Insured including but not limited to discrimination on the basis of race, national origin, creed, religion, age, sex, sexual orientation, health disability or marital status or to any claim arising out of alleged or actual wrongful termination.

With the exception of THE EXCLUSIONS (a) hereinabove, any fact pertaining to any one or more Insured(s) which determines the applicability of THE EXCLUSIONS hereinabove shall apply to each and every individual or entity identified within THE INSURED and the Company shall not be required to defend or indemnify any Claim arising out of alleged Acts or claim for Damages for which no coverage applies pursuant to THE EXCLUSIONS or any other terms of this Policy.

## TERRITORY

The Insurance afforded applies worldwide.

## LIMITS OF LIABILITY

### 1. Limit of Liability C Each Claim:

The liability of the Company for the combined total of Damages and Claim Expenses for each Claim FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED IN ACCORDANCE WITH CLAIMS 1., shall not exceed the amount stated in the Declarations for "each Claim."

### 2. Limit of Liability C Policy Aggregate:

Subject to 1. Limit of Liability C Each Claim, the liability of the Company for the combined total of Damages and Claim Expenses shall not exceed the amount stated in the Declarations as "aggregate"

as a result of all Claims FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND THE EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED IN ACCORDANCE WITH CLAIMS 1.

**3. Deductible:**

Except as set forth in the following paragraph, the deductible amount stated in the Declarations shall be applicable to the combined total of Damages and Claim Expenses for each Claim.

Deductible payment or portions thereof shall be paid by the Firm within 30 days of demand.

**4. Multiple Insureds, Claims and Claimants:**

The inclusion of more than one Insured in any Claim or the making of Claims by more than one person or organization shall not operate to increase the limits of liability and deductible. Two or more Claims arising out of a single Act or Personal Injury or a series of related Acts or Personal Injuries shall be treated as a single Claim. All such Claims whenever made shall be considered first made on the date on which the earliest Claim arising out of such Act or Personal Injury was first made and all such Claims are subject to the same limit of liability and deductible.

## CLAIMS

**1. Insured's Duties in the Event of Claim:**

As a condition precedent to the availability of coverage under this policy The Insured's duties in the event of a Claim shall be as follows:

- (a) If suit is brought or arbitration is instituted against The Insured, then The Insured shall immediately forward to the company, directed to Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015, every demand, notice, summons or other process received by The Insured or their representative; and
- (b) If any Claim, other than a suit or arbitration proceeding, is made, then The Insured shall give as soon as practicable, written notice to the Company containing particulars sufficient to identify The Insured and claimant and full information with respect to the time, place and circumstances of the Claim; and
- (c) In any event any Claim or suit made or arbitration instituted against The Insured during the Policy Period MUST BE REPORTED IN WRITING TO AND RECEIVED BY THE COMPANY WITHIN SIXTY (60) DAYS AFTER THE EXPIRATION OF THE POLICY PERIOD; and
- (d) In any event any Claim made or suit made or arbitration instituted against The Insured during the purchased Extended Reporting Period MUST BE REPORTED IN WRITING TO AND RECEIVED BY THE COMPANY WITHIN TEN (10) DAYS AFTER THE EXPIRATION OF THE EXTENDED REPORTING PERIOD.

**2. Subrogation and Indemnity:**

- (a) In the event of payment for Damages or Claim Expenses under the policy, the Company shall be subrogated to all of The Insured's rights of recovery against any person or organization. Any recovery shall be used to pay: first, subrogation expenses; second, payments in excess of the deductible by The Insured; third, payments by an excess insurer; fourth, payments made by a primary insurer; and, last reimbursement of The Insured's deductible.
- (b) If the Company makes any payment of Claim Expenses or Damages as a result of the final adjudication that an intentionally dishonest or fraudulent Act has been committed, then the Company shall have the right to indemnification of such payments from the individual or entity

so adjudged, including any individual or entity identified in THE INSURED section of the policy.

**3. False or Fraudulent Claims:**

If any Individual or entity identified within THE INSURED commits fraud in presenting or maintaining any Claim, the Company at its sole option may void:

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(a) this insurance with respect to such Claim; and/or

(b) this insurance as to such individual or entity from the date such Claim is presented or maintained; and/or

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(c) this policy in its entirety; and/or

(d) this insurance from the date such Claim is presented or maintained.

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**OTHER CONDITIONS**

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**1. Application:** By acceptance of this policy, The Insured agrees that the statements in the application are personal representations, that they shall be deemed material and 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 this insurance.

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**2. Firm Changes:** Any of the following changes in the Firm which occur during the Policy Period must be reported to the Company within sixty (60) days of such change:

(a) any change of 20% or more in the total number of lawyers in the Firm;

(b) any new involvement in any single practice specialty anticipated to produce 5% or more of the Firm's gross billable dollars;

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A premium adjustment and/or revision of limits, deductible, and/or coverage may be required by the Company as a result of such change. A return of premium due to a mid-term reduction in staff is not available under the policy. Mid-term charges for increase in staff in excess of 20% may apply.

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**3. 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 this policy, nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

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**4. Non-Payment of Deductible:** If, within thirty (30) days of demand by the Company, the Insured fails to pay any or all of the Deductible which the Insured has become obligated to pay, the Company has the right to institute binding arbitration against the Insured unless otherwise prohibited by the laws of the state governing the Policy. The arbitration fees and costs of both parties shall be borne by the Insured; however, should the Insured prevail in arbitration, the Company shall pay the fees and costs.

**5. Assignment:** Assignment of any interest under this policy shall not bind the Company unless its consent is endorsed hereon.

**6. Integration of Document:** All provisions of this policy are intended to be read together as one integrated document. No provision nor any part thereof is intended to be separable from the balance of the policy. The meaning of each provision of this policy is created by what is written in such

provision and by what is written in the balance of the policy, and the Company issues this policy to The Insured in contemplation of the foregoing method of giving meaning to the policy.

If any provision of this policy is held to be void by a court of competent jurisdiction, then the balance of this policy shall still be interpreted in accordance with the preceding paragraph.

7. **Cancellation or Non-Renewal:** This policy may be cancelled by the Firm by the Firm's mailing of written notice to the Company stating when, thereafter, such cancellation shall be effective and by the Firm's surrender of the policy or a valid lost policy release to the Company.

This policy may be cancelled by the Company or by Shand Morahan & Company, Inc. by mailing to the Firm written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective.

Provided, however, if the Firm does not pay the premium or deductible when due, the Company or Shand Morahan & Company, Inc., may cancel the policy giving the Firm at least ten (10) days written notice of cancellation. If no premium has been paid, cancellation for non-payment of premium shall be as of Policy inception. In the event that the policy is cancelled for non-payment of premium, the Company will not be liable for any Claims made against the Firm.

The Company, or Shand Morahan & Company, Inc., if it intends not to renew this policy, must give written notice to the Firm, mailed at least sixty (60) days prior to the expiration date of this policy.

The effective date of cancellation or non-renewal stated in the notice shall become the end of the Policy Period. Delivery of written notice by the Company or by Shand Morahan & Company, Inc., shall be equivalent to mailing. Should the Firm cancel the policy, the short rate proportion of the premium shall be charged. If the Company or Shand Morahan & Company, Inc., cancels the policy, the earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

8. **Service of Suit:** Except with respect to any policy issued to a Firm domiciled in Illinois, or in any state in which the Company is licensed to transact business, 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 Firm 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. In any suit instituted against it upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Lord Bissell & Brook, whose address is 115 South LaSalle Street, Chicago, Illinois 60603, is authorized and directed to accept service of process on behalf of the Company in any such suit and/or upon the request of the Firm they will enter a general appearance upon the Company's behalf in the event such suit shall be instituted.

Further, pursuant to any statute of any state, 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 proceeding instituted by or on behalf of The 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.

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Secretary

President

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# NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

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

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- (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 termination 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

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- (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:

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

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

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"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;

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

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

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