

Information Technology Professional Liability Insurance Policy

In consideration of the payment of the premium, in reliance upon the statements in the application attached hereto and made a part hereof, and subject to all of the terms of this insurance, the Company agrees with the Named Insured as follows:

THE INSURED

1. The Insured: The unqualified word "Insured" whenever used in this policy means:

- (a) the Named Insured is defined herein as the individual, partnership, or corporation designated in Item 1 of the Declarations including any partner, executive officer, director or stockholder of such designated firm solely while acting within the scope of their duties as such;
- (b) any employee of the firm or predecessor firm as designated in Item 1 of the Declarations solely while acting in their professional capacity on behalf of the said firms;
- (c) any former partner, director, or employee of the firm or predecessor firms as designated in Item 1 of the Declarations solely while acting within their professional capacity on behalf of said firms;
- (d) as respect the liability of each Insured above as is otherwise covered herein, the heirs, executors, administrators, assigns and legal representatives of each of the above Insureds in the event of death, incapacity or bankruptcy.

2. Firm Changes: Any changes among the partners or stockholders of the Named Insured during the Policy Period, even though it results in changes in the name of the firm, shall not affect this insurance.

THE COVERAGE

1. Coverage A - Errors and Omissions Liability and Claims Made Clause: To pay on behalf of the Insured sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as Damages and Claim Expenses as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR OPTIONAL EXTENSION PERIOD, IF PURCHASED, by reason of any act, error or omission in Professional Services rendered or that should have been rendered by the Insured or by any person for whose acts, errors or omissions the Insured is legally responsible including liability arising from the infection of a client's computer system with a computer virus and unauthorized access to a client's computer system by a third party with respect to which computer the Insured was engaged to develop and install access controls or limitations;

PROVIDED ALWAYS THAT such act, error or omission in Professional Services happens:

- (a) during the Policy Period, or
- (b) subsequent to the Retroactive Date specified in the Declarations, provided that prior to the effective date of this policy the Insured had no knowledge of circumstances involving such act, error or omission, which may result in a Claim under this policy.

2. Coverage B - Intellectual Property Right Infringement Claims Made Clause: To pay on behalf of the Insured sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as Damages and Claim Expenses as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR OPTIONAL EXTENSION PERIOD, IF PURCHASED, alleging an infringement of Intellectual Property rights or unfair competition in connection therewith by the Insured arising from an act, error or omission in the performance of Professional Services rendered or that should have been rendered by the Insured or by any person for whose acts the Insured is legally responsible;

PROVIDED ALWAYS THAT such act happens:

- (a) during the Policy Period, or

(b) subsequent to the Retroactive Date specified in the Declarations, provided that prior to the effective date of this policy the Insured had no knowledge of circumstances involving such act, which may result in a Claim under this policy.

3. **Conditions Precedent:** As respects Coverages A and B, coverage shall be afforded for only those Coverages listed in Item 6 of the Declarations. It is also a condition precedent to coverage under this policy that all Claims be reported in compliance with CLAIMS 1, Notice of Claims.

4. **Definitions:** Whenever used in this policy:

Claim means a demand received by the Insured for compensation for Damages, including the service of suit or institution of arbitration proceedings against the Insured.

Claim Expenses means:

- (a) fees charged by any lawyer designated by the Company; and
- (b) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, if incurred by the Company; and
- (c) fees charged by any lawyer designated by the Insured with the written consent of the Company.

However Claim Expenses does not include salary charges of regular employees or of officials of the Company or any supervisory counsel retained by the Company. The determination of the Company as to the reasonableness of the Claim Expenses shall be conclusive on the Named Insured.

Damages means a monetary judgment award or settlement and does not include:

- (a) fines or penalties whether imposed by law or otherwise; nor
- (b) the return of fees or charges for the services rendered; nor
- (c) costs incurred by the Insured or by any other party to correct, perform or reperform the Insured's Professional Services when the Insured had the capability to correct, perform or reperform the Professional Services with respect to which such costs were incurred; nor
- (d) judgments or awards arising from acts deemed uninsurable by law.

Intellectual Property means copyright, service mark, service name or trademark, title, trade dress, trade name or slogan. However, Intellectual Property does not include any patent.

Policy Period means the period from the inception date of this policy to the policy expiration date as set forth in the Declarations or its earlier termination date, if any.

Professional Services means the services described in Item 3. of the Declarations.

5. **Defense, Settlement:** With respect to the insurance afforded by this policy, the Company shall defend any Claim against the Insured seeking Damages to which this insurance applies even if any of the allegations of the suit are groundless, false or fraudulent. It is further 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 Claim or judgment or to defend or to continue to defend any Claim after the limits of the Company's liability have been tendered to the Insured or into the court or exhausted by payment of Damages or Claim Expenses.

6. **Discovery Clause:** If during the Policy Period or any purchased Optional Extension Period hereunder the Insured first becomes aware that an Insured has committed a specific act, error or omission in Professional Services for which coverage is otherwise provided hereunder, and if the Insured shall during the Policy Period or such Optional Extension Period give written notice to the Company of:

- (a) the specific act, error or omission; and
- (b) the damage which has or may result from such act, error or omission; and
- (c) the circumstances by which the Insured first became aware of such act, error or omission;

then any Claim that may subsequently be made against the Insured arising out of such act, error or omission shall be deemed for the purposes of this insurance to have been on the date on which such written notice was given to the Company.

- 7. Optional Extension Period:** In the event of the termination of this insurance by reason of non-renewal or cancellation by the Named Insured, or if the Company shall cancel this policy or terminate it by refusing to renew, for reasons other than the Named Insured's non-payment of premium and/or deductible amount or non-compliance with the terms and conditions of this policy, then the Named Insured upon payment of an additional premium calculated at that percentage shown in Item 10 of the Declarations of the full annual premium for this policy shall extend the Claims reporting period, subject otherwise to the terms and conditions of the policy to apply to CLAIMS FIRST MADE AGAINST THE INSURED DURING TWELVE (12) CALENDAR MONTHS following immediately upon the effective date of such cancellation or non-renewal. Any such Claim must be reported to the Company during such twelve calendar month period and must arise out of any act, error or omission in Professional Services rendered before such applicable termination or expiration date, after the retroactive date, if any, and otherwise covered by this insurance.

This twelve (12) calendar month interval shall be referred to as the Optional Extension Period. If, however, this policy is immediately succeeded by similar CLAIMS MADE insurance coverage, the succeeding insurance shall be deemed to be a renewal hereof and in consequence, the Named Insured shall have no right to purchase the Optional Extension Period.

As a condition precedent to the Named Insured's right to purchase the Optional Extension Period, the full annual premium of this policy and any deductibles that are due must have been paid.

The Named Insured's right to purchase the Optional Extension Period must be exercised by notice in writing not later than thirty (30) days after the cancellation or termination date of this policy AND MUST INCLUDE FULL PAYMENT OF PREMIUM FOR THE OPTIONAL EXTENSION PERIOD.

After the commencement of any Optional Extension Period, the entire premium therefor shall be deemed fully earned and non-refundable.

The fact that this policy is extended by virtue of the exercise of the Optional Extension Period shall not in any way increase the limits of liability set forth in the Declarations.

THE EXCLUSIONS:

1. With respect to all Coverages, this policy does not apply:
 - (a) to any Claim based upon or arising out of any dishonest, deliberately fraudulent, malicious or knowingly wrongful act, error or omission committed by or at the direction of the Insured. However, notwithstanding the foregoing, the Company will provide a defense for any such Claim without any liability on the part of the Company to pay such sums as the Insured shall become legally obligated to pay as Damages.
 - (b) to liability arising out of the Insured's services and/or capacity as:
 1. an officer, director, partner, trustee, or employee of a business enterprise not named in the Declarations or charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust;
 2. a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto; or any other employee benefit plan;
 - (c) to any Claim made by any business enterprise which is operated or managed or owned, in whole or in part, by the Named Insured or parent company or any affiliated, subsidiary or associated company;
 - (d) 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;

- (e) to any Claim arising out of false arrest, humiliation, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, or malicious prosecution, libel, slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy;
- (f) to any Claim based upon or arising out of discrimination by the Insured on the basis of age, color, race, sex, creed, national origin, or marital status;
- (g) to any loss or Claim based upon or arising out of a violation or alleged violation of the Securities Act of 1933 as amended or the Securities Exchange Act of 1934 as amended or any state Blue Sky or securities law or similar state or federal statute and any regulation or order issued pursuant to any of the foregoing statutes, unless endorsed hereon;
- (h) to the liability of others assumed by the Insured under any contract or agreement, unless such liability would have attached to the Insured even in the absence of such agreement;
- (i) to any Claim based upon or arising out of express warranties or guarantees; cost estimates or estimates of probable costs being exceeded;
- (j) to any Claim arising out of unauthorized access to the Insured's electronic data processing system.

2. With respect to Coverage A, this policy does not apply:

- (a) to any Claim arising out of infringement of patent or Intellectual Property right of any form.
- (b) to any Claim to which Coverage B applies.

3. With respect to Coverage B, this policy does not apply:

- (a) to any Claim based on, arising from or in any way involving failure to obtain a software site license or to advise of the need to obtain a software site license;
- (b) to any Claim arising from patent infringement or unfair competition based upon patent infringement;
- (c) to any Claim arising from infringement of copyright or trademark with regard to matter incorporated into any Web site designed and/or maintained by the Insured.

TERRITORY

The insurance afforded applies worldwide, provided that suit is brought or Claim is made within the United States, its territories and possessions or Canada.

LIMITS OF LIABILITY

1. Limit of Liability - Each Claim:

- (a) With respect to Coverage A, the liability of the Company for Damages and Claim Expenses for each Claim FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR OPTIONAL EXTENSION PERIOD, IF PURCHASED, shall not exceed the amount stated in the Declarations for "each claim."
- (b) With respect to Coverage B, the liability of the Company for Damages and Claim Expenses for each Claim FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR OPTIONAL EXTENSION PERIOD, IF PURCHASED, shall not exceed the amount stated in the Declarations for "each claim."

2. Limit of Liability - Policy Aggregate: Subject to 1. Limit of Liability - Each Claim, with respect to both Coverage A and/or Coverage B, the liability of the Company for Damages and Claim Expenses shall not exceed the amount stated in the Declarations as "Policy Aggregate" as a result of all claims FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR OPTIONAL EXTENSION PERIOD, IF PURCHASED.

3. **Deductible:** With respect to Coverage A and Coverage B, the deductible amount stated in the Declarations shall be paid by the Named Insured, shall be applicable to each Claim and shall include Damages and Claim Expenses, whether or not payment for Damages is made. Such amounts shall, upon written demand by the Company, be paid by the Named Insured within thirty (30) days. The total payments requested from the Named Insured in respect of each Claim shall not exceed the deductible amount stated in the Declarations.
4. **Limit of Liability and Deductible--All Coverages:** With respect to Coverages A and B, it is the intent of the Company that such Coverages be mutually exclusive. If, however, it is determined that more than one purchased Coverage applies to any one Claim, then the limit of liability with respect to such Claim shall be that each-claim-limit-of-liability available under the single, purchased, applicable Coverage having the higher limit of liability available for such Claim and not the sum of the available each Claim limits of liability. In the event that each of the purchased, applicable Coverages has the same limit of liability available for such Claim, the limit of liability of only one applicable, purchased Coverage shall apply and not the sum of the limits of the purchased, applicable Coverages.

In such event the amount of Damages and/or Claim Expenses incurred for such Claim shall be applied to reduce the available aggregate limits of liability of the applicable, purchased Coverages in proportion to the amount of the available aggregate limit of liability for each applicable, purchased Coverage relative to the sum of the available aggregate limits of liability for all applicable, purchased Coverages.
5. **Multiple Insureds, Claims and Claimants:** 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 Company's limit of liability. Two or more Claims arising out of a single act, error or omission or a series of related acts, errors or omissions 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 acts, errors or omissions was first made, and all such Claims shall be subject to the same limit of liability.
6. **Payment of Claim Expenses:** Subject to the Named Insured's obligation to pay the deductible as set forth in LIMITS OF LIABILITY 3, which includes an obligation to pay Damages and/or Claim Expenses as applicable, the Company shall pay Claim Expenses subject to the applicable limits of liability.

CLAIMS

1. **Notice of Claims:** As a condition precedent to the right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice directed to **Shand Morahan & Company, Inc., Ten Parkway North, Deerfield, Illinois 60015**, of any Claim made against the Insured.

In the event suit is brought or arbitration instituted against the Insured, the Insured shall immediately forward to the Company through Shand Morahan & Company, Inc., every demand, notice, summons or other process received directly or by the Insured's representatives.
2. **Assistance and Cooperation of the Insured:** The Insured shall give full assistance and cooperation to the Company as respects all Claims made against the Insured at the Insured's expense. The Insured shall not, except at their own cost, make any payment, admit any liability, settle any Claims, assume any obligation or incur any expense without the written consent of the Company.
3. **Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor 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 the Claim to prejudice such rights.

The Company shall not exercise any such rights against any persons, firms or corporation including in the definition of "Insured." Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured in respect of any Claim brought about

or contributed to by the intentional, dishonest, fraudulent, criminal or malicious act, error or omission of such Insured.

Any amount so recovered shall be apportioned as follows:

Any recovery shall first be used for the repayment of expenses incurred toward subrogation; second, to any loss and expense payment by the Insured in excess of any deductible(s); third, to any loss and expense payments by any excess carrier on behalf of the Insured; fourth, to any loss and expense payments by any primary carrier on behalf of the Insured; and, last, to repayment of the Insured's deductible.

4. **False or Fraudulent Claims:** If any Insured shall commit fraud in proffering any Claim as regards amount or otherwise, this insurance shall become void as to such Insured from the date such fraudulent Claim is proffered.

OTHER CONDITIONS

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.
2. **Other Insurance:** This insurance shall be in excess of the amount of the applicable deductible of this policy and any other valid and collectible insurance available to the Insured whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the limits of liability provided in this policy.
3. **Assignment:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed hereon.
4. **Cancellations:** This policy may be cancelled 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 thereafter such cancellation shall be effective. If cancelled by the Named Insured, the Company shall retain the customary short rate proportion of the premium.

This policy may be cancelled by the Company or by Shand Morahan & Company, Inc., by mailing to the Named Insured written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Company cancels the policy because the Named Insured has failed to pay a premium or deductible when due, this policy may be cancelled 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 cancelled by the Company or Shand Morahan & Company, Inc., earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

5. **Audit:** The Company may examine and audit the Insured's books and records at any time during the policy period and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.
6. **Premium Adjustment:** When requested by the Company, the Named Insured shall furnish the Company with a signed statement (directed to Shand Morahan & Company, Inc.) of the Insured's total gross receipts or other premium base as specified in the Declarations for the Policy Period.

The actual earned premium shall be computed thereon at the premium rate stipulated in the Declarations. If the actual earned premium is more than the deposit premium the Insured shall pay

the difference to the Company; if less, the Company shall refund the difference to the Insured except that the Company shall be entitled to the minimum premium as stated in the Declarations.

When used as a premium base:

Gross receipts means the gross amount of money charged by the Insured for services rendered during the Policy Period including taxes, other than those which the Insured collects as a separate item and remits directly to a governmental division.

7. **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. It is further agreed that service of process in such suit may be made upon **Lord, Bissel & Brook, 115 South LaSalle, Chicago, Illinois 60603**, and that in any suit instituted against them 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.

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 that they will enter a general appearance upon the Company's behalf in the event such a 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 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 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.

8. **Integration of Document:** All the provisions of this policy are intended to be read together as one integrated document. No applicable provision nor any part thereof is intended to be separable from the balance of the applicable policy provisions. The meaning of each applicable provision of this policy is created by what is written in such provision and by what is written in the balance of the applicable policy provisions, and the Company issues this policy to the Insured in contemplation of the foregoing method of giving meaning to the policy.

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

9. **Use of Singular and Plural:** In this policy, the use of a defined term in the singular shall be deemed a proper use even though such term may be referring to more than one of what it defines. The necessary grammatical changes required to make the defined terms of this policy apply in the plural sense when such terms are used singularly shall in all instances be assumed as though in each case fully expressed.
10. **Authorization:** By acceptance of this policy, the Named Insured agrees to act on behalf of all Insureds with respect to the giving of all notice to the Insurer as provided herein, the cancellation of this policy, the receiving of any return premium that may become due and the giving of notice to any Insured of addition or deletion from coverage under this policy; and all Insureds agree that the Named Insured shall act on their behalf.
11. **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 estop 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.

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 (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
 - (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
 - (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 include 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 included 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-supporting chain reaction or to contain a critical mass of fissionable material;

property damage includes all forms of radioactive contamination of property.